

(2012) 10 MAD CK 0233

In the Madras High Court

Case No : Writ Petition (MD) No"s. 8439 and 8440 of 2010

K. Rajakumaran

APPELLANT

Vs

Managing Director, Arasu Rubber Corporation Ltd., Registered
Office, Vadasery, Nagercoil and Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 311
Trade Unions Act, 1926 — Section 2

Citation : (2012) 8 MLJ 255

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : T. Lajapathi Roy, for the Appellant; Pala. Ramasamy, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Petitioner has sought for a writ of certiorarified mandamus, to quash the charge memorandum in Na. Ka. No. Pa2/12516/03, dated 28.4.2006, issued by the Joint Managing Director, Arasu Rubber Corporation Ltd., Vadasery, Nagercoil, the second respondent herein, as well as another order in Na. Ka. No. Pa2/12516/03, dated 16.6.2010, rejecting the request of the petitioner for legal assistance. As both the Writ Petitions pertain to disciplinary proceedings initiated against the petitioner, they are taken up together and a Common Order is being passed.

2. Facts of the case, as stated in the supporting affidavit, in a nutshell are that the petitioner is a Driver in Arasu Rubber Corporation Limited, Nagercoil. A case in Crime No. 160 of 2003 has been registered against him alleging that he was involved in cutting and transporting Teak Wood, without permission from the Forest Department. Vide order dated 30.9.2003, the General Manager, Arasu Rubber Corporation Limited, Nagercoil, suspended the petitioner from service. Subsequently, vide order dated 22.9.2004, the petitioner was reinstated in

service. On 28.4.2006, two charges have been framed against the petitioner by the second respondent, which are as follows:

(i) He was involved in cutting and transporting Teak Wood without permission from the Forest Department

(ii) He refused to receive the order of suspension and left Headquarters without prior permission.

3. It is the further case of the petitioner that on receipt of the said charge memorandum, he made a representation dated 16.5.2006 to the Joint Managing Director, Arasu Rubber Corporation Limited, Nagercoil, the second respondent herein, to provide him all the supporting documents mentioned in annexure III of the charge memorandum as well as the statements of witnesses mentioned in annexure IV. In spite of his request, the said documents were not furnished to him.

4. The petitioner has further submitted that one Mr. M. Sundarakumar, Vigilance Officer, was appointed as an Enquiry Officer, by proceedings dated 23.5.2006. But, he did not conduct any enquiry. Thereafter, by proceedings dated 29.11.2006, one Mr. R. Diraviam, Vigilance Officer in charge, was appointed as the Enquiry Officer and he also did not conduct any enquiry. Subsequently, Mr. P. Vijayakumar, Law Officer of Arasu Rubber Corporation Limited, the third respondent herein, has been appointed as the Enquiry Officer, by proceedings dated 5.2.2009. When he began the enquiry, the petitioner made a representation dated 14.8.2009 stating that as the Criminal Case in C.C. No. 33 of 2008 was pending before the Special Court, for Forest Cases, Nagercoil, the enquiry can be kept in abeyance. In the aforesaid representation dated 14.8.2009, the petitioner also requested to provide legal assistance i.e., either to engage a Lawyer or a co-employee with legal knowledge or any other office bearer, to defend him in the enquiry. But, vide order dated 3.5.2010, the said request of the petitioner was negated by the Enquiry Officer. Not satisfied with the rejection, the petitioner, once again, made another representation, dated 8.6.2010 stating that he was only an ordinary Driver, having educational qualification upto 9th standard, and therefore, prayed for legal assistance, which was also rejected on 16.6.2010.

5. In the aforesaid circumstances, the petitioner has assailed both the charge memo and the order rejecting the request for legal assistance orders, contending inter alia that the Joint Managing Director, Arasu Rubber Corporation Limited, Nagercoil, second respondent herein, has failed to furnish the documents mentioned in annexure III of the charge memorandum as well as the statements of witnesses, mentioned in annexure IV, which is a violation of Rule III (2)(d) and (e) of Arasu Rubber Corporation Limited (Disciplinary and Appeal) Rules, and that therefore, there is violation of principles of natural justice.

6. Placing reliance on a decision of a Division Bench of this Court i R. Venkatachalapathy Vs. The Senior Manager, Indian Overseas Bank, the petitioner

has submitted that as the facts involved in C.C. No. 33 of 2008, on the file of the Special Court for Forest Cases, Nagercoil, and the departmental enquiry in the charge memorandum dated 28.4.2006 are one and the same, the departmental proceedings should be kept in abeyance, otherwise, petitioner would be seriously prejudiced in his defence.

7. Learned counsel for the petitioner sub-mitted that Mr. P. Vijayakumar, Enquiry Officer, Arasu Rubber Corporation Limited, Vadasery, Nagercoil, third respondent herein, is none other than the Law Officer of the respondents Corporation, and therefore, there is a likelihood of bias and that he would not conduct a fair enquiry.

8. Lastly, placing reliance on an unreported decision of this Court dated 18.11.2010 made in W.P. (MD). No. 1708 of 2008, learned counsel for the petitioner submitted that in similar circumstances, when a request for legal assistance was sought for, and rejected, this Court, while setting aside the rejection order, permitted the petitioner therein to engage an advocate and allow him to participate in the domestic enquiry on behalf of the petitioner therein as his counsel. Learned counsel for the petitioner prayed that a similar direction be issued in this case also.

9. Based on the averments made in the counter affidavit filed by the Managing Director, Arasu Rubber Corporation Limited, Nagercoil, in W.P. (MD). No. 8440 of 2010, Mr. Pala. Ramasamy, learned counsel for the respondents Corporation submitted that as the petitioner, driver, was involved in a forest offence No. 160 of 2003 for illicit cutting and transportation of Teak Wood, he was suspended from service and that a charge memorandum dated 28.4.2006 was issued by the Joint Managing Director, Arasu Rubber Corporation Limited, Nagercoil, second respondent herein and an Enquiry Officer was also appointed. When the enquiry officer summoned the petitioner for an enquiry, he did not co-operate for the same.

10. He further submitted that Mr. M. Sundarakumar, Vigilance Officer, appointed as Enquiry Officer was reverted to the Forest Department, the enquiry was entrusted to one Mr. Thiraviam, Vigilance Officer, in charge of Vigilance Squad. Due to his health condition, he submitted a report that he was unable to conduct the enquiry, and in such circumstances, the third respondent has been appointed as Enquiry Officer. The request of the petitioner for engagement of a lawyer or a co-worker with legal knowledge or union representative was rejected as there was no provision, in Arasu Rubber Corporation Service Rules.

11. Learned counsel for the Arasu Rubber Corporation Limited, Nagercoil further submitted that the case in Forest Offence No. 160 of 2003 for cutting and transporting the teak wood in F.C. No. 33 of 2008 has ended in conviction and that a penalty of two years rigorous imprisonment and fine of Rs. 7,500/- has been imposed. He also submitted that all the documents shown in Annexure III, have been sent to the petitioner in E. 2/12516/03, dated 11.7.2006. The

petitioner has not submitted any questionnaire form. It is also the case of the Corporation that the petitioner has all the opportunities to obtain any related documents during the course of enquiry.

12. Placing reliance on a decision of the Hon''ble Division Bench of this Court in Chairman and Managing Director, Hindustan Teleprinters Ltd. Vs. M. Rajan Isaac, , learned counsel for Arasu Rubber Corporation Limited, Nagercoil, submitted that in the absence of any rule, the employee has no right to seek for any legal assistance, and only in a case where, the Presenting Officer is stated to be a man of law, justice would require that charged official or workman who has no legal background, should be provided with legal assistance. In the light of the above, he submitted that there is no manifest illegality, in rejecting the request of the petitioner.

13. Learned counsel for Arasu Rubber Corporation Limited further submitted that the allegations are bias levelled against the third respondent, Enquiry Officer, has no basis. Inviting the attention of this Court to the Service Rules of the Arasu Rubber Corporation Limited, Nagercoil, learned counsel further submitted that there is no prohibition in appointing a law officer to be the enquiry officer. According to him, the only prohibition contained in the service rules is for appointment of an outsider, as the Enquiry Officer. Learned counsel for the Corporation further submitted that as the criminal case has ended in conviction, the contention that the defence of the petitioner would be exposed in the disciplinary proceedings, no longer exists and for the above said reasons, prayed that the interim stay granted in M.P. (MD) No. 1 of 2010 in W.P. (MD) No. 8439 of 2010 be vacated.

14. According to the learned counsel for the Corporation, the petitioner at each and every stage of the proceedings, has attempted to protract the enquiry. No legal or statutory right has been infringed and that therefore, prayed for dismissal of the both the writ petitions.

15. Heard the learned counsel appearing for the parties and perused the materials available on record.

16. In W.P. (MD). No. 8439 of 2010, the petitioner has challenged the charge memo in Na. Ka. No. Pa2/12516/03, dated 28.4.2006 issued by the second respondent herein.

17. In W.P. (MD). No. 8440 of 2010, the petitioner has challenged the order in Na. Ka. No. Pa2/12516/03, dated 16.6.2010 issued by the fourth respondent rejecting legal assistance.

18. Insofar as the first ground of attack that the disciplinary proceedings are in violation of principles of natural justice on the ground that Arasu Rubber Corporation Limited, Nagercoil, has not furnished documents relied on by the Corporation in annexure III of the charge memorandum as well as the statement of witnesses mentioned in annexure IV and that there is violation of Rule III (2)

(d) and (e) of the Arasu Rubber Corporation Limited Disciplinary and Appeal Rules is concerned, it is a specific case of the respondent that the documents shown in Annexure III have been sent to the charged official in letter No. E2/12516/03, dated 11.7.2006. It is also the contention of the Corporation that the petitioner would be provided with a reasonable opportunity to obtain the documents which are relevant during the enquiry. The enquiry itself has not commenced so far. In the said circumstances, this Court is of the view that it is too premature to arrive at any conclusion that the disciplinary proceedings are in violation of principles of natural justice. At the same time, before commencement of the enquiry, the charged official should be furnished with all the documents relied on, in the charge memorandum, so as to enable him to have a fair and reasonable opportunity to effectively defend the charges.

19. Material on record discloses that earlier when Mr. Sundarakumar, Vigilance Officer, was appointed as the Enquiry Officer, he has been reverted to Forest Department. Therefore, the enquiry could not be conducted. Subsequently, when the enquiry was entrusted to Mr. Thiraviam, Vigilance Officer, he had made a representation that he was unable to conduct enquiry, due to his ill health and hence, the third respondent, Law Officer of the Arasu Rubber Corporation Limited, Nagercoil, has been appointed as the Enquiry Officer.

20. At this juncture, it is worthwhile to extract the relevant service rules of the Arasu Rubber Corporation Limited Nagercoil, relating to the manner of conducting an enquiry:

(1) In every case where it is proposed to impose on an employee of the Corporation any of the minor penalties he/she shall be issued with a charge sheet and given a reasonable time to put forth his/her defence. On receipt of the explanation from the delinquent employee the punishing authority shall dispose of the charge sheet on the merits of the case and taking into consideration the explanation offered by the employee. If no explanation is submitted within the stipulated time the authority is competent to finalise the charge sheet ex-parte, as per facts available on record.

Provided that the requirements of this sub regulation shall not apply to cases where it is proposed to impose on an employee any of the minor penalties on the basis of facts which have led to his/her conviction absconded of where it is, for any other reason, impracticable to communicate with his/her.

(2)(a) In every case where it is proposed to impose on an employee of this Corporation any one of the major penalties, mentioned above, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge(s) which will be communicated to the person charge, together with a statement of the allegations on which each charge is based. The employee shall be required, within a reasonable time to put in a written statement of his/her defence and to state whether he/she desires an oral enquiry or to be heard in person or both. A questionnaire form (as in the annexure) shall be en-closed to

the charge memo, and the person charged shall be required to resubmit the same duly filled in and signed along with his/her explanation.

(b) The charge memo should be carefully prepared, as this is the most crucial stage in the entire disciplinary proceedings. The success or otherwise of the disciplinary proceedings depends mainly on the strength and soundness of the charge memo. The evidence on which a charge memo is issued shall be unshakable and clear cut and no charge memo shall be issued based on mere suspicion.

(c) For charge sheeting an employee there shall be a prima facie case against him/her. Each charge should be expressed in clear and precise terms and it should not be vague. A separate charge should be framed in respect of each separate allegation. Multiplication or splitting up of charges on the basis of the same allegation should be avoided.

(d) If, before framing charges, witnesses have been enquired and statements recorded, a list of witnesses, who are proposed to be produced during the oral enquiry, in support of the charges, shall be enclosed to the charge memo. Only such witnesses should be produced who are considered to support the charges and give material evidence. Copies of complaints and copies of statements taken from the witnesses who are to be produced for oral enquiry, shall be communicated to the accused employed along with the charge memo. A list of documents which are proposed to be produced in support of the charges should also accompany the charge memo. The charge memo should be signed by the appropriate disciplinary authority.

(e) The disciplinary authority will deliver or cause to deliver the charge memo together with all enclosures to the employee concerned in person or by sending through Registered Post with Acknowledgment Due

Copy of Addendum received in Govt. Ir. No. (D) No. 362 dt. 29.10.1999.

Sub: Establishment-Arasu Rubber Corporation Limited - Draft proposal for amending Disciplinary and Appeal Rules of Arasu Rubber Corporation Limited for appointment of Enquiry Officer -Approved.

Ref: Your Ir. No. E1/6864/99-2 dt. 22.6.99.

Addendum

For the existing Rule III (2) (g) of the Service Rules of the Arasu Rubber Corporation Limited the following shall be added and read as Rule III (2)(g)(1).

Appointment of Enquiry Officer:

An Officer of the Arasu Rubber Corporation Limited alone can be appointed as an Enquiry Officer in the Disciplinary cases including Director of Vigilance and Anti-corruption cases and outside agency shall not be appointed as an Enquiry Officer. The Enquiry Officer so appointed shall be only an Officer holding a higher post in

the Arasu Rubber Corporation Limited.

Provided that where it is difficult to appoint an Enquiry Officer sufficiently higher in seniority, a retired judge may be appointed as an Enquiry Officer in the case of officers of the rank of Managing Director and above. This shall not be however extended to junior officers in the Corporation where a sufficiently senior officer in the Corporation can himself be the Enquiry Officer.

Superintendent.

(true extract)

21. Reading of the rules makes it clear that the only prohibition under the service rules is that no outsider should be appointed as an enquiry officer. The officer appointed to enquire into the charges should be an officer holding a higher post in the Arasu Rubber Corporation Limited. The rule makes it clear that in cases of any difficulty to appoint an enquiry officer sufficiently higher in seniority, a retired Judge may be appointed as an enquiry officer in the case of officers of the rank of Managing Director and above and this shall not be extended to junior officers in the corporation where a sufficiently senior officer in the Corporation can himself be the enquiry officer.

22. In the absence of any provision in the service rules, appointment of the third respondent, law officer as enquiry officer, cannot be said to be contrary to the rules. On the contrary, appointment of a legally qualified person to be the enquiry officer would be in the best interest of both the department as well as the charged official.

23. Though the petitioner has placed reliance on a decision of the Hon"ble single Judge of this Court in Mervin Sargunakumar Benjamin v. The Managing Director, Arasu Rubber Corporation Ltd., Nagercoil, in W.P. (MD) No. 1708 of 2008, dated 18.11.2010, this Court deems it fit to consider a decision Chairman and Managing Director, Hindustan Teleprinters Ltd. v. M. Rajan Isaac (supra), wherein the Hon"ble Division Bench has considered a similar issue. In the reported case, the petitioner therein working as Deputy General Manager, (management services) was issued with a charge memorandum. After enquiry, he was removed from service. One of the grounds raised challenging the order of removal was that the enquiry was vitiated for gross violation of the principles of natural justice as the request of the charged official for assistance of a lawyer was rejected even though he was pitted against a legally trained person in the enquiry. The Hon"ble Division Bench considered the question as to whether as a matter of right a charged employee can seek for legal assistance to defend his case in the disciplinary proceedings. In the reported case, the presenting officer was a legally trained person. It is worthwhile to extract the decisions considered by the Hon"ble Bench and that they are reproduced.

3. As the issue in question frequently arises for consideration, we propose to consider the same with reference to the settled law of the Supreme Court right

from the year 1960. In *Kalindi and Others Vs. Tata Locomotive and Engineering Co. Ltd.*, it was contended on behalf of the workmen that the enquiry on the results of which the orders of dismissal were based was not a proper and valid enquiry inasmuch as the workmen were not allowed to be represented at the enquiry by a representative of that particular union to which the workmen belonged. It was also argued that fair play demands that at such an enquiry the workman concerned should have reasonable assistance for examination and cross examination of the witnesses and for seeing that proper records are made of the proceedings. While repelling the said contentions, in paragraphs 4 and 5, the Supreme Court has held as follows:

It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic Tribunals the person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic Tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.

Our conclusion therefore is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union, though of course an employer in his discretion can and may allow his employee to avail himself of such assistance.

In *Brooke Bond India (Private) Ltd., v. Subba Raman (S) and Another* 1961-II-LLJ-417, the view taken in *N. Kalindi v. Tata Locomotive & Engg. Co. Ltd.* (supra) case was quoted by the Supreme Court with approval.

4. A similar question came up for consideration before the Supreme Court in *The Dunlop Rubber Co. Vs. Workmen*, . While referring to the Judgment in *N. Kalindi v. Tata Locomotive & Engg. Co. Ltd.* (supra) case, the Supreme Court has observed as follows:

The Tribunal was also wrong in thinking that there was a denial of natural justice because the workmen were refused the assistance of a representative of their own Union. Under the Standing Orders it is clearly provided that at such enquiries only a representative of a Union which is registered under the Indian Trade Union Act and recognized by the Company can assist. Technically, therefore, the demand of the workmen that they should be represented by their own Union could not be accepted.

But we cannot say that the action of the Enquiry Officer was for that reason illegal or amounted to a denial of natural justice. In this connection, we have

repeatedly emphasised that in holding domestic enquiries, reasonable opportunity should be given to the delinquent employees to meet the charge framed against them and it is desirable that at such an enquiry the employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. But as we have just indicated, in the circumstances of this case, we have no doubt that the failure of the Enquiry Officer to accede to the request made by the employees does not introduce any serious defect in the enquiry itself, and so, we have no hesitation in holding that the result of the said enquiry cannot be successfully challenged in the present proceedings.

Even in the above case where the workmen were entitled to be represented by their own Union as per the Standing Order, the Supreme Court held that the refusal to accede to the request of the workmen for insistence of a representative of their union was held as not violative of the principles of natural justice, but it was only observed that it is desirable that at such an enquiry the employees should be given liberty to represent their case by persons of their choice, if there is no standing order against such a course being adopted and if there is nothing otherwise objectionable in the said request. By the said observation the Supreme Court laid down the law that there is no vested right in a workman to seek for assistance of a person of his choice in the absence of any rule, but it is only desirable that he should be given an opportunity to defend his case through a person of his choice. Holding so, the Supreme Court held that the enquiry could not be successfully challenged.

5. In *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, , while upholding the limitation in Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971 and the Standing Orders imposing restrictions on the right to representation, the Supreme Court has held as follows:

The doctrine of natural justice embodies two principles, namely: (i) no one can be a judge in his own cause, and (ii) a judicial or quasi-judicial Tribunal ought not and shall not condemn any person unheard. In the present case we are not concerned with the first principle and must, therefore, confine ourselves to the second which recognises the right to be heard. The second principle envisages that the right to be heard in order to be effective must be preceded by notice as to the exact charge which a delinquent is called upon to meet. Does then the right to be heard include the right to be represented through counsel or agent of the choice of the delinquent? If a Domestic Tribunal refuses permission to a delinquent appearing before it to be represented by an agent would that amount to infringement of the rule of natural justice? There can be no doubt that a delinquent must be given an opportunity of presenting his case in such way suitable to the character of the enquiry which would ensure a fair hearing resulting in fair dispensation of justice. But does that extend to the right to be represented through counsel or agent is the question which we are called upon to

answer.

In *Enderby Town Foot Ball Club Ltd. v. Football Association Ltd.* (1971) 1 ALL ER 215, the validity of a rule of the Football Association prohibiting clubs which appealed to it against decisions of County Football Associations from being legally represented was considered. While FENTON ATKINSON L.J. and CAIRNS L.J. were inclined to take the view that the clubs might exclude legal representation by an absolute rule, LORD DENNING, M.R. posed the question: Is a party who is charged before a domestic Tribunal entitled as of right to be legally represented? and answered it by saying much depends on what the rules say about it. He further proceeded to add that when the rules are silent, then the party has no absolute right to be legally represented and it is a matter left to the discretion of the Tribunal which must be properly exercised.

6. In *Harinarayan Srivastav Vs. United Commercial Bank and another*, the Supreme Court had in fact gone to the extent to reject the contention of the charge sheeted employee viz., that the charge sheet has already been filed and a criminal trial was pending and that the enquiry conducted against him on the same set of facts would prejudicially affect his case and therefore the denial to have the assistance of an advocate is violative of the principles of natural justice. In that case, the claim for a lawyers assistance was rejected on the ground that Clause 19.12 of the Bipartite Settlement provides only an option to the employee to seek for a lawyers assistance. While considering the said clause in Bipartite Settlement, the Supreme Court has held that even if the Bipartite Settlement provided a clause enabling the bank officer to have a lawyers assistance, it is only an option and therefore the same cannot be claimed as a matter of right. Further, it is to be seen that in that case the request of the officer to defend himself with the assistance of an advocate was rejected considering the limited scope of Clause 19.12 of the Bipartite Settlement, though the bank appointed a law graduate as a presenting officer.

7. In *Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors*, the same issue again came up for consideration before the Supreme Court with reference to the following Model and Draft Standing Orders

Para 14(4)(ba) of the Model Standing Orders, as framed by the Central Government under the Act for industrial establishments, not being industrial establishments in coal mines, provides as under:

In the enquiry, the workman shall be entitled to appear in person or to be represented by an office-bearer of a trade union of which he is a member. Clause 29.4 of the Draft Standing Orders, as certified by the appellate authority, provides as under:

If it is decided to hold an enquiry, the workman concerned will be given an opportunity to answer the charge/charges and permitted to be defended by a fellow workman of his choice, who must be an employee of the Corporation. The workman defending shall be given necessary time off for the conduct of the

enquiry.

While upholding the above Standing Orders, the Supreme Court has held that an employee has no right to representation in the disciplinary proceedings by another person or a lawyer unless the service rules specifically provide for the same. The Supreme Court also held that the right to representation is available only to the extent specifically provided for in the rules.

8. Recently the same issue came up for consideration before the Supreme Court in *Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another*. The regulations of the bank enabled an officer-employee to take the assistance of any other officer-employee to defend him in the disciplinary proceedings, but a note was added restraining the officer-employee from taking the assistance of any other employee who had two pending disciplinary cases on hand in which he had to give assistance. While considering the scope of the said note to the regulations, the Supreme Court has observed as follows: We have carefully considered the submissions made as above. The issue ought to have been considered on the basis of the nature and character or the extent of rights, if any, of an officer-employee to have, in a domestic disciplinary enquiry, the assistance of someone else to represent him for his defence in contesting the charges of misconduct. This aspect has been the subject-matter of consideration by this Court on several occasions and it has been categorically held that the law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognize such a right and provide for such representation.

Considering a challenge to the note added to the regulations that in the absence of a corresponding ceiling in respect of engagement of a presenting officer by the management, the Supreme Court held that the said note to the regulations is not violative of Article 14 as the management can always observe the same while considering the need for choosing a presenting officer in an individual case even in the absence of a stipulation therefor. The Supreme Court further observed that mere possibility or otherwise of any action which may result in differential standard or norm being adopted in a given case cannot be assumed to provide sufficient ground or reason to undermine the right of the management to make a regulation or standing order of the nature in question or militate against the reasonableness or justness of the said provision.

9. A combined reading of the above judgments leads to the following conclusions:

(1) There is no vested or absolute right in the officer/employee/workman, as the case may be, to representation either through a counsel or through an agent unless the statutes/regulations/rules/standing orders recognise such a right.

(2) The right to representation through a counsel or agent can be restricted, controlled or regulated by statutes/regulations/rules/standing orders, as the case

may be.

(3) In the absence of any provision in the statutes/regulations/rules/standing orders, refusal to representation either through a counsel or through an agent does not violate the principles of natural justice.

(4) Even in case of only an option is given to an employee to secure the assistance of a lawyer/agent, by such clause, there is no vested or absolute right on the employee, as it is the discretion of the employer to accept such request depending upon the facts of each case with reference to the complicated issues raised and involved in the enquiry.

10. The question still remains is as to whether in the absence of any rule the workman or officer, as the case may be, would be entitled to the assistance of a lawyer when such workman or officer is pitted against a legally trained person. This issue came up for consideration in *C.L. Subramaniam Vs. Collector of Customs, Cochin*, While considering the grievance of the appellant therein that his request for assistance of a lawyer was rejected even when he was pitted against a legally trained prosecutor, the Supreme Court has observed as follows: The grounds urged by the appellant in support of his request for permission to engage a legal practitioner were by no means irrelevant. The fact that the case against the appellant was being handled by a trained prosecutor was a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighed against him. The Disciplinary Authority completely ignored that circumstance. Therefore, that authority clearly failed to exercise the power conferred on it under the rule. It is not unlikely that the Disciplinary Authority's refusal to permit the appellant to engage a legal practitioner in the circumstances mentioned earlier had caused serious prejudice to the appellant and had amounted to a denial of reasonable opportunity to defend himself".

The said observation was made by the Supreme Court taking into consideration the fact as to whether the officer was given a reasonable opportunity to defend himself in accordance with sub-rule (5) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 which provided that the government servant may not engage a legal practitioner for the purpose mentioned in that clause unless the disciplinary authority having regard to the circumstances of the case so permits. The Supreme Court while distinguishing the law laid down in *N. Kalindi v. Tata Locomotive & Engg. Co. Ltd.* (supra) case, *Brooke Bond India (Private) Ltd., v. Subba Raman (S) and Another* (supra) case and in *Dunlop Rubber Co. Ltd. v. Workmen* (supra) case has held in paragraph 17 as follows:

The learned counsel for the State relied on the decisions mentioned above in support of his contention that the appellant was not entitled to have the assistance of a legal practitioner. This contention is without force. In those cases this Court considered whether a person proceeded against in an enquiry before a

domestic Tribunal had a right to be represented by someone else on the basis of the principles of natural justice. Therein this Court was not called upon to consider either the limits of the reasonable opportunity to defend oneself, guaranteed under Article 311 or the scope of a statutory rule. The question that falls for decision in this case did not arise for decision in those cases.

11. A similar question came up for consideration in the Board of Trustees of the Port of Bombay Vs. Dilipkumar Raghavendranath Nadkarni and Others, Regulation 12(8) of the Bombay Port Trust Employees Regulations, 1976, which was put in issue before the Supreme Court, reads as under:

The employee may take the assistance of any other employee or, if the employee is a Class III or a Class IV employee, of an Office Bearer as defined in Clause (d) of Section 2 of the Trade Unions Act, 1926 (16 of 1926) of the union to which he belongs, to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the said Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case, so permits.

While considering the scope of the rule imposing conditions on the employee to engage a legal practitioner in case the presenting officer appointed by the disciplinary authority is a legal practitioner, the Supreme Court has held as follows:

In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic Tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated.

In fact, the Supreme Court had further observed as follows:

In fact one can go so far as to say that the Enquiry Officer in order to be fair and just, whenever he finds the employer appointing legally trained persons as Presenting-cum-Prosecuting Officers must enquire from the delinquent employee before commencement of enquiry whether he would like to take assistance of a legal practitioner. The option then is with the delinquent employee.

12. The general rule is that in the absence of rules an employee has no right to seek for assistance of a lawyer in the departmental enquiry. Ordinarily the principles of natural justice do not postulate a right to be represented or assisted by a lawyer in the departmental proceedings. But there is an exception and the question would be different if the delinquent officer or the workman, as the case may be, is pitted against a legally trained person in the departmental enquiry and the delinquent officer or the workman is not that much familiar with the legal procedures involved in the departmental enquiry. When a presenting officer is stated to be a man of law, justice would require that the officer or workman who

has no legal background is represented through a lawyer. Though the quasi-judicial authorities holding domestic enquiries are not governed by strict and technical rules of evidence, yet they are governed by the rule of equity and natural justice and they must act in fairness. This concept is to ensure that there is no failure of justice. Natural justice is a concept which has succeeded in keeping the arbitrary action in limits and preserving rule of law. In this context, the following observation of LORD DENNING M.R. In C.A. Pett v. Greyhound Racing Association Ltd. (1968) 2 ALL ER 545 can be usefully referred to. Once it is seen that a man has a right to appear by an agent, then I see no reason why that agent should not be a lawyer. It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence. He cannot examine or cross-examine witnesses. We see it every day. A magistrate says to a man: "You can ask any questions you like"; whereupon the man immediately starts to make a speech. If justice is to be done, he ought to have the help of someone to speak for him; and who better than a lawyer who has been trained for the task? I should have thought, therefore, that when a man's reputation or livelihood is at stake, he not only has a right to speak by his own mouth. He has also a right to speak by counsel or solicitor. It has been held by the Supreme Court in Ex. Capt. R.S. Dhull Vs. State of Haryana and Others, that the non observance of principles of natural justice by itself is a prejudice caused.

13. On the above pronouncements of the Supreme Court relating to the issue, the facts of the case in question should be considered. It is the specific case of the respondent that he was pitted against a legally trained person as a presenting officer. Therefore, he has made a request for the assistance of an advocate. The said request was made on the ground that the presenting officer was the Manager (Personnel and Administration) and also holding charge of the post of Chief Vigilance Officer and had put in not less than 20 years of service as Personnel Manager in the private sector undertakings before joining the appellant undertaking and is a degree holder in law. For better appreciation of the stand of the appellant, the relevant portion as stated in paragraph 6 of the affidavit filed in support of the writ petition reads as under:

It is therefore a moot point whether or not the presenting officer was trained in the legal discipline. In any event, having put in not less than 20 years of service in the personnel department of private sector undertakings, it cannot be validly claimed that he was not legally trained. Therefore, when I was denied the assistance of an advocate, having been pitted against a legally trained presenting officer it is against all the principles of natural justice. On this ground alone, the whole disciplinary proceeding against me stands vitiated and false and therefore the order of termination passed against me founded on the said enquiry fails.

While meeting this submission, in paragraph 9 of the counter affidavit, it is stated as follows:

As regards paras 6 and 7, I submit that all the averments made therein are false and baseless and hence denied. I submit that Rule 31 (6) of the CDA Rules of the respondent company provides that an employee may take assistance of any other public servant but may not engage a legal practitioner for the purpose. Hence, the petitioners request for legal assistance was denied in accordance with the said rule.

14. From the above rival stand, it is clear that the averment of the respondent that the presenting officer was a legally trained person was not denied by the appellant, except saying that the respondent was denied the assistance of a legal practitioner as the rules do not provide for the same. The Supreme Court in *Mintu Bhakta Vs. The State of West Bengal*, has held that a vague answer is neither a proper nor an adequate reply in disproof of the specific allegation and therefore the allegation remains unanswered and must consequently be accepted in the absence of any cogent reply". In the absence of specific denial, the claim of the respondent that he was pitted against a legally trained person who is familiar with the procedures of the domestic enquiry including the legal consequences thereof should be accepted. In the absence of such expertise by the officer, the denial of assistance of a legally trained person would render the disciplinary proceedings vitiated. We, therefore, agree with the views expressed by the learned single Judge in this regard. Moreover, the learned single Judge has also given liberty to the appellant to proceed further in accordance with law.

24. This Court in W.P. (MD) No. 11756 of 2006, dated 5.8.2010, had an occasion to consider a similar question as to whether in the absence of any rule as a matter of right a charged employee is entitled to seek for legal assistance. After considering the decisions of this Court held that the petitioner therein has no legal or statutory right to insist, that he should be provided with the assistance of a legal practitioner to conduct the enquiry, on his behalf. Few decisions relied on in the abovesaid case are reproduced:

9. The Hon'ble Supreme Court, *The Management of National Seeds Corporation Ltd. Vs. K.V. Rama Reddy*, where the delinquent sought for engagement of a legal practitioner to defend the disciplinary proceedings. The reasons for seeking assistance of a legal practitioner were that (a) amount alleged to have been misappropriated was Rs. 63.67 lakhs, (b) a number of documents and number of witnesses were relied on by the respondent.

10. The prayer for availing the services of an retired employee was rejected by the department and the respondent was unable to get any assistance from any other able co-worker. The High Court accepted the plea that there was a legal right for engaging a legal practitioner and taking into consideration, the factual scenario, permitted engagement of a legal practitioner. Rule 31(7) of the National Seeds Corporation Conduct (Discipline and Appeal) Rules, 1992, which was pressed into service, before the Abstract reads as follows:

31. (7) The employee may take the assistance of any other employee working in

the particular unit where the employee is working/was working at the time of happening of alleged charges to which the inquiry relates of where the inquiry is being conducted to present the case on his behalf but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority having regard to the circumstances of the case, so permits.

2. After considering a catena of decisions, the Supreme Court, rejected the contentions of the employee, who sought for legal assistance on the above said grounds. While reiterating the law relating to engagement of a legal practitioner, the Supreme Court, after extracting various decisions, at paragraphs 7, 8 and 10 held as follows:

7. The law in this country does not concede an absolute right of representation to an employee in domestic enquiries as part of his right to be heard and that there is no right to representation by somebody else unless the rules or regulation and standing orders, if any, regulating the conduct of disciplinary proceedings specifically recognise such a right and provide for such representation: see *The Dunlop Rubber Co. Vs. Workmen*, , *Crescent Dyes and Chemicals Ltd. Vs. Ram Naresh Tripathi*, and *Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another*,

8. 27. The basic principle is that an employee has no right to representation in the departmental proceedings by another person or a lawyer unless the Service Rules specifically provide for the same. The right to representation is available only to the extent specifically provided for in the Rules. For example, Rule 1712 of the Railway Establishment Code provides as under:

The accused railway servant may present his case with the assistance of any other railway servant employed on the same Railway (including a railway servant on leave preparatory to retirement) on which he is working

28. The right to representation, therefore, has been made available in a restricted way to a delinquent employee. He has a choice to be represented by another railway employee, but the choice is restricted to the Railway on which he himself is working, that is, if he is an employee of the Western Railway, his choice would be restricted to the employees working on the Western Railway. The choice cannot be allowed to travel to other Railways.

29. Similarly, a provision has been made in Rule 14(8) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, where too, an employee has been given the choice of being represented in the disciplinary proceedings through a co-employee.

30. In *N. Kalindi v. Tata Locomotive & Engg. Co. Ltd.* (supra) case a three-judge Bench (of this Court) observed as under:

Accustomed as we are to the practice in the Courts of law to skilful handling of witness by lawyers specially trained in the art of examination and cross-

examination of witnesses, our first inclination is to think that a fair enquiry demands that the person accused of an act should have the assistance of some person, who even if not a lawyer may be expected to examine and cross-examine witnesses with a fair amount of skill. We have to remember however in the first place that these are not enquiries in a Court of law. It is necessary to remember also that in these enquiries, fairly simple questions of fact as to whether certain acts of misconduct were committed by a workman or not only fall to be considered, and straightforward questioning which a person of fair intelligence and knowledge of conditions prevailing in the industry will be able to do will ordinarily help to elicit the truth. It may often happen that the accused workman will be best suited, and fully able to cross-examine the witnesses who have spoken against him and to examine witnesses in his favour.

It is helpful to consider in this connection the fact that ordinarily in enquiries before domestic Tribunals the person accused of any misconduct conducts his own case. Rules have been framed by Government as regards the procedure to be followed in enquiries against their own employees. No provision is made in these rules that the person against whom an enquiry is held may be represented by anybody else. When the general practice adopted by domestic Tribunals is that the person accused conducts his own case, we are unable to accept an argument that natural justice demands that in the case of enquiries into a charge-sheet of misconduct against a workman he should be represented by a member of his Union. Besides, it is necessary to remember that if any enquiry is not otherwise fair, the workman concerned can challenge its validity in an industrial dispute.

Our conclusion therefore is that a workman against whom an enquiry is being held by the management has no right to be represented at such enquiry by a representative of his Union; though of course an employer in his direction can and may allow his employee to avail himself of such assistance.

31. In another decision, namely, *Dunlop Rubber Co. (India) Ltd. v. Their Workmen* (supra) case it was laid down that there was no right to representation in the disciplinary proceedings by another person unless the Service Rules specifically provided for the same.

32. The matter again came to be considered by a three-judge Bench of this Court in *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi* (supra) case, and AHMADI, J. (as he then was) in the context of Section 22(ii) of the Maharashtra Recognition of Trade Unions and Unfair Labour Practices Act, 1971, as also in the context of domestic enquiry, upheld the statutory restrictions imposed on the delinquent's choice of representation in the domestic enquiry through an agent...

33. The earlier decisions in *N, Kalindi and Others v. Tata Locomotives and Engineering Co. Ltd., Jamshedpur* (supra) case, *Dunlop Rubber Co. (India) Ltd. v. Their Workmen* (supra) case and *Brooke Bond India (P) Ltd. v. Subba Raman (S.)* (supra) were followed and it was held that the law in this country does not

concede an absolute right of representation to an employee as part of his right to be heard. It was further specified that there is no right to representation as such unless the company, by its Standing Orders, recognises such a right. In this case, it was also laid down that a delinquent employee has no right to be represented in the departmental proceedings by a lawyer unless the facts involved in the disciplinary proceedings were of a complex nature in which case, the assistance of a lawyer could be permitted.

34. We have seriously perused the judgment of the High Court which, curiously, has treated the decision of this Court in *Crescent Dyes and Chemicals Ltd. v. Ram Naresh Tripathi* (supra) case as a decision in favour of Respondent 1. The process of reasoning by which this decision has been held to be in favour of Respondent 1 for coming to the conclusion that he had a right to be represented by a person who, though an office-bearer of the Trade Union, was not an employee of the appellant is absolutely incorrect and we are not prepared to subscribe to this view. Consequently, we are of the opinion that the judgment passed by the High Court insofar as it purports to quash the order of the Appellate Authority, by which the Draft Standing Orders were certified, cannot be sustained.

(emphasis supplied)

The position as aforementioned was reiterated in *Bharat Petroleum Corpn. Ltd. v. Maharashtra General Kamgar Union*, (1991) 1 SCC 626 SCC pp. 634-36, paras 27-34.

9....

10... The reasons indicated by the respondent for the purpose were: (a) amount alleged to have been misappropriated is Rs. 63.67 lakhs, (b) a number of documents and number of witnesses are relied on by the respondent, and (c) the prayer for availing services of the retired employee has been rejected and the respondent is unable to get any assistance to get any other able co-worker. None of these factors are really relevant for the purpose of deciding as to whether he should be granted permission to engage the legal practitioner. As noted earlier, he had to explain the factual position with reference to the documents sought to be utilised against him. A legal practitioner would not be in a position to assist the respondent in this regard. It has not been shown as to how a legal practitioner would be in a better position to assist the respondent so far as the documents in question are concerned. As a matter of fact, he would be in a better position to explain and throw light on the question of acceptability or otherwise and the relevance of the documents in question. The High Court has not considered these aspects and has been swayed by the fact that the respondent was physically handicapped person and the amount involved is very huge. As option to be assisted by another employee is given to the respondent, he was in no way prejudiced by the refusal to permit engagement of a legal practitioner. The High Court's order is therefore, unsustainable and is set aside.

3. Right of a delinquent to seek assistance of a legal practitioner in domestic/ departmental enquiry vis-a-vis, came up for consideration before the Supreme Court in a recent decision in D.G. Railway Protection Force and Others Vs. K. Raghuram Babu, . In the above judgment, Rule 153.8 of the Railway Protection Force, 1987, which came up for consideration is extracted hereunder:

153.8. The enrolled member charged shall not be allowed to bring in a legal practitioner at the proceedings but he may be allowed to take the assistance of any other member of the Force (herein after referred to as "friend") where in the opinion of the inquiry officer may, at the request of the party charged, put his defence properly. Such "friend" must be a serving member of the Force of or below the rank of Sub-Inspector for the time being posted in the same division or the battalion where the proceedings are pending and not acting as a "friend" in any other proceedings pending anywhere. Such "friend" shall, however, not be allowed to address the inquiry officer nor to cross-examine the witnesses.

(emphasis supplied)

4. While reaffirming the legal position, the Supreme Court in the above reported judgment, held that, "ordinarily in a domestic/departmental enquiry, the person accused of misconduct has to conduct his own case. Such an inquiry is not a suit or a criminal trial where a party has a right to be represented by a lawyer. It is only if that he can claim to be so represented in an inquiry. There is no vested or absolute right in any charge-sheeted employee to representation either through a counsel or through any person unless the statute or rules/standing Orders provide for such a right. Moreover, the right to representation through someone, even if granted by the rules, can be granted as a restricted or controlled right. Refusal to grant representation through an agent does not violate the principles of natural justice.

11. Reading of the Sub-rule (2) of rule 62, makes it clear that the charged employee can have the assistance of another employee of his choice, to assist him in his defence and the petitioner has no legal or statutory right to insist, that he should be provided with the assistance of a legal practitioner to conduct the enquiry, on his behalf.

25. Reverting back to the case on hand, this Court is of the view that the rules applicable to the petitioner do not confer any right on the petitioner to seek for legal assistance. In the light of the well settled position, this Court is not inclined to subscribe to the contention of the petitioner. The decisions of the Supreme Court and the Division Bench of this Court would cover the issue.

26. On the aspect of bias or reasonable apprehension, the only averment by the petitioner at paragraph 14 of supporting affidavit is as follows:

I suspect that the 3rd respondent would be biased and he cannot go against the charges framed by his immediate superior.

27. The next contention to be considered is the aspect of bias. Merely because

the Law Officer has been appointed as the enquiry officer, it cannot be contended that he would be biased. Bias or likelihood of bias has to be established on facts and evidence. A solitary statement of suspicion would not lead to a conclusion that the third respondent is likely to be biased.

28. On the aspect of bias and likelihood of bias, it is worthwhile to extract a few decisions of the Apex Court:

(i) In *G.N. Nayak Vs. Goa University and Others*, the Supreme Court explained the meaning of the word "bias". At Paragraph 33, the Apex Court held as follows:

33. Bias may be generally defined as partiality or preference. It is true that any person or authority required to act in a judicial or quasi-judicial matter must act impartially.

If however, "bias" and "partiality" be defined to mean the total absence of preconceptions in the mind of the judge, then no one has ever had a fair trial and no one ever will. The human mind, even at infancy, is no blank piece of paper. We are born with predispositions and the processes of education, formal and informal, create attitudes which precede reasoning in particular instances and which, therefore, by definition, are prejudices.

(ii) The Supreme Court in *Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others*, at Paragraphs 10 and 11 held as follows:

10. The word "Bias" in popular English parlance stands included within the attributes and broader purview of the word "malice", which in common acceptation mean and imply "spite" or "ill-will" (STROUD'S JUDICIAL DICTIONARY (5th Ed.) Volume 3) and it is now well settled that mere general statements will not be sufficient for the purposes of indication of ill-will. There must be cogent evidence available on record so come to the conclusion as to whether in fact there was existing a bias which resulted in the miscarriage of justice.

11. While it is true that legitimate indignation does not fall within the ambit of malicious act, in almost all legal enquires, intention, as distinguished from motive is the all-important factor. In common parlance, a malicious act has been equated with intentional act without just cause or excuse (see in this context *Jones Bros. (Hunstanton) v. Steven* (1955) 1 Q.B. 275).

(iii) Paragraphs 26 and 32 of the above reported judgment would also be relevant for the purpose of testing the present case.

26. The concept of "Bias" however has had a steady refinement with the changing structure of the society: Modernisation of the society, with the passage of time, has its due impact on the concept of Bias as well. Three decades ago this Court in *S. Parthasarathi Vs. State of Andhra Pradesh*, : *S.R. Tewari Vs. District Board Agra and Another*, proceeded on the footing of real likelihood of "bias" and there was in fact a total unanimity on this score between the English and the

Indian Courts.

MATHEW, J. In *S. Parthasamthi v. State of Andhra Pradesh* (supra) case observed:

16. The tests of "real likelihood" and "reasonable suspicion" are really inconsistent with each other. We think that the reviewing authority must make a determination on the basis of the whole evidence before it, whether a reasonable man would in the circumstances infer that there is real likelihood of bias. The Court must look at the impression which other people have. This follows from the principle that justice must not only be done but seen to be done. If right minded persons would think that there is real likelihood of bias on the part of an inquiring officer, he must not conduct the enquiry; nevertheless, there must be a real likelihood of bias. Surmise or conjecture would not be enough. There must exist circumstances from which reasonable men would think it probable or likely that the inquiring officer will be prejudiced against the delinquent. The Court will not inquire whether he was really prejudiced. If a reasonable man would think on the basis of the existing circumstances that he is likely to be prejudiced, that is sufficient to quash the decision (See per LORD DENNING, H.R. in *Metropolitan Properties Co. (F.G.C.) Ltd. v. Lannon and Others* (1968) 3 WLR 694 at 707. We should not, however, be understood to deny that the Court might with greater propriety apply the "reasonable suspicion" test in criminal or in proceedings analogous to criminal proceedings.

LORD THANKERTON however in *Franklin v. Minister of Town and Country Planning*, (1948) AC 87 had this to state:

I could wish that the use of the word "bias" should be confined to its proper sphere. Its proper significance, in my opinion, is to denote a departure from the standard of even-handed justice which the law requires for those who occupy judicial office, or those who are commonly regarded as holding a quasi-judicial office, such as an arbitrator. The reason for this clearly is that, having to adjudicate as between two or more parties, he must come to his adjudication with an independent mind, without any inclination or bias towards one side or other in the dispute.

32. The test, therefore, is as to whether a mere apprehension of bias or there being a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event however the conclusion is otherwise inescapable that there is existing a real danger of bias, the administrative action cannot be sustained: If on the other hand, the allegations pertaining to bias is rather fanciful and otherwise to avoid a particular Court, Tribunal or authority, question of declaring them to be unsustainable would not arise. The requirement is availability of positive and cogent evidence and it is in this context that we do record our concurrence with the view expressed by the Court of Appeal in *Locabail* case (supra).

(emphasis supplied)

(iv) In *State of Punjab Vs. V.K. Khanna and Others*, , after elaborately considering the concept of Administrative action and wide impact of the word "bias", the Supreme Court held as follows:

The test of bias is as to whether there is a mere apprehension of bias or there is a real danger of bias and it is on this score that the surrounding circumstances must and ought to be collated and necessary conclusion drawn therefrom. In the event, however, the conclusion is otherwise that there is existing a real danger of bias, administrative action cannot be sustained. If on the other hand, allegations pertain to rather fanciful apprehension in administrative action, question of declaring them to be unsustainable on the basis therefor, would not arise.

Bias is included within the attributes and broader purview of the word "malice". Therefore, the factual details are relevant to determine whether there was existing cogent evidence of improper conduct and motive resultantly a mala fide move on the part of the appellants against the respondent.

(v) The Supreme Court in *International Airports Authority of India Vs. K.D. Bali and Anr*, held that there must be reasonable evidence to satisfy that there was a real likelihood of bias. Vague suspicions of whimsical, capricious and unreasonable people should not be made the standard to regulate normal human conduct.

29. In the light of the abovesaid decisions, the contention of the petitioner on the ground of bias is not specific and substantiated and therefore, the same is rejected.

30. On the contention as to whether there is any likelihood of prejudice caused to the petitioner his defence in the enquiry would be exposed, pending disposal of the trial of the criminal case before the Special Court, as on today, C.C. No. 33 of 2008, pending before the Special Court, for the offences has ended in conviction against the petitioner, and that the Special Court after trial, has imposed a punishment of 2 years Rigorous Imprisonment with a fine of Rs. 7,500/-. As the criminal case has already ended in conviction, the alleged prejudice in proceeding with the departmental enquiry, no longer exists. Even otherwise, there is no bar for conducting disciplinary proceedings. Dealing with the abovesaid aspect as to whether departmental enquiry could be proceeded with, during criminal trial, a Division Bench of this Court in 2009 3 MLJ 833, after considering a catena of decisions, held as follows:

12. The principles underlined in *Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another*, , are extracted hereunder:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent

employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge sheet.

(iv) The factors mentioned at (ii) and (iii) above cannot be considered in isolation to stay the Departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

13. While setting aside the order of the Division Bench, the Supreme Court in *Indian Overseas Bank, Anna Salai and Another Vs. P. Ganesan and Others*, , having regard to the legal position that departmental proceedings, pending criminal case does not warrant automatic stay, has observed that the discretionary Writ jurisdiction under Article 226 of the Constitution of India should be exercised, keeping in view of the conduct of the parties. In the case on hand, the disciplinary proceedings initiated against the respondent have almost reached its finality and there is nothing more for the respondent to expose his defence and non-staying the disciplinary proceedings at this stage, in our considered view, would not cause any serious prejudice to the respondent, as there is no absolute right for deferment of departmental proceedings.

14....It is trite law that the purpose of departmental enquiry is to adjudge the government servant/employee's conduct under the relevant conduct or discipline and appeal rules and to maintain discipline and efficiency in Public service, whereas a criminal prosecution is launched for an offence for violation of public duty which he owes, or for breach of law, which entails punishment provided under the penal laws. It is also well settled that the standard of proof to hold a person guilty of offence, is based on strict evidence, as prosecution has to be prove the case beyond all reasonable doubt and what is required in departmental enquiry, is preponderance of probability. In view of the difference and distinction, the principles of law laid down by the Supreme Court in the above referred cases, when applied to the facts of the present case do not warrant deferment of departmental proceedings till the conclusion of the criminal case registered against the respondent. In view of the above, the contention of the respondent that his defence would be exposed cannot be countenanced.

31. Reverting back to the case on hand, in the light of the legal pronouncements stated supra, this Court is of the view that none of the grounds raised by the petitioner are tenable warranting interference. At one stage, the petitioner states that his representation dated 16.5.2006, seeking to provide documents mentioned in annexure III and the statements of the witnesses in annexure IV were not considered, thereby giving an inference that he is ready to participate in the enquiry, but the impediment was non furnishing of the documents. Likewise, when the petitioner made a representation dated 14.8.2009 to the Enquiry Officer stating that when a criminal case No. 33 of 2008 was pending before the Special Court, Nagercoil, departmental enquiry could be kept in abeyance, as there was a likelihood of exposure of his defence causing prejudice, thereby he has given the impression that he would participate in the enquiry, after the criminal case was over. Again by seeking for assistance of legally qualified person, the petitioner has given an impression that he would get along with the enquiry, even though a law officer of Arasu Rubber Corporation Limited, Nagercoil was appointed as the enquiry officer but required a legal assistance to defend on his behalf. The sentence imposed by the Trial Court has been suspended in Crl. M.P. No. 2432 of 2010 in Criminal Appeal No. 45 of 2010. Finding that his request for engagement of legal assistance has been negatived, he has now come forward to challenge the very formulation of the charges alleging violation of principles of natural justice and made an allegation of bias and obtained interim orders from this Court. Charge memorandum cannot be quashed at the threshold. Reference can be made to the following decisions:

(i) In Union of India (UOI) and Others Vs. Upendra Singh, the Central Administrative Tribunal examined the correctness of the charges against the respondent therein on the basis of the material produced by him and quashed the same. The Union of India preferred an appeal. The Supreme Court, after considering the decisions in T.C. Basappa Vs. T. Nagappa and Another, which was followed in Smt. Ujjam Bai Vs. State of Uttar Pradesh, and V.D. Trivedi v. Union of India, (1993) 2 SCC 55 of the judgment in Union of India v. Upendra Singh (supra) case, held as follows:

In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be.

The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of

the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view.

(ii) In *Union of India and Others Vs. K.K. Dhawan*, it was contended by the delinquent therein that his conduct cannot be the subject matter of disciplinary proceedings, as it was not in the course of discharge of the duties as a servant of the Government. The Supreme Court, following the ratio decidendi in *Govinda Menon Vs. Union of India (UOI)*, repelled such contention and at Paragraph 28, held that disciplinary action can be taken in the following cases, though the instances are not exhaustive,

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party; if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great.

(iii) It is useful to extract the ratio decidendi in *S. Govinda Menon v. Union of India* (supra) and it reads as follows:

In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty, there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with the nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the

Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relevant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the Service. In this context, reference may be made to the following observations of LOPES, L J. in *Pearce v. Foster*

If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service or the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant.

(iv) In *Union of India (UOI) and Another Vs. Kunisetty Satyanarayana*, wherein, the Supreme Court has held that the charge memorandum could be set aside only in rare and exceptional cases. In the above reported judgment, the Supreme Court at paragraphs 13 to 16 has held as follows:

13 It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh and others*, *The Special Director and Another Vs. Mohd. Ghulam Ghouse and Another*, , *Ulagappa and Others Vs. Divn. Commr. and Others*, *State of Uttar Pradesh Vs. Brahm Datt Sharma and Another*, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.

32. The said judgment has been followed by a Hon"ble single Judge of this Court in S. Chinnasamy v. Joint Registrar of Co-op. Societies, Madurai Region and Others (2010) 2 CWC 222. For the above said reasons, the writ petitions are dismissed and the interim orders granted in MP. (MD) No. 1 of 2010 in W.P. (MD) No. 8439 of 2010 is vacated. The respondents are directed to proceed with the enquiry, further in accordance with law. No costs. Consequently, connected miscellaneous miscellaneous petitions are closed.