
(2013) 08 DEL CK 0182

In the Delhi High Court

Case No : Writ Petition (C) No. 2338 of 2002

Mrs. S.V. Sharma

APPELLANT

Vs

Director of Education and Others

RESPONDENT

Date of Decision : 08-08-2013

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2013) 08 DEL CK 0182

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : H.K. Chaturvedi, for the Appellant; Vaibhav Misra, Advocate for Respondent No. 1 and Mr. Saket Sikri, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—This writ petition is filed by the petitioner-Mrs. S.V. Sharma impugning the order of the Delhi School Tribunal (DST) dated 28.8.2001. By the impugned order, the DST dismissed the appeal of the present petitioner and upheld the enquiry report and the order of the Disciplinary Authority imposing the penalty of removal from services upon the petitioner. Before me two main grounds are urged for impugning the orders of the Disciplinary Authority and the DST. The first ground is that one Mrs. M. Varshney was a member of the Disciplinary Committee, who imposed the punishment upon the petitioner and who also appeared as a witness in the proceedings, thereby the order of the Disciplinary Authority is liable to be set aside on the ground of bias. Reliance is placed upon certain paragraphs of the judgment of the Supreme Court in the case of Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-education) Higher Secondary School and others, . The second ground which is urged before me is that principles of natural justice are violated because petitioner was not given documents in the enquiry proceedings, and which action of the Enquiry Officer causes a vital flaw in the report of the Enquiry Officer.

2. At the outset, and before I go to the discussion of the issues in the case, I

may state that law with respect to challenge to orders which are passed by the Departmental Authorities is now well settled. Orders passed by the Departmental Authorities can be challenged only under any of the following four heads:-

- (i) The orders which are passed are in violation of principles of natural justice.
- (ii) Orders are in violation of law or rules of the employer-organization,
- (iii) Orders are perverse,
- (iv) There is violation of doctrine of proportionality.

This Court while hearing a challenge raised under Article 226 of the Constitution of India does not sit as an Appellate Court over findings arrived at by the Enquiry Officer. This Court does not re-appraise the findings of facts and conclusions arrived at by the Enquiry Officer/Disciplinary Authority unless the findings are perverse. If two views are plausible and possible, Courts will not interfere much less in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

3. Let me take up firstly the second ground which is urged of violation of principles of natural justice on account of the fact that various documents were not supplied to the petitioner. I put a specific query to the counsel for the petitioner to show to me either in the grounds in the present writ petition or in the grounds of appeal before the DST as to what are the documents which were not supplied to the petitioner, and how each of those documents which were not given, have prejudiced the petitioner. These queries were put by me because the Supreme Court in the judgment in the case of State Bank of Patiala and others Vs. S.K. Sharma, has held that once the case is not a case of no hearing, and violation is alleged only of a facet of principles of natural justice such as non-supply of documents, then, the delinquent employee will have to show that how he is prejudiced by non-supply of documents. Since in the present case there are no pleadings whatsoever as to the prejudice which is allegedly caused to the petitioner for non-supply of the documents, I do not find that the petitioner can challenge the findings of the Enquiry Officer or the orders passed by the Disciplinary Authority on the ground that on account of violation of principles of natural justice the report of the Enquiry Officer and the consequent order of the Disciplinary Authority, should be set aside.

4. Actually, the main ground urged on behalf of the petitioner is of bias of the Disciplinary Committee and consequent violation of principles of natural justice because one of the Members of the Disciplinary Committee Mrs. M. Varshney appeared as a witness in the departmental proceedings to prove as many as five charges against the petitioner. It is argued that since admittedly Mrs. M. Varshney was Member of the Disciplinary Committee, the order which is passed by the Disciplinary Authority is bound to be set aside for this very reason. It may be noted that there were five Members of the Disciplinary Committee of the respondent No. 4-school. Petitioner places reliance upon the judgment of the

Supreme Court in the case of Rattan Lal Sharma (supra). The relevant paras of the judgment are paras 10, 11 and 12 and the same read as under:-

10. Since the rules of natural justice were not embodied rules it is not possible and practicable to precisely define the parameter of natural justice. In *Russel v. Duke of Norfolk* 1949 (1) All ER 109 Tucker, L.J. observed:

...There are, in my view, no words which are of universal application to every kind of inquiry and the every kind of domestic tribunal. The requirements of natural justice must depend on the circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with, and so forth.

It has been observed by this Court in *Union of India (UOI) and Another Vs. P.K. Roy and Others*, that:

The extent and application of the doctrine of natural justice cannot be imprisoned within the strait-jacket of a rigid formula. The application of the doctrine depends upon the nature of the jurisdiction conferred on the administrative authority, upon the character of the rights of the persons affected, the scheme and policy of the statute and other relevant circumstances disclosed in the particular case.

Similar view was also expressed in *A.K. Kraipak's_ case* (ibid). this Court observed:

...What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the Constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened, the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case.

Prof. Wade in his *Administrative Law* has succinctly summarised the principle of natural justice to the following effect:

It is not possible to lay down rigid rules as to when the principles of natural justice are to apply; not as to their scope and extent. Everything depends on the subject matter, the application for principles of natural justice, resting as it does upon statutory implication, must always be in conformity with the scheme of the Act and with the subject-matter of the case. In the application of the concept of fair play there must be real flexibility. There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice depend on the facts and the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth.

One of the cardinal principles of natural justice is: "Nemo debet esse judex in

propria causa" (No man shall be a judge in his own cause). The deciding authority must be impartial and without bias. It has been held by this Court in *Secretary to Government Transport Department v. Manuswamy* 1980 (Suppl) SCC 651 that a pre-disposition to decide for or against one party without proper regard to the true merits of the dispute is bias. Personal bias is one of the three major limbs of bias namely pecuniary bias, personal bias and official bias. A classic case of personal bias was revealed in the decision of this Court in *The State of Uttar Pradesh Vs. Mohammad Nooh*, . In the said case, a departmental enquiry was held against an employee. One of the witnesses against the employee turned hostile. The officer holding the enquiry then left the enquiry, gave evidence against the employee and thereafter resumed to complete the enquiry and passed the order of dismissal. this Court quashed the order of dismissal by holding *inter alia* that the rules of natural justice were grievously violated.

11. In the instant case, Charge No. 12 states that a particular sum on account of amalgamated fund for the month of." December was given to the appellant by Shri Mam Ram who was teacher incharge of the amalgamated fund. In the enquiry committee comprising of the three members, the said Shri Maru Ram was taken as one of the members and the himself deposed to establish the said Charge No. 12 and thereafter again joined the enquiry committee and submitted a report holding the appellant guilty of some of the charges including the said Charge No. 12. Shri Maru Ram was interested in establishing the said charge. From the charge itself, it is apparent that he had a pre-depositor to decide against the appellant. It is really unfortunate that although the appellant raised an objection before the enquiry committee by clearly indicating that the said Shri Maru Ram was inimical towards him and he should not be a member in the enquiry committee, such objection was rejected on a very flimsy ground, namely, that since the said Sri Maru Ram was one of the members of the Managing Committee and was the representative of the teachers in the Managing Committee it was necessary to include him in the enquiry committee. It is quite apparent that the enquiry committee could have been constituted with other members of the Managing Committee and the rules of the enquiry are not such that Shri Maru Ram being teacher's representative was required to be included in the said enquiry committee so that the doctrine of necessity may be attracted. If a person has a pecuniary interest, such interest, even if very small, disqualifies such person. For appreciating a case of personal bias or bias to the subject matter the test is whether there was real likelihood of a bias even though such bias has not in fact taken place. De Smith in his *Judicial Review of Administrative Action*, (1980) at page 262 has observed that a real likelihood of bias means at least substantial possibility of bias. In *R. v. Sunderland Justices* 1924 (1) KB 357 373 it has been held that the Court will have to judge the matter as a reasonable man would judge of any matter in the conduct of his own business. In *v. Sussex Justices* (1924 (1) KB 256 (259) it has been indicated that answer to the question whether there was a real likelihood of bias depends not upon what

actually was done but upon what might appear to be done. In Halsbury Laws of England, (4th Edn.) Vol. 2, para 551, it has been indicated that the test of bias is whether a reasonable intelligent man, fully apprised of all the circumstances, would feel a serious apprehension of bias. The same principle has also been accepted by this Court in *Manak Lal Vs. Dr. Prem Chand*, . This Court has laid down that the test is not whether in fact, a bias has affected the judgment; the test always is and must be whether a litigant could reasonably apprehend that a bias attributable to a member of the tribunal might have operated against him in the final decision of the tribunal. It is in this sense that it is often said that justice must not only be done but must also appear to be done.

12. In the facts of the case, there was not only a reasonable apprehension in the mind of the appellant about the bias of one of the members of the enquiry committee, namely, the said Shri Maru Ram but such apprehension became real when the said Shri Maru Ram appeared as a witness against the appellant to prove the said charge and thereafter proceeded with the enquiry proceeding as a member of the enquiry committee to uphold the correctness of his deposition as a Judge. The learned Single Judge considering the aforesaid facts came to the finding that the participation of Shri Maru Ram as a member of the enquiry committee has vitiated the enquiry proceeding because of flagrant violation of the principles of natural justice. Unfortunately, the Division Bench set aside such judgment of the learned Single Judge and dismissed the Writ Petition improperly, to say the least, on a technical ground that plea of bias of Shri Maru Ram and his acting as a Judge of his own case by being a member of the enquiry committee was not specifically taken before the Deputy Commissioner and also before the appellate authority, namely, the Commissioner by the appellant and as such the said plea should not be allowed to be raised in writ proceedings, more so, when the case of prejudice on account of bias could be waived by the person suffering such prejudice. Generally, a point not raised before the tribunal or administrative authorities may not be allowed to be raised for the first time in the writ proceeding, more so when the interference in the writ jurisdiction which is equitable and discretionary is not of course or must as indicated by this Court in *A.M. Allison v. State of Assam* (1957) 1 LLJ 472 SC particularly when the plea sought to be raised for the first time in a Writ proceeding requires investigation of facts. But if the plea though not specifically raised before the subordinate tribunals or the administrative and quasi-judicial bodies, is raised before the High Court in the writ proceeding for the first time and the plea goes to the root of the question and is based on admitted and uncontroverted facts and does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea but in the anxiety to do justice which is the paramount consideration of the Court, it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the list involved. The aforesaid view has been taken by this Court in a number of decisions and a reference may be made to the decisions in *A.S.T. Arunachalam Pillai Vs. Southern Roadways (Private) Ltd.*, , *The Cantonment Board, Ambala Vs. Pyarelal*, . In our

view, the learned Single Judge has very rightly held that the Deputy Commissioner was under an obligation to consider the correctness and propriety of the decision of the Managing Committee based on the report of the enquiry committee which since made available to him, showed on the face of it that Shri Maru Ram was included and retained in the inquiry committee despite objection of the appellant and the said Shri Maru Ram became a witness against the appellant to prove one of the charges. It is really unfortunate to prove that the Division Bench set aside the decision of the learned Single Bench by taking recourse to technicalities that the plea of bias on account of inclusion of Shri Maru Ram in the enquiry committee and his giving evidence on behalf of the department had not been specifically taken by the appellant before the Deputy Commissioner and the Commissioner. The Division Bench has also proceeded on the footing that as even apart from Charge No. 12, the Deputy Commissioner has also considered the other charges on consideration of which along with Charge No. 12, the proposed order of dismissal was made, no prejudice has been caused to the appellant. Such view, to say the least, cannot be accepted in the facts and circumstances of the case. The learned Single Judge, in our view, has rightly held that the bias of Shri Maru Ram, one of the members of the enquiry committee had percolated throughout the enquiry proceeding thereby vitiating the principles of natural justice and the findings made by the enquiry committee was the product of a biased and prejudiced mind. The illegality committed in conducting the departmental proceedings has left an indelible stamp of infirmity on the decision of the Managing Committee since affirmed by the Deputy Commissioner and the Commissioner. The observation of S.R. Das, C.J. in Mohd. Nooh's case (ibid) may be referred to in this connection:

. ...Where the error, irregularity or illegality touching jurisdiction or procedure committed by an inferior court or tribunal of first instance is so patent and loudly obtrusive that it leaves on its decision an indelible stamp of infirmity or vice which cannot be obliterated or cured on appeal or revision. If an inferior court or tribunal or first instance acts wholly without jurisdiction or patently in excess of jurisdiction or manifestly conducts the proceedings before it in a manner which is contrary to the rules of natural justice and all accepted rules of procedure and which offends the superior court's sense of fair play, the superior court may, we think, quite properly exercise its power to issue the prerogative writ of certiorari to correct the error of the court or tribunal of first instance, even if an appeal to another inferior court or tribunal was available and recourse was not had to it or if recourse was had to it, it confirmed what ex-facie was a nullity for reasons aforementioned.

5. By placing reliance upon the aforesaid three paras of the judgment (and which also places reliance upon the earlier judgment of the Supreme Court in the case of The State of Uttar Pradesh Vs. Mohammad Nooh,) it is argued that when an Enquiry Officer deposes as a witness in proceedings, then, on account of bias the report of the Enquiry Officer is liable to be set aside. It is also argued that with reference to observations made in para 12 of the judgment in the case of Rattan

Lal Sharma (supra) if the report of the Enquiry Officer is bad on account of aforesaid bias then, bias cannot be said to be not existing merely because the Enquiry Officer deposed only with respect to one charge and not as regards the other charges.

6. In order to appreciate the arguments and decide the issue, it will be necessary for me, at this stage, to reproduce the statement of imputation of misconduct/misbehavior in support of the Article of Charges against the petitioner. I am conscious that the imputation of facts are indeed long and they run into about ten and half pages, however, to understand the entire statement of imputation, it is necessary to reproduce the entire statement of imputation and the same reads as under:-

Statement of imputation of misconduct/misbehaviour in support of the Article of Charges framed against Mrs. S.V. Sharma, T.G.T. (Sc.) (Bio-Chemistry) under suspension

Though in the past the work and conduct of Mrs. S.V. Sharma, T.G.T. (Sc.) (Bio-Chemistry) under suspension has been crossed all limits of misconduct, indiscipline and untoward behaviour/attitude with the result that the whole atmosphere in the school has got vitiated. The Managing Committee was, therefore, constrained to initiate disciplinary proceedings against her and as a consequence thereof she was placed under suspension w.e.f. 22-2-89 and is now hereby chargesheeted as follows:-

Rule 123(a) DSER (i)

1. Knowingly or wilfully neglecting her duties

a) Though present in the school she refused to perform the invigilation duty in home-examination from 14-12-88 to 23-12-88.

b) Mrs. S.V. Sharma stopped taking remedial classes assigned to her and her colleagues from Jan, 89 although other teachers were carrying out their assignments. The time of her departure can be verified from the attendance register.

c) Mrs. S.V. Sharma rendered her teachers diary unsustainable by inserting objectionable remarks. Retaining this diary the principal vide her memo No. 586 dated 14-12-88 pointing out her discrepancies instructed her to start a new teacher's diary. Mrs. S.V. Sharma refused to receive it and hence did not submit her teacher's diary thereafter. Last year also she had stopped submitting teachers diary w.e.f. 24.8.87.

d) Mrs. S.V. Sharma ignored daily normal teaching and finally tried to cover up the syllabus and hastened her speed of teaching which was beyond the comprehension of the students of class as reported by the students themselves and their parents.

(e) Mrs. S.V. Sharma did not get the fee & funds A/c for the month of Oct. 1988

checked by the checker. Entries in the fee and funds column of class attendance register for October 1986 were not got compared and checked with the receipt books in time but the task was done on 2-12-88 i.e. very late. Besides, there are many lapse in the maintenances of the class attendance register. Some of them are as under:-

(i) Absent students were marked present and vice-versa.

(ii) Serial numbers of the students were changed.

(Attendance register will be shown when required)

By the aforesaid acts, Mrs. S.V. Sharma has violated the provisions of Code of Conduct for the teachers as prescribed in Rule 123(a) (i) of Delhi School Education Act 1973 and the rules made there under.

(2) Rule 123(a) (iv) DSER

Malpractices

a) Mrs. S.V. Sharma on 17-12-88 about 9 a.m. tried to induce Shri Roshan Lal, Peon with a tip to bring to her the peon-book with some ulterior motive but Sh. Roshan Lal, true to himself, declined it and brought these facts to the notice of the Principal as per his representation dated 17-12-88 instant.

b) Tampering of school record:-

Mrs. S.V. Sharma on 1-12-86 removed two pages (one written and one blank) from the Science faculty minutes Register. On one of the pages minutes of the Sc. Faculty meeting held on 30-11-88 were recorded and duly signed by all the faculty members with Principal's remarks endorsed on it.

c)(ii) The medical certificate of students who fell sick during examination days were to remain with examination incharge with due knowledge of class teacher so that the checking of students reporting sick in the future examination could be easy. Contrary to this Mrs. S.V. Sharma the then class teacher of IX A, on 3-10-88 on the plea of making another look into the medical certificate together with the leave application of Km. Parvita Sharma IX A took it from examination incharge Mrs. M. Varshney and did not return it at all to her in spite of her (Mrs. M. Varshney) repeated requests.

By the aforesaid acts, Mrs. S.V. Sharma has violated the provisions of code of conduct for the teachers as prescribed in Rule 123(a)(iv) of Delhi School Education Act, 1973 and the rule made there under.

Rule 123(b) (xviii) DSER

(3) Misbehaviour, cruelty and discrimination towards students teachers and parents/guardians

a) Mrs. S.V. Sharma has been extremely prejudicial towards Km. Parvita Sharma

IX A because reasonably or unreasonably, she slapped the said student on 22-9-88 causing an injury to her ear. Consequently Mrs. S.V. Sharma turned out Km. Parvita Sharma from her class on 3-10-88 without any fault on her part and subsequently stopped marking her attendance in the class attendance register w.e.f. 7-10-88. Over and above Mrs. S.V. Sharma refused to accept fee/funds from the said student for the month of October and November 1988.

B-1 Mrs. S.V. Sharma slapped Km. Jyoti Khanna of X B on 4-1-89 and unjustifiably turned her out from her Science Practical Examination (Chem. Bio) because the said student had submitted her practical file but it was unchecked. Further on Mrs. S.V. Sharma did not allow Km. Jyoti Khanna to enter her class till the date of her suspension i.e. upto 21-2-89.

B-II For reasons best known to her Mrs. S.V. Sharma gave remark "Cheated" in award list of the Science Practical Exam, against Jyoti Khanna's Roll No. In spite of Principal's instructions on 7-1-89 that such a remark was undesirable and the students should be examined and awarded her due score she did not comply with this too.

C. On 4/1/89 Mrs. S.V. Sharma sent to the Principal of her own accord only 7(seven) Practical Files (Bio-Chem.) Class X students including that of Km. Jyoti Khanna. Out of those, the files of Jyoti Khanna, Ritu and Suman were unchecked. Thus Mrs. S.V. Sharma victimized Km. Jyoti absolutely unreasonably by not allowing her to take the practical Exam. Though she allowed the other two alleged defaulters to take the said test and they were declared passed even though their practical files were also unchecked.

D. On complaint of Km. Jyoti Khanna Principal asked Mrs. S.V. Sharma to submit the Exercise Book/Practical files of all the students of X B who appeared for practical examination vide Memo No. 593 dated 4-1-89 incited all the students of Class X B including Km. Ritu and Suman to state before the Principal that their exercise note books and the practical files were in the custody of Mrs. S.V. Sharma and they were helpless to produce them before her but in the presence of Mrs. M. Varshney, Mrs. U. Mehta, Km. Alka, Km. Manisha, Ritu, Suman, Meena after having said so submitted their assignments before the Principal and stated that Mrs. S.V. Sharma had asked them to say so. They had to deny although the Exercise-note-books/Practical files were with them. Thus she insisted the students to give wrong statements before the Principal and to tell lies. 5 Students who submitted their note-books to the Principal were taken to task by her. Out of Vengeance Mrs. S.V. Sharma kept these 5 students (Manisha, Meena, Ritu, Suman and Alka) standing at the back of the class (w.e.f. 5-1-89) showering upon them various threats in loose language and even turning them out of their class, making them sit in the class. Further to this many a times she took all the students of the class to another room (Sc. Lab) leaving these five students in the same room and thus discriminated them from others and deprived them of their regular studies.

E. On 17-11-87 Mrs. S.V. Sharma well aware that Km. Deepti Mehrotra VII A was sick with rheumatic fever, gave her corporal punishment though unwarranted and insulted her father.

F. Mrs. S.V. Sharma has been keeping strained relations with her colleagues.

On 21-12-88 Mrs. S.V. Sharma at about 11-45 A.M. lashed upon her colleagues.

Thereupon teachers collectively gave in writing what had transpired between them and Mrs. S.V. Sharma, requesting the Manager to take necessary action in the matter. Moreover, thereafter she left the school without marking the time of her departure and without signing the teachers' attendance register, stating that she had been officially asked by the Education Officer to see her, when there was no official intimation regarding the same with the office. Moreover, when the Education Officer was contacted personally/officially by the Principal to comply with her office letter No. 1728/XI dated 15-12-88, the Education Officer said that she had never officially called Mrs. S.V. Sharma to her office. Mrs. S.V. Sharma left in a huff without getting the desired permission.

G. Mrs. S.V. Sharma had been rude and misbehaving with the parents/students and threatening them. Rather she went to the extent of filing a complaint against Mr. Mittal and Mr. Khanna and Mr. Sharma, parents of Manisha, Jyoti and Parvita Sharma respectively with the police, Town Hall. The Police official came to the school on inquiry on 23-3-89.

By the aforesaid acts, Mrs. S.V. Sharma has violated the Provisions of Code of Conduct for the teachers as prescribed in Rule 123(b)(xviii) of the D.S.E.R., 1973.

4. Sustained neglect in Correction of Class-Work/H.W. done by the Students.

(Rule 123(a) (v) DSER

a) Mrs. S.V. Sharma checked exercise books/Practical files of her students neither regularly nor properly instead she had been checking them haphazardly giving odd dates of checking and putting tick marks without covering right or wrong to point out the mistakes to enable the students to realise their mistakes for their improvement.

b) The Practicals done/recorded on 4-10-88 were dated checked on 6-10-88.

How could any practical be conducted by the students in her absence on 4/10/88 and checked on 6/10/88 when she was on leave on those days.

C) The Practicals conducted/recorded on 11/10/88 by the students have been dated checked by Mrs. S.V. Sharma on 13/10/88 when the school was closed for Autumn Break w.e.f. 11/10/88 to 20/10/88.

D) The assignments/Home Work and Class work actually done by the students does not tally with what has been shown in the Teacher's diary. The Record in the teacher's diary is quite at variance with the work done.

By the aforesaid acts, Mrs. S.V. Sharma has violated the provisions of code of conduct for the teachers as prescribed in rule 123(a) (v) DSER 1973

Rule 123(c) (ii) DSER

Rule 123(c) (ii) DSER

(5) Violation of school Rules and disrespect to duly Constituted Authority:-

(A) On 4/1/89 Mrs. S.V. Sharma had submitted practical files of 7 students only out of her own. On Principal's demand to submit practical files/Exercise-books of all the examinees of that day Mrs. S.V. Sharma instead of meeting the demand returned the Memo with remark "You can not demand the Copies of... ". by the students have been dated checked by Mrs. S.V. Sharma.

(B) (i) On 23/12/88 she reached school at 8-15 A.M. but did not mark her attendance and demanded that she be treated as on leave. When asked to apply for leave and go or mark her attendance by the Principal vide letter dated 23/12/88 she said that she had already submitted her leave application to Mrs. U. Mehta which she had not. She wrote some objectionable remark on the same letter threatening that she would bring to the notice of D.E. and the E.O.

(B) II. On 24/12/88 she came around 8-00 A.M. in the school again, but she did not mark her attendance and refused to receive Memo No. 528 dated 24/12/88 issued to her before 10-30 A.M. She told the peon to send the Memo to the Deptt. She marked her application for half day leave for 24/12/88 covering also full day leave for 23/12/88. Moreover, she took teacher's attendance register out of the Principal's room in spite of Principal's verbal direction to sign it in the office only. She also put derogatory remarks therein.

(C) On 4/1/89 Mrs. S.V. Sharma besides defying the orders of the Principal to submit the practical files/Note books of class X examinees of that day in the Practical Examination she endorsed in the order rude remarks that the Principal was no authority to call for note-books of the students of the subject taught by her. She also remarked that she had reported the whole affairs to the E.O. and she was bound only to the order of the Department.

(D) Then Principal and the Vice-Principal of the school doth taught English to the VII A. On 5/1/89 Mrs. S.V. Sharma asked the students of this class to show their English note-books. She took those note-books about 22 in number and kept the same in her custody. Thereafter she did not return the note-books till date in spite of the Principal's Memo No. 598 dated 16/1/89 with the exception of five note books submitted on 21/1/89.

E. Mrs. S.V. Sharma had been disrespectfully refusing Memos/official letters and orders sent to her duly despatched in the peon-book through the peon/and order-book, not to speak of complying with the verbal instructions. Two specimen in this regard are enclosed.

(F) On 24/12/88 Mrs. S.V. Sharma picked up quarrel in the Library room with

Mrs. M. Varshney, Mrs. U. Mehta and Mrs. K. Sharma. The Principal who incidentally happened to be there tried to pacify them but Mrs. S.V. Sharma roared...

(G) On 9/1/89 Shri Roshan Lal went to Mrs. S.V. Sharma to deliver memo No. 595 dated 9/1/89 entered in the Peon-book, Mrs. S.V. Sharma took the Memo from the peon but instead of signing its acknowledgment in the peon-book she forcibly held up the peon-book. Even on written orders from the Principal and the Manager she did not return the peon-book. At last the flying Squad was summoned and the peon-book was recovered from her by the police and the same was returned to the principal.

That on account of aforesaid serious acts of misconduct and breach of Code of Conduct as levelled against her, the Managing Committee of the School resolved to suspend her from service in its meeting held on 21/2/89 on the basis of resolution passed in it and order of suspension was prepared and sought to be served and given to her on the same day when she was present in the school. The Head Clerk was deputed to handover the said order but she of her own accord appeared before the Managing Committee which was in session with the letter in her hand, read it and threw away the order and refused to receive as well as acknowledge the same and left the school without signing and writing the time of departure in the teacher's attendance register, before time insulting the Managing Committee in session. She was sent the said letter alongwith the covering letter under registered AD/UPC. post dated 21/2/1989.

That in her suspension letter dated 21/2/89 she was also directed to hand over the charge including that of all the keys of Science Almirah as, Science equipments stock etc. Book/Note-books of the students and Library to Mr. Anjum Singh, Lab. Asstt. But she did not comply with the order contained in her order of suspension dated 21/2/89. Subsequently another Memo NO. 617 dated 23/3/89 was sent to her under Regd. AD. Cover/UPC. urging her to hand over the complete charge under her custody, pointing out to her in particular that the Science Practical files (Bio-Chemistry) of class X students were urgently required for the assessment of Annual Examination, 1989 as awards were to be given to the students and submitted to the C.B.S.E., New Delhi. She did not send any reply to it.

Matter was referred to the E.O. vide letter dated 1/4/89, who vide his letter No. 434/XI dated 7/4/89, nominated Miss. K. Mathur, Principal Govt. G.S.S.S. Nicholson Road, Delhi and Ms. Pushpa Lata, Principal, Gadodia G.S.S.S. Kucha Natwar as Govt. representatives permitting us to open the almirah as of Science-equipments in their presence.

The said representatives suggested on 8/4/89 that before opening the locks of the almirah as one more chance may be given to Mrs. S.V. Sharma and as a result of that one more letter No. 621 dated 8/4/89 (Regd. A.D.) together with telegram dated 8/4/89 and UPC. 8/4/89 were sent to Mrs. S.V. Sharma

requesting her to do the needful failing which the locks of almirah as would be opened in the presence of Govt.-representatives and others on 11/4/89 at 9-30 A.M., in pursuant of the order of the Department in this connection she came on the fixed date with two men reported to be office bearers of Casta stating that they were her witnesses. She said that one of the almirah (Steel) contained Rs. 2,500/- her personal money and some personal documents but no Science-equipments. When asked to open the locks of almirah as she expressed her inability saying that she had no keys with her. The Govt. representative Miss K. Mathur suggested to Mrs. S.V. Sharma in writing to come on next day i.e. on 12/4/89 at 10-00 A.M. and do the needful in the presence of other Govt. nominee (as one Govt. nominee, Dr. Pushap Lata could not come on that day as she had to attend some seminar under the direction of the D.D.E. (Central)) but she refused to receive it. After wasting hours together, she agreed and gave in writing that she would come to hand over the charge on 12/4/89.

She presented herself next-day before the Govt.-representatives but she said that she would hand over the charge in the presence of some Science Expert and did not open the almirah as to hand over the charge at all. Even after their repeated persuasion particularly to return the Science-practical files Bio-Chemistry of Class X. She held up the said files of 38 students and did not return till the end.

Ultimately some alternative had to be sought out to protect the career of the students who are going to appear in the Board Examination.

On 11/4/89 in the presence of the Govt.-representative, Miss. K. Mathur, who had come in connection with the opening of the locks of the Sc. Stock almirah as she uttered most disrespectful words.

On 12/4/1989 she threatened Govt.-representatives that she would report about them to the Director of Education.

Her behaviour with Govt.-representatives was very rude, ill mannered, disorderly and challenging.

By the aforesaid acts, Mrs. S.V. Sharma has violated the provisions of code of conduct for the teachers as prescribed in Rule 123(c)(ii) of Delhi School Education Rules 1973 made there under.

7. A reference to the aforesaid statement of imputation of misconduct or misbehaviour shows that with respect to Charge I there are five sub-charges. With respect to Article II, there are three sub charges. With respect to Charge No. III, there are seven sub-charges. With respect to Charge No. IV, there are four sub-charges and with respect to Charge No. V, there are seven sub-charges. There are in effect therefore a total of 26 charges. A reading of the charges with the sub-charges show that the charges are not ordinary or routine charges, but are very grave charges. The charges include refusing to perform the duties assigned, refusing to take classes, leaving the school without permission, not

maintaining the teachers diary properly, seeking to bribe a peon for obtaining a peon book, tampering with the school record, misbehaving with the school students, wrongly refusing to hand over the records of the students to the school, making a police complaint against parents of students, punishing those students who do not listen to the petitioner, giving of corporal punishments, quarrelling with other teachers and employees of the school, claiming checking on those dates when in fact the school was closed, defying orders of the Principal etc.

8. All the aforesaid charges have essentially been proved against the petitioner except that one charge was only partially proved. The report of the Enquiry Officer dated 29.3.1990 is a detailed report running into 45 pages. The Disciplinary Authority which could have simply adopted the report of the Enquiry Officer, but instead the Disciplinary Authority has passed a detailed order running into 23 pages. In the light of the aforesaid facts this Court would have to examine if the ratio of the judgment of the Supreme Court in the case of Rattan Lal Sharma (supra) applies, and which is relied upon on behalf of the petitioner.

9. It is true that the Supreme Court in the case of Rattan Lal Sharma (supra) refers with approval to the ratio in the earlier judgment in the case of Mohd. Nooh (supra) to hold that an Enquiry Officer cannot appear as a witness in a case and then give his report, and the Supreme Court further states that it cannot be argued that merely because Enquiry Officer gave a report on various other charges and not only with respect to charge in which he appeared as a witness, yet, bias will not exist or will not stand proved, because, the issue is not of the actual bias but a reasonable likelihood of bias.

In my opinion, however the judgment which is relied upon by the petitioner is distinguishable for the reason that Supreme Court in the case of Rattan Lal Sharma (supra) in para 10 itself specifically observes that there are no universal rules of application to every kind of enquiry and qua different kinds of domestic Tribunals the requirement of following of the principles of natural justice must depend on circumstances of each case, nature of the enquiry etc. In the case of Mohd. Nooh (supra) which was relied upon in the case of Rattan Lal Sharma (supra) the Enquiry Officer stepped into the witness box in very peculiar circumstances where one witness against the employee turned hostile and official holding the enquiry at that stage left the enquiry to give evidence against the employee and thereafter resumed the enquiry to pass order of dismissal. In these circumstances the Supreme Court held that there existed interest and bias of the Enquiry Officer and once a person has interest in the proceedings, he cannot become a Judge in his own cause. The observations of the Supreme Court in the case of Mohd. Nooh (supra) which have been relied upon with approval in the case of Rattan Lal Sharma (supra) have to be read in the context of the facts of that case, and the same do not apply in the present case because I have already reproduced above the imputation of misconduct which shows as many as 26 charges against the petitioner. All the charges are serious and grave charges.

Out of the 26 charges, Mrs. M. Varshney has deposed with respect to the five of the charges and therefore there are 21 other independent charges which stand proved against the petitioner even in the absence of testimony of Mrs. M. Varshney being considered. Doctrine of severability will hence come into play. It may be noted that the Supreme Court while observing in the case of Rattan Lal Sharma (supra) that bias of one of the Members of the Enquiry Committee percolates the enquiry proceedings and hence resulting in violation of principles of natural justice, however, the Supreme Court was careful to state that the aspect of one charge percolating all charges when an Enquiry Officer also appears as a witness was in the facts and circumstances of the case before the Supreme Court in the case of Rattan Lal Sharma (supra) and so stated in para 12 of the judgment which has specifically used the expression "in the facts and circumstances of the case". Therefore, issue of an Enquiry Officer appearing as a witness has to be carefully examined with respect to the alleged bias in the facts and circumstances of each individual case.

10. In the present case, 21 other wholly independent charges were made against the petitioner and all of which charges were independently proved by detailed evidence in the enquiry proceedings. There are as many as 119 pages in the enquiry proceedings including depositions of the witnesses and their cross-examinations. Documents have also been filed and proved by the school management in the departmental proceedings. Therefore, in my opinion, in the present case it cannot be said that the bias of Mrs. M. Varshney percolated to all aspects of enquiry and with respect to 21 other charges which were independently proved and had no connection to the testimony of Mrs. M. Varshney qua five of the charges. Therefore, in the facts and circumstances of the present case, I am of the opinion that petitioner has failed to establish that the Enquiry Officer's report and the order of the Disciplinary Authority should be set aside on the ground of bias. In view of the above, there is no merit in the petition, which is accordingly dismissed, leaving the parties to bear their own costs.