

(2006) 03 DEL CK 0242
In the Delhi High Court
Case No : Civil Writ No. 1651 of 2003

Om Pal Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-03-2006

Acts Referred:

Central Civil Services (Leave) Rules, 1972 — Rule 19(5)
Constitution of India, 1950 — Article 14, 311(2)
Criminal Procedure Code, 1973 (CrPC) — Section 161, 245
Delhi Police (Punishment and Appeal) Rules, 1980 — Rule 15, 16, 16(3), 16(4)
Income Tax Act, 1961 — Section 132

Citation : (2006) 88 DRJ 759 : (2007) 1 SLJ 502

Hon'ble Judges : Sanjiv Khanna, J;Dr. M.K. Sharma, J

Bench : Division Bench

Advocate : Arun Bhardwaj, for the Appellant; Aditya Madan, for the Respondent

Final Decision : Dismissed

Judgement

Sanjiv Khanna, J.—In the present writ petition, the petitioner, Mr. Om Pal Singh, has questioned and challenged the virus of Rule 16 including the sub rules of the Delhi Police (Punishment and Appeal) Rules, 1980 (hereinafter referred to as the Rules, for short). He has also impugned the orders passed by the Enquiry Officer, Disciplinary Authority and the Appellate Authority, pursuant to which he was awarded the punishment of removal from service and the order passed by the Central Administrative Tribunal dismissing his original application.

2. The petitioner was appointed as a Constable in Delhi Police on 1.8.1984. It is alleged that he willfully absented himself from duty w.e.f. 10.2.1999. The petitioner did not send any information/medical papers or move any application requesting for leave. Absentee notice dated 23.2.1999 was issued to him and was served upon his wife. Thereafter, another notice dated 10.3.1999 was issued to him directing him to resume duties. The petitioner sent a letter stating that he was sick and because of his illness he cannot resume duty. The respondents vide memo dated 7.4.1999 asked the petitioner to undergo medical examination. This

memo was sent through a Special Messenger for service at the house of the petitioner. The brother of the petitioner, Mr. Sat Pal Singh, informed the Special Messenger that the whereabouts of the petitioner were not known, as he had not been coming home for the last one month.

3. In these circumstances, disciplinary proceedings were initiated against the petitioner for willfully absenting himself from duty vide order dated 18.4.1999. It was also noticed in the charge-sheet that the petitioner had absented himself earlier on 13 different occasions for which he had been reprimanded but he had failed to mend himself and was in a habit of absenting himself unauthorisedly. It may be relevant to state here that till the time of initiation of disciplinary proceedings the petitioner had not reported back for duty.

4. The enquiry officer sent repeated notices to the petitioner but he did not appear and ultimately ex-parte proceedings were directed against him in terms of Rule 16(3) on 2.8.1999. On 11.8.1999, however, the petitioner appeared before the enquiry officer and received a copy of the summary of allegations, list of documents, list of witnesses along with ex parte order and the matter was adjourned for recording of evidence etc on 16.8.1999. On 16.8.1999, again the petitioner did not appear and various witnesses were examined. Ex parte evidence was also recorded on 18/20.8.1999. On 26.8.1999, the enquiry officer completed the proceedings and charge was got served upon the petitioner, to which again there was no response. On the basis of evidence and material before the enquiry officer, he submitted his findings. As per the enquiry report dated 28.9.1999, the charges against the petitioner were held proved.

5. Thereafter, the Deputy Commissioner of Police vide its order dated 11.10.1999 called upon the petitioner to make written statements/ representations against the findings of the enquiry officer within 15 days. The said order along with the enquiry report etc. were delivered to the brother of the petitioner, Mr. Sat Pal on 7.10.1999 but no written representation was received. To give another opportunity to the petitioner, letter dated 26.10.1999 was issued asking the petitioner to appear before the Deputy Commissioner of Police on 29.10.1999. The said letter was delivered to the mother of the petitioner but again he did not appear and/or submit any reply to the Deputy Commissioner of Police on 29.10.1999. The petitioner also did not report to the authorities.

6. Considering various aspects and after examining the report of the enquiry officer, the Deputy Commissioner of Police as the Disciplinary authority held that the charges against the petitioner stood proved and he was found to be totally disinterested in government service and unfit for the same. Punishment of dismissal from service with immediate effect was ordered and the period of absence from 19.2.1999 was directed to be treated as `dies non`.

7. The petitioner filed an appeal against the said order before Additional Commissioner of Police. The Appellate Authority, after recording reasons maintained that the petitioner was guilty of the charges but modified the

punishment from dismissal from service to punishment from removal from service.

8. The petitioner challenged the impugned findings/orders passed by the enquiry officer, disciplinary authority and the appellate authority in O. A. No.2098/2001 before the learned Central Administrative Tribunal. The Central Administrative Tribunal dismissed the said Original Application and also upheld the validity of Rule 16 including various sub-rules of the Rules.

CONTENTIONS

9. The learned Counsel appearing for the petitioner before us has challenged the virus of Rule 16 including the sub rules. The main argument of the learned Counsel for the petitioner was that in view of Rule 16 the enquiry officer had acted as a presenting officer also and this according to the learned Counsel was contrary to the principles of natural justice and Therefore, Rule 16 was/is liable to be struck down. It was also submitted that after framing of the charge by the enquiry officer, the delinquent was/is not permitted under the Rules and allowed to cross examine the witnesses. It was submitted in this regard that the enquiry officer had prepared the list of witnesses and also prepared a list of documents relied upon by him to prove the charges against the petitioner in the enquiry. The summary of allegations against the petitioner was also prepared by the enquiry officer. Thus the entire enquiry proceedings procedure was/is an eye wash as under the Rules, the enquiry officer from the very beginning had acted on the basis of a presumption that the allegations made against the delinquent officer were correct and not as an independent and an impartial adjudicator. The enquiry officer under the Rules it was submitted acted more like a presenting officer and thus real likelihood of bias stands established. It was submitted that the Rules prevent a free, fair and independent judgment by an enquiry officer as under the Rules an enquiry officer acts as a presenting officer. It was also argued that at the time of framing of charge, the enquiry officer had to form an opinion whether or not the delinquent officer was guilty and Therefore at that stage the enquiry officer decided whether the petitioner was guilty of charges. Only after framing of charge, under the Rules defense witnesses were be examined. This it was submitted was contrary to law and violates principles of natural justice as the enquiry officer before even defense evidence was lead, had already reached a conclusion that the petitioner was guilty of the charges leveled against him.

10. Learned counsel for the petitioner relied upon the judgments of the Supreme Court in the case of Kuldeep Singh Vs. The Commissioner of Police and Others, and State Bank of Bikaner and Jaipur Vs. Srinath Gupta and another, .

11. Learned counsel appearing for the respondent had submitted that the petitioner was proceeded ex parte before the enquiry officer. It was further submitted that the petitioner had admittedly absented himself from duty and did not join duties even after repeated notices were served upon him. Reliance was also placed on Rule 19(5) of the CCS (Leave Rules), 1964 to the effect that

submission of the medical certificate alone does not confer upon a government servant a right to claim leave. In the present case, it was submitted that the petitioner was specifically asked to get himself medically examined but he did not respond. It was further submitted that the Special Messenger had submitted a report that the petitioner was not found at his residence and it was stated by his brother that his whereabouts were not known as he was not coming home. It was further argued that it was an admitted fact that the petitioner never rejoined his duty.

We may in order to decide the controversy, refer to the Rules.

RULE 15

15. Preliminary enquiries (1) A preliminary enquiry is a fact finding enquiry. Its purpose is (i) to establish the nature of default and identity of defaulter(s), (ii) to collect prosecution evidence, (iii) to judge quantum of default, and (iv) to bring relevant documents on record to facilitate a regular departmental enquiry. In cases where specific information covering the above mentioned points exists a preliminary enquiry need not be held and departmental enquiry may be ordered by the disciplinary authority straight away. In all other cases a preliminary enquiry shall normally precede a departmental enquiry.

(2) In cases in which a preliminary enquiry discloses the commission of a cognizable offence by a police officer of subordinate rank in his official relations with the public, departmental enquiry shall be ordered after obtaining prior approval of the Addl. Commissioner of Police concerned as to whether a criminal cases should be registered and investigated or a departmental enquiry should be held.

(3) The suspected police officer may or may not be present at a preliminary enquiry but when present he shall not cross-examine the witnesses. The file of preliminary enquiry shall not form part of the formal departmental record, but statements there from may be brought on record of the departmental proceedings when the witnesses are no longer available. There shall be no bar to the Enquiry Officer bringing on record any other documents from the file of the preliminary enquiry, if he considers it necessary after supplying copies to the accused officer. All statements recorded during the preliminary enquiry shall be signed by the person making them and attested by Enquiry Officer.

16. Procedure in departmental enquiries.- The following procedure shall be observed in all departmental enquiries against police officers of subordinate rank where prima facie the misconduct is such that, if proved, it is likely to result in a major punishment being awarded to the accused officer:

(i) A police officer accused of misconduct shall be required to appear before the disciplinary authority, or such Enquiry Officer as may be appointed by the disciplinary authority. The Enquiry Officer shall prepare a statement summarizing the misconduct alleged against the accused officer in such a manner as to give

full notice to him of the circumstances in regard to which evidence is to be recorded. Lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon or prosecution shall be attached to the summary of misconduct. A copy of the summary of misconduct and the lists of prosecution witnesses together with brief details of the evidence to be led by them and the documents to be relied upon for prosecution will be given to the defaulter free of charge. The contents of the summary and other documents shall be explained to him. He shall be required to submit to the Enquiry Officer a written report within 7 days indicating whether he admits the allegations and if not, whether he wants to produce defense evidence to refute the allegations against him.

(ii) If the accused police officer after receiving the summary of allegations, admits the misconduct alleged against him, the enquiry officer may proceed forthwith to frame charge, record the accused officer's pleas and any statement he may wish to make and then pass a final order after observing the procedure laid down in Rule 15(xii) below if it is within his power to do so. Alternatively the finding in duplicate shall be forwarded to the officer empowered to decide the case.

(iii) If the accused police officer does not admit the misconduct, the Enquiry Officer shall proceed to record evidence in support of the accusation, as is available and necessary to support the charge. As far as possible the witnesses shall be examined direct and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The Enquiry Officer is empowered, however, to bring on record the earlier statement of any witness whose presence cannot in the opinion of such officer, be procured without undue delay, inconvenience or expense if he considers such statement necessary provided that it has been recorded and attested by a police officer superior in rank to the accused officer, or by a magistrate and is either signed by the person making it or has been recorded by such officer during an investigation or a judicial enquiry or trial. The statements and documents so brought on record in the departmental proceedings shall also be read out to the accused officer and he shall be given an opportunity to take notes. Unsigned statements shall be brought on record only through recording the statements of the officer or magistrate who had recorded the statement of the witness concerned. The accused shall be bound to answer any questions which the enquiry officer may deem fit to put to him with a view to elucidating the facts referred to in the statements or documents thus brought on record.

(iv) When the evidence in support of the allegations has been recorded, the Enquiry Officer shall:

(a) If he considers that such allegations are not substantiate, either discharge the accused himself, if he is empowered to punish him or recommend his discharge to the Deputy Commissioner of Police or other officer, who may be so empowered, or

(b) Proceed to frame a formal charge or charges in writing, explain them to the accused officer and call upon him to answer them.

(v)The accused officer shall be required to state the defense witnesses whom he wishes to call and may be given time, not exceeding two working days, to prepare a list of such witnesses together with a summary of the facts they will testify and to produce them at his expense in 10 days. The Enquiry Officer is empowered to refuse to hear any witness whose evidence he considers to be irrelevant or unnecessary in regard to the specific charge. He shall record the statements of those witnesses whom he decides to admit in the presence of the accused officer who shall be allowed to address question to them, the answers to which shall be recorded; provided that the Enquiry Officer may cause to be recorded by any other Police Officer superior in rank to the accused officer the statements of a witness whose presence cannot be secured without delay, expense or inconvenience and any bring such statements on record. When such a procedure is adopted, the accused office may be allowed to draw up a list of questions he wishes to be answered by such witnesses. The Enquiry Officer shall also frame questions which he may wish to put to the witnesses to clear ambiguities or to test their veracity. Such statements shall also be read over to the accused officer and he will be allowed to take notes.

(vi)The accused officer shall, for the purpose of preparing his defense, be permitted to inspect and take extracts from such official documents as he may specify, provided that such permission may be refused for reasons to be recorded in writing, if in the opinion of the Enquiry Officer such records are not relevant for the purpose or against the public interest to allow him access thereto. The latest orders of the Government shall be applicable with regard to the charging of copying fees, etc.

(vii)At the end of the defense evidence or if the Enquiry Officer so directs, at an earlier stage after the framing of charge the accused officer shall be required to submit his own version of facts. He may file a written statement for which he may be given a week's time, but he shall be bound to answer orally all questions arising out of the charge, the recorded evidence, his own written statement or any other relevant matter, which the Enquiry Officer may deem fit to ask.

(viii)After the defense evidence has been recorded and after the accused officer has submitted his final statement, the Enquiry Officer may examine any other witness to be called court witness whose testimony he considers necessary for clarifying certain facts not already covered by the evidence brought on record in the presence of the accused officer who shall be permitted to cross examine all such witnesses and then to make supplementary final defense statement, if any, in case he so desires.

(ix)The Enquiry Officer shall then proceed to record the findings. He shall pass orders of acquittal or punishment if himself empowered to do so, on the basis of evaluation of evidence. If he proposes to punish the defaulter he shall follow the

procedure as laid down in Rule 16 (xii). If not so empowered he shall forward the case with the reasons Therefore, to the officer having the necessary powers. If the enquiry locate on each of the charges together with the reasons there-establishes charges different from those originally framed he may record findings on such charges, provided that findings on such charges shall be recorded only if the accused officer has admitted the facts Constituting them or has an opportunity of defending himself against them.

(x)On receipt of the Enquiry Officer's report the disciplinary authority shall consider the record of the enquiry and pass his orders on the enquiry on each charge. If in the opinion of the disciplinary authority, some important evidence having a bearing on the charge has not been recorded or brought on the file he may record the evidence himself or sent back the enquiry to the same or some other Enquiry Officer, according to the circumstances of the case, for such evidence to be duly recorded. In such an event, at the end of such supplementary enquiry, the accused officer shall again be given an opportunity to lead further defense, if he so desires, and to submit a supplementary statements, which he may wish to make.

(xi)If it is considered necessary to award a severe punishment to the defaulting officer by taking into consideration his previous bad record, in which case the previous bad record shall form the basis of a definite charges against him and he shall be given opportunity to be defending himself as required by rules.

(xii)If the disciplinary authority, having regard to his findings on the charges, is of the opinion that a major punishment is to be awarded, he shall :

(a) Furnish to the accused officer free of charge a copy of the report of the Enquiry Officer, together with brief reasons for disagreement, if any, with the finding of the Enquiry Officer,

(b) Where the disciplinary authority is himself the Enquiry Officer, a statement of his own findings, and

(c) Give him a show cause notice stating the punishment proposed to be awarded to him and calling upon him to submit within 15 days such representation as he may wish to make against the proposed action.

12. Under Rule 15, normally a preliminary fact finding enquiry is required to be held to bring on record relevant documents to facilitate a regular departmental enquiry. A preliminary enquiry, however, need not be held where specific information regarding the nature of default or the identity of the defaulter, prosecution evidence and relevant documents to facilitate regular departmental enquiry are already on record and it is also possible on the basis of the evidence available to prima facie adjudge quantum of default. It is after a preliminary enquiry is held or where there is sufficient material already available that a regular departmental enquiry can be initiated under Rule 16.

13. Under Rule 16, a delinquent officer charged with misconduct is required to

appear before the disciplinary authority or the enquiry officer who has been appointed by the disciplinary authority. Under Sub-Rule 1, the enquiry officer or the disciplinary authority prepares a statement summarizing the misconduct alleged and so as to give the delinquent officer full notice of the circumstances with regard to which evidence is to be recorded. List of prosecution witnesses and documents relied upon is to be attached with the said summary. If the delinquent officer does not admit the misconduct, then under Sub-Rule 3 to Rule 16, the enquiry officer is to proceed and record evidence. Witnesses are examined in the presence of the delinquent officer who has full right to take notes and cross-examine them. Under certain circumstances the enquiry officer is also empowered to bring on record statement of witnesses recorded earlier on specific conditions being satisfied. After the evidence has been recorded, the enquiry officer can himself discharge the delinquent officer and if not empowered, recommend discharge to the Deputy Commissioner of Police or to other officer so empowered. If he feels that on the basis of evidence the charges are substantiated, he may call upon the accused officer to answer the charges. Thereafter, the delinquent officer is given an opportunity to lead defense evidence. The enquiry officer can also earlier direct the delinquent officer to submit his own version of facts and file relevant statement. The enquiry officer is also empowered to ask oral questions to the delinquent officer arising out of the charge. After the defense evidence has been recorded, the enquiry officer can examine any other witness, whom he considers necessary for clarifying any facts and the delinquent officer is permitted to cross-examine said witnesses and then make a supplementary final defense statement, if he so desires. Thereafter, the enquiry officer is to proceed and record his findings and also pass an order of acquittal or punishment, if he so empowered or forward his findings to an officer having the necessary powers.

14. While making reference to these provisions, the main contention of the learned Counsel for the petitioner was that as per the provisions of Rule 16 the enquiry officer acts in dual capacity, both as a presenting officer as well as an adjudicatory authority deciding and giving findings as an enquiry officer. This it was submitted, violates the principles of natural justice and makes entire enquiry procedure void ab initio on account of bias. It was further submitted that the enquiry officer also had right to cross-examine the defense witnesses and even the list of witnesses and list of documents was prepared by the enquiry officer, who had thus shed his cloak of an independent and a fair adjudicator but was an interested party.

Bias and validity of the Rules

15. Doctrine that No man should be a judge of his own cause - (Nemo Judex in Re causa) is well known. Is the procedure prescribed in the Rule 16 bad in law being at variance to the said doctrine? In other words, is an enquiry officer under the Rules, a judge of his own cause? Can the Rule 16 be struck down on the ground of per-se bias?

16. To answer the above questions, we are required to examine Article 311(2) of the Constitution of India, which reads as under:

No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

17. There are two requirements of the said Article:

(i) Delinquent officer should be supplied with a copy of the charge sheet and informed.

(ii) Delinquent officer should be given a reasonable opportunity of being heard in respect of the charge sheet.

18. The purpose and the object of Article 311(2) of the Constitution is that the Government servant should be afforded with an opportunity to meet the charges against him but once a reasonable opportunity of hearing is given, constitutional requirement under the said Article is satisfied. However, where a judge or an adjudicating authority has an interest in cause or is biased against the parties, reasonable opportunity requirement of Article 311(2) is desecrated.

19. But it is also equally true that ministerial or departmental adjudication by an officer of the department cannot be regarded as a disqualifying bias or violation of the principle of reasonable hearing enshrined in Article 311(2) of the Constitution of India. Departmental bias does not offend Article 311(2) of the Constitution. It is different and cannot be put into the same cohort as a personal or individual bias or misconduct by a particular officer. What is envisaged and required by Article 311(2) of the Constitution is a fair hearing and a just procedure generally.

20. We have reproduced the provisions of Rule 16 and analysed them and find that the procedure prescribed under the aforesaid rule is just and fair. It provides for fair hearing and gives reasonable opportunity to a delinquent officer to meet various charges and allegations made against him. By no stretch procedure can be described and regarded as one that has the effect of the enquiry officer getting influenced and preventing him from giving a fair and just decision on the merits of the case. The procedure prescribed is fairly detailed, wherein a complete summary of allegations is required to be given to the delinquent officer along with list of witnesses and documents in support. These witnesses are examined in person by the enquiry officer (unless the case falls an exception) and the delinquent officer has right to cross-examine the witnesses. Thereupon, the enquiry officer examines the evidence and if he is of the opinion that the charges are not substantiated, he can discharge the delinquent officer or make recommendation in that regard to the competent authority. If he feels that the charges have to be substantiated, he can frame the charges.

21. It is not correct to state that the provisions of Rule 16, fail the test of

reasonableness and are unconstitutional because defense evidence is only recorded after charge is framed. Charge is framed under Rule 16(4) only on the basis of the evidence produced till that stage and when the enquiry officer is of the opinion that the allegations have been substantiated on the basis of evidence available till that stage. Once defense evidence is produced and recorded, the enquiry officer is to examine the entire matter including the defense evidence and give his final findings. It is not possible to accept the contention that once charge is framed, the enquiry officer has bias and, Therefore, the said provision should be struck down. In fact, the enquiry officer is required to go into and examine the evidence and material at different stages to prevent harassment and in a given case drop or recommend the proceedings, once before the defense evidence is recorded and thereafter at the end, after the entire evidence including defense evidence has already been recorded. At the first stage, in case an enquiry officer comes to conclusion that the allegations are not substantiated, he need not frame any charge. This obviates recording defense evidence. Thus it saves time, money and prevents harassment. A similar provision with regard to framing of charge also exists in the Code of Criminal Procedure wherein prosecution evidence is to be first recorded and thereafter charges are framed (See Section 245, Code of Criminal Procedure, 1973). The accused gets a chance to lead evidence only after charge is framed but before the final decision.

22. In the case of Sunil Kumar Banerjee Vs. State of West Bengal and Others, , the Supreme Court rejected the contention that there was reasonable apprehension that the enquiry officer was prejudiced on account of the fact that the preliminary report of investigation was referred to enquiry officer for his views for preparation of draft charges and whether institution of disciplinary proceeding was to be recommended. The enquiry officer on the basis of the preliminary report had expressed his opinion that there was material for framing five charges. Later on the same person, who had given the opinion on the basis of the preliminary report had acted as an enquiry officer and the appointment was challenged on the ground of lack of reasonable opportunity of being heard. This argument was rejected by referring to the procedure followed in criminal cases wherein the same Magistrate on the basis of the prima facie material first frames charges and then conducts trial and thereafter decides whether accused is guilty or not.

23. Disciplinary enquiry proceedings cannot be regarded as adversarial in nature as the aim and purpose of disciplinary enquiry proceeding is to find out the truth and whether or not the misconduct alleged against the delinquent officer stands proved. It is not necessary nor can any procedure be held to be violative of Articles 311(2) or 14 of the Constitution of India merely because under the said procedure, the adjudicating authority is empowered to put questions and cross-examine witnesses. Constitutional protection under the Articles 311(2) and 14 cannot be extended and stretched to this extent and thus deny power to the presiding officer/enquiry officer to question witnesses and get clarifications and/or if required summon new witnesses. As already mentioned above, under Rule

15 preliminary enquiry is required to be conducted before an enquiry officer is appointed unless in case falls under the exceptions. Therefore, in most of the cases in the preliminary enquiry proceedings necessary evidence, material and details of documents and list of witnesses required to be examined are collected and after the preliminary enquiry has come to an end, disciplinary proceedings are initiated. On the basis of the preliminary enquiry report, a list of witnesses is to be prepared. In other cases, the requirement of Rule 15 is that these details or materials should be already available. The enquiry officer is only required to make summary of the allegations and forward the list of witnesses and documents etc. to the delinquent officer facing charges. The mere fact that the enquiry officer is required to examine witnesses himself, put questions to the witnesses and cross-examine the defense witnesses cannot by any stretch be regarded as violation of Articles 311(2) and 14 of the Constitution.

24. Principles of natural justice have to give way when the statutory provisions are to the contrary. It may be also stated here that Doctrine of bias is not an absolute doctrine and is subject to well known exceptions as it is only propounded on the basis of principles of natural justice. One of the recognised and well known exceptions is the requirement of the statute itself. When a statute itself confers power or authority and imposes a duty on the authority itself to adjudicate a dispute, the provision itself cannot be struck down on the basis of Official bias , because in such cases like the present one, the legislature has clearly and expressly given specific power to investigate and adjudicate and, Therefore, the question of violation of principles of natural justice does not arise.

25. Similarly, doctrine of necessity is an accepted exception to the principles of natural justice. Intermingling of functions cannot be regarded as a bias or unconstitutional merely because adjudicator is a departmental officer. It is duty of an enquiry officer to search, probe and find out the truth. He has no personal interest or bias, being an officer in the police force, in holding that the delinquent employee is guilty of the charges. Merely because an enquiry officer can put questions and then cross-examine witnesses to find out and reach a proper conclusion does not mean that the procedure under the Rules is unconstitutional. An enquiry officer does cease to be impartial or neutral because of this power or right to put questions and cross-examine witnesses. By very nature, departmental enquiry has to be carried out by bureaucratic or departmental authorities; otherwise the system would be unworkable. It is a different matter that a particular departmental officer may be disqualified from acting as an enquiry officer because of his personal involvement or if he has exhibited personal bias. The provisions of Rule 16 are just and fair. They require giving of hearing, right of cross-examination, right to defend, produce witnesses, cross-examination, etc. to a delinquent employee. The enquiry officer is also required to pass a reasoned order that can be made subject matter of an appeal. An enquiry officer is an independent person who conducts an enquiry into the allegations made against the delinquent officer.

26. It is also not possible to accept the contention of the learned Counsel for the petitioner that the entire procedure mentioned in Rule 16 should be struck down on the ground of bias as an enquiry officer also acts as an investigator. As held by Frank J. of the United States in *Linahan, Inere* :

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.

27. An administrative adjudicator will not for obvious reasons have the same kind of objectivity or neutral stand as that of a Judge but his by itself cannot be a ground to strike down Rule 16. There are number of provisions in fiscal and other statute under which departmental officers act as both investigators and adjudicators. Challenge to the jurisdiction of the Government officers acting as both an adjudicator and an investigator was rejected by the Supreme Court way back in 1960 in the case of *H.C. Narayanappa and Others Vs. The State of Mysore and Others*, wherein it was held as under:

It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias.

28. The doctrine or question of departmental bias was examined was also examined one year earlier in 1959 by the Supreme Court in the case of *Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others*, , it was held that the doctrine of bias has two settled principles:

(i) No man should be a judge of his own cause.

(ii) Justice should not only be done but also manifestly and undoubtedly seeing to be done.

29. However, it was held that where legislature has clearly and expressly ordained to the contrary, the principles of natural justice must yield. The courts tolerate statutory invasion to the common law objection on the ground of bias. It cannot be said that the enquiry officer is a judge of his own cause merely because while conducting enquiry he also acts and acts not merely as a salient spectator but as an equal participant in quest to find the truth.

30. The issue of departmental bias has also been examined in the case of *Hindustan Petroleum Corpn. Ltd. Vs. Yashwant Gajanan Joshi and others*, . The contention raised was that an employee of the appellate corporation should not be permitted to act as a competent authority and determine compensation payable. The contention was rejected by holding that there was no provision that

barred the Central Government to appoint an employee of the Corporation as a competent authority and the said authority might be required to discharge various functions and diverse duties but this was no ground to hold that the decision would be biased. It was held that bias of an enquiry officer in particular facts and circumstances of the case would vitiate the proceeding but not merely departmental bias or employer employee relationship. That by itself cannot be a disability or disqualification. It was further pointed out that a case of private employment cannot be equated with a case of an employee in public employment. However, in the given facts and circumstances of that case, the Supreme Court came to the conclusion that the competent authority in fact had personal bias but that finding was not on the basis that he was in Government employment.

31. Supreme Court in the case of Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and Others, examined these aspects in relation to service law and held the purpose and object of procedural fairness is to ensure reasonable opportunity to the delinquent officer to defend himself but the same depends upon facts and circumstances of each case. It was held that the doctrine of natural justice is incapable of exact definition but has to be judged from the point of view of what a reasonable man would regard as a fair procedure in particular circumstances. With regard to bias also the Court noted that bias includes within its ambit, attitude, malice, respite or ill will but mere general statements would not be sufficient for the purpose of indication of ill will malice etc. The concept of rare likelihood and reasonable suspicion of bias was examined and it was clarified that the issue of bias has to be decided on the facts and circumstances of each individual case. It was noticed that there was a change in the original thinking pertaining to concept of bias to the effect that mere apprehension or bias in the same case was held to be sufficient.

32. In the case of Indian Overseas Bank Vs. Indian Overseas Bank Officers' Association and Another, , the Supreme Court examined the constitutional validity of the regulation under which an employee was barred from taking assistance of an employee who has two pending disciplinary cases on hand with him. The Court examined the concept of departmental enquiry and it was held that there is no absolute right of representation to an employee in domestic enquiries that can be equated to right to reasonable hearing under Article 311(2) of the Constitution unless there is a provision in the rules, regulations or standing orders. The decision of the High Court was reversed and the said regulation was upheld under Article 14 of the Constitution of India. The concept of bias has been also examined in the case of G.N. Nayak Vs. Goa University and Others, , it was held that the bias if founded on reason and not actuated by consideration of personal interest, pecuniary otherwise, it would not vitiate the decision. The Supreme Court also gave an example of a senior officer who has filled up remarks in a confidential report and held that he was not precluded from being part of Departmental Promotional Committee on the ground of bias. It was observed:

34. It is not every kind of bias which in law is taken to vitiate an act. It must be a prejudice which is not founded on reason, and actuated by self-interest ?" whether pecuniary or personal. Because of this element of personal interest, bias is also seen as an extension of the principles of natural justice that no man should be a judge in his own cause.

33. Recently, again in the case of Union of India (UOI) and Others Vs. Vipin Kumar Jain and Others, , the Supreme Court has held that an officer who has carried out search u/s 132 of the Income Tax Act, 1961 is competent to act as an assessing officer and there is no inherent unconstitutionality in permitting the assessing officer to gather information and assess the value of the information himself. While rejecting the above contention the Supreme Court referred to decision of the U.S. Supreme Court in the case of Harold Withrow v. Duane Larkin 43 L.ED. 712 and has been opined:

Even though it could be said that in a sense since the assessing officer was acting on behalf of the Revenue, in discharging the functions as an assessing officer, he was a party to the dispute, nevertheless there is no presumption of bias in such a situation. As said in H.C. Narayanappa v. State of Mysore¹ SCR at p. 753:

It is also true that the Government on whom the duty to decide the dispute rests, is substantially a party to the dispute but if the Government or the authority to whom the power is delegated acts judicially in approving or modifying the scheme, the approval or modification is not open to challenge on a presumption of bias. The Minister or the officer of the Government who is invested with the power to hear objections to the scheme is acting in his official capacity and unless there is reliable evidence to show that he is biased, his decision will not be liable to be called in question, merely because he is a limb of the Government.

There is nothing inherently unconstitutional in permitting the assessing officer to gather the information and to assess the value of the information himself. The issue as to the constitutional validity of a provision which permitted an examining board not only to hold an inquiry but also to take action against doctors was raised before the Supreme Court of the United States in Harold Withrow v. Duane Larkin. In negating the challenge the Court said: (US p. 47)

The contention that the combination of investigative and adjudicative functions necessarily creates an unconstitutional risk of bias in administrative adjudication has a much more difficult burden of persuasion to carry. It must overcome a presumption of honesty and integrity in those serving as adjudicators; and it must convince that, under a realistic appraisal of psychological tendencies and human weakness, conferring investigative and adjudicative powers on the same individual poses such a risk of actual bias or prejudgment that the practice must be forbidden if the guarantee of due process is to be adequately implemented.

It is true that there may be cases where the outcome of the assessment may be

influenced by the fact that the raiding assessing officer had himself in the course of the raid been witness to any incriminating material against the assessed. The assessing officers decision on the basis of such material is not the final word in the matter. The assessment order is appealable under the provisions of the statute itself and ultimately by way of judicial review.

34. In the case of *Canara Bank and Others Vs. Shri Debasis Das and Others*, , the Supreme Court examined the scope and object of service regulations framed by Canara Bank. As per the said regulations, the enquiring authority after completion of evidence could permit the parties to file written briefs. It was held that there were two separate options available with the enquiry officer and it was not mandatory for the presenting officer to file his written brief and thereafter for the delinquent employee to give his reply. It was further held that there was no question of prejudice as there was a provision for appeal. It may be relevant to quote here some passages of the said judgment, which are reproduced below:

13. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canone. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities and grammatical niceties. It is the substance of justice which has to determine its form.

14. The expressions natural justice and legal justice do not present a watertight classification. It is the substance of justice which is to be secured by both, and whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigant's defense.

15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play.

The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the Magna Carta . The classic exposition of Sir Edward Coke of natural justice requires to vocate, interrogate and adjudicate . In the celebrated case of Cooper v. Wandsworth Board of Works² the principle was thus stated: ER p. 420

Even God himself did not pass sentence upon Adam before he was called upon to make his defense. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof, I commanded thee that thou shouldest not eat?"

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

16. Principles of natural justice are those rules which have been laid down by the courts as being the minimum protection of the rights of the individual against the arbitrary procedure that may be adopted by a judicial, quasi-judicial and administrative authority while making an order affecting those rights. These rules are intended to prevent such authority from doing injustice.

17. What is meant by the term principles of natural justice is not easy to determine. Lord Sumner (then Hamilton, L.J.) in R. v. Gopal Govt. Board³ KB at p. 199 described the phrase as sadly lacking in precision. In General Council of Medical Education & Registration of U.K. v. Spackman Lord Wright observed that it was not desirable to attempt to force it into any Procrustean bed and mentioned that one essential requirement was that the Tribunal should be impartial and have no personal interest in the controversy, and further that it should give a full and fair opportunity to every party of being heard.

35. Admittedly, the delinquent employee has right to challenge the findings of the enquiry officer in appeal. Kuldeep Singh's case (supra), Supreme Court set aside and quashed the departmental proceedings and the punishment orders on the ground that they were perverse as the conclusions were not based upon some definite evidence but mere suspicion. It was further held that Rule 16(3) should be invoked only when the conditions precedent mentioned therein were satisfied and not otherwise. State Bank of Bikaner and Jaipur (supra) also does not help the petitioner. In the said case it was held that statements made in Section 161 Cr. P.C. 1973 could be produced in a disciplinary inquiry but the delinquent officer should be given a fair opportunity to cross-examine the said witnesses. The context and the controversy involved in the said case was entirely different.

36. We may also point out that in the present case the petitioner had only appeared only once before the enquiry officer and did not participate in the enquiry proceedings. He did not cross-examine the witnesses, file any written statement or give his defense against allegations made against him. There is no allegation that procedure as prescribed in Rule 16 has not been followed. The

petitioner had filed an appeal against the order passed by the disciplinary authority which was dismissed. It appears that the petitioner has challenged the procedure prescribed under Rule 16 only because he had no other ground to challenge and question the disciplinary proceedings and the punishment awarded to him.

37. In view of the above, we do not find any merit in the present writ petition and the same is dismissed. No costs.