GAHC010162022018

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4982/2018

JAGADISH CHANDRA BRAHMA
S/O. LT. DAYA RAM BRAHMA, R/O. VILL. GWJWNPURI, P.O. KOKRAJHAR, DIST. KOKRAJHAR, ASSAM.

VERSUS

UCO BANK AND 3 ORS.
A BODY CORPORATE HAVING ITS HEAD OFFICE AT 10, BTM SARANI, BRABOURNE ROAD, KOLKATA-700001, REP. BY ITS CHAIRMAN AND MANAGING DIRECTOR.

2:THE GENERAL MANAGER
HRAM DEPTT. UCO BANK
HEAD OFFICE 10 BTM SARANI KOLKATA-700001.

3:THE ASSTT. GENERAL MANAGER AND ZONAL HEAD
UCO BANK
BONGAIGAON ZONAL OFFICE
STATION ROAD
P.O. AND DIST. BONGAIGAON
ASSAM-783380.

4:THE ZONAL MANAGER
UCO BANK
ZONAL OFFICE
GUWAHATI
SILPUKHURI GUWAHATI-781003

Advocate for the Petitioner : MR. N NATH

Advocate for the Respondent : MR M SARMA (SC, UCO BANK)

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

JUDGMENT & ORDER (ORAL)

Date : 24-11-2022

Heard Mr. N Nath, learned counsel for the petitioner. Also heard Mr. D K Das, learned counsel for the respondents in the UCO Bank.

2. The petitioner who was a Senior Manager at Kokrajhar Branch was subjected to a disciplinary proceeding as per the show-cause notice dated 08.10.2015 issued by the disciplinary authority being the Assistant General Manager and Zonal Head. Amongst others, the charges against the petitioner were that while he was the Branch Head in the Sakti Ashram Branch of the Bank, he had credited certain loan proceeds in the Saving Bank Accounts of the borrowers and thereafter, the loan amount was transferred into his own Saving Bank Account and Staff Overdraft Account.

3. In other words, the meaning and purport of the charge is that the petitioner taking the advantage of being the Head of the Branch had credited certain amounts in the form of loans to the Saving Bank Accounts of some borrowers of the bank and thereafter, the loan amounts were transferred back to his Saving Bank Account for his own purpose meaning thereby that it was a charge of misappropriation of bank's money as well as an act by which the bank may lose faith upon its employee.

4. In the aforesaid proceeding, the petitioner was also placed under suspension by the order dated 01.08.2015. In the inquiry proceeding Sri Dipak Kalita, a retired Chief Manager of the Bank was appointed as an Inquiring Officer to inquire to the charges and the appointment of the Inquiry Officer was intimated to the petitioner as per the communication dated 27.10.2016 of the Zonal Manager-cum-Disciplinary Authority.

5. Be that as it may, the inquiry was completed resulting in the inquiry report dated 18.03.2017. The inquiry report was acted upon by the disciplinary authority agreeing with the findings thereof and the petitioner delinquent was also provided with the copy of the inquiry

report and his objection was invited to the report.

6. In the aforesaid process, the order dated 12.12.2017 was passed by the disciplinary authority by which the petitioner was dismissed from service.

7. As provided under Clause 17 of the United Commercial Bank Officer Employees' (Discipline and Appeal) Regulations, 1976 (in short, the Regulations of 1976) the petitioner preferred an appeal dated 23.01.2018 before the General Manager being the appellate authority. The appellate authority in consideration of the appeal passed the order dated 18.05.2018 whereby it arrived at its conclusion that the petitioner delinquent had not brought any new facts other than what had already been considered in the inquiry and by the disciplinary authority and accordingly, the order of penalty was upheld.

8. Being aggrieved, this writ petition is instituted.

9. One of the grounds urged upon by Mr. N Nath, learned counsel for the petitioner in the writ proceeding is that Sri Dipak Kalita, retired Chief Manager who was appointed as the Inquiry Authority is not a public servant as defined under Clause 3(n) of the Regulations of 1976. Mr. N Nath, learned counsel for the petitioner by referring to the definition of public servant as provided in Clause 3(n) of the Regulations of 1976 raises the contention that as per the said definition the expression public servant would have the same meaning that of a public servant as provided in Section 21 of the Indian Penal Code.

10. A further contention is raised by referring to the judgment of the Supreme Court rendered in *Ravi Malik v. National Film Development Corpn. Ltd. and others reported in (2004) 13 SCC 427* wherein while interpreting Clause 23(b) of the Regulations known as Service Rules and Regulations, 1982, which provides that the disciplinary authority may inquire into any imputation of misconduct or misbehavior against an employee either by itself or appoint any public servant, where in that case a retired Judge of the City Civil Court was appointed as the Inquiry Officer, had interpreted the expression public servant to mean that it would not include a retired person.

11. Accordingly, by referring to Section 21 of the Indian Penal Code, it is the submission of Mr. N Nath, learned counsel for the petitioner that a public servant would only be those authorities as provided in Section 21 itself and not others and in the instant case, a retired

Chief Manager of the Bank would not come within the meaning of any of the authorities provided under Section 21 of the Indian Penal Code. The other contention raised is that as the Supreme Court in Ravi Malik (supra) had held that a retired City Civil Judge would not be a public servant for the reason of being a retired person, similarly a retired Chief Manager of the Bank would also not be a public servant for the purpose of being appointed as an Inquiry Officer in a disciplinary proceeding.

12. Mr. D K Das, learned counsel for the respondents UCO Bank on the other hand refers to the pronouncement of the Supreme Court rendered in *Union of India & ors. v. Alok Kumar reported in (2010) 5 SCC 349* wherein with reference to Rule 9(2) of the Railway Servants (Discipline and Appeal) Rules, 1968 (in short, the Railway Rules of 1968), it had been provided that an exclusion clause in a provision should be reflected in clear, unambiguous, explicit and specific terms or language and if there is no specific exclusion of a particular entity, it cannot be construed to have been excluded. Accordingly, it is the submission of Mr. D K Das, learned counsel for the respondent UCO Bank that a retired Chief Manager of the Bank having not been specifically excluded in the definition of public servant under Clause 3(n) of the Regulations of 1976, such exclusion in the absence of any clear, unambiguous, explicit and specific terms or language in the provision itself cannot be given the meaning that the retired employee is excluded.

13. Mr. N Nath, learned counsel for the petitioner has raised a further contention that the petitioner having filed an appeal under Clause 17 of the Regulations of 1976, there was an inherent requirement on the part of the appellate authority as provided in Clause 17 itself, to consider the finding of the disciplinary authority, either as justified or to be excessive or inadequate. By referring to Clause 17, it is the submission of Mr. N Nath, learned counsel for the petitioner that the appellate order dated 18.05.2018 does not reflect that the appellate authority had considered whether the findings of the Disciplinary Authority are justified or whether the penalty is excessive or inadequate and accordingly, assails the appellate order.

14. As regards the first contention raised as to whether the retired Chief Manager would also be included within the expression public servant under Clause 3(n) of the Regulations of 1976, we take note of the first contention of Mr. N Nath, learned counsel for the petitioner that Clause 3(n) of the Regulations of 1976 itself defines a public servant to have the same

meaning as that of the expression public servant as finds place in Section 21 of the IPC.

15. By referring to the meaning given to the expression 'public servant' in Section 21 of the IPC, Mr. N. Nath, learned counsel for the petitioner submits that even if we accommodate to the maximum in the instant case, the question as to whether a retired Chief Manager would also be a public servant would have to be understood as per the Clause 12(a) of Section 21 of the Indian Penal Code. By referring to the provisions of Clause 12(a) of Section 21 of the IPC, Mr. N. Nath, learned counsel for the petitioner submits that every person in the service or pay of the Government or remunerated by fees or commission for the performance of any public duty by the Government alone would be a public servant and as a retired official of the Bank is neither in the pay of the Bank nor is paid any remuneration or commission for performing any public duty by the Bank, therefore, the Chief Manager will not be a public official.

16. Mr. D.K. Das, learned counsel for the respondent Bank on the other hand contends that in the instant case, an inquiry officer who was a retired Chief Manager would be included within the meaning of Clause 6 of Section 21 of the Indian Penal Code. By referring to Clause 6, it is the submission of Mr. D.K. Das, learned counsel for the respondent Bank that every arbitrator or other person to whom any cause or matter has been referred for decision by any competent public authority would also be a public servant and accordingly, submits that the retired Chief Manager would come within the meaning of the expression 'other person' of Clause 6.

17. To appreciate the rival contentions as to whether Clause 6 or Clause 12(a) of Section 21 of the Indian Penal Code would be applicable to arrive at a conclusion and as to whether the Chief Manager would also be a public servant, we deem it appropriate to examine the two judgments of the Supreme Court in

Ravi Malik (supra) as referred by the petitioner and *Union of India & Ors. Vs. Alok Kumar (supra) as referred by the* respondent Bank. Paragraphs 2 and 3 of the judgment in *Ravi Malik (supra)* are as extracted:

> "***2.*** *The respondent National Film Development Corporation Ltd. is a Government of India enterprise. Regulations were framed known as the Service Rules and Regulations, 1982 (hereinafter referred to as "the Regulations") in respect of the employees of Respondent 1. The Regulations, inter alia, contain conduct, discipline and appeal rules under which disciplinary action can be taken against an employee for misconduct by imposition of either a minor or a major penalty. As far as the procedure for imposing a major penalty is concerned, Rule 23 lays down the procedure. The subject-matter of debate before us is the construction of Rule 23(b) which reads as follows:*
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> > *"23. (b) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into, or appoint any public servant, hereinafter called the inquiring authority to inquire the truth thereof."*
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> ***3.*** *A retired Judge of the City Civil Court was appointed as the inquiry officer for the purpose of inquiring into the truth of the imputations against the appellant. The appellant challenged this appointment by way of a petition under Article 226 of the Constitution. It was the appellant's submission that a retired judge was not a "public servant" within the meaning of Regulation 23(b). In addition the appellant challenged the refusal of the inquiry officer to make available certain documents to him."*

18. In *Ravi Malik (supra)*, the Supreme Court was examining the meaning of the expression 'public servant' as it appeared in Rule 23 of the Regulations known as Service Rules and Regulations, 1982 (for short 'the Regulations of 1982'). Rule 23 of the Regulations of 1982, which was under consideration before the Supreme Court in *Ravi Malik (supra)* is extracted as below:

> *"23. (b) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an employee, it may itself inquire into, or appoint any public servant, hereinafter called the inquiring authority to inquire the truth thereof."*

19. In the instant case, the appointment of an inquiry officer is provided under Clause 6(2) of the Regulations of 1976, which is again extracted as below:

> *(2) Whenever the Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against an officer employee, it may itself inquire into, or appoint any other public servant (hereinafter referred to as the inquiring authority) to inquire into the truth thereof.*
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> ***Explanation**- When the Disciplinary Authority itself holds the inquiry any reference in sub-regulation (8) to sub-regulation (21) to the inquiring authority shall be construed as a reference to Disciplinary Authority.*

20. A reading of Clause 23(b) of the Regulations of 1982, which was under consideration before the Supreme Court in *Ravi Malik (supra)* and Clause 6(2) of the Regulations of 1976 involved in the present writ petition are not only pari materia but in fact worded in the same manner. If upon interpreting the expression 'public servant' appearing in a pari materia provision or to that effect a provision which is exactly similarly worded, ordinarily we have to accept the meaning given to the expression 'public servant' in *Ravi Malik (supra).*

21. In paragraph 3 of the judgment of the Supreme Court in Ravi Malik(supra) it has been provided that it was the submission before the Supreme Court that a retired Judge of the City Civil Court who was appointed as the inquiry officer was not a 'public servant' within the meaning of Regulation 23(b) which was under consideration in the said writ petition.

22. In paragraph 7 of the aforesaid judgment, the Supreme Court took a view that the word 'public servant' under Section 23(b) mean exactly what they say, namely, that the person appointed as an inquiry officer must be a servant of the public and not a person who was a servant of the public. Accordingly in paragraph 7 thereof a view was taken by the Supreme Court that a retired officer would not come within the definition of 'public servant' for the purpose of Rule 23(b) therein. But in the instant case, it is also brought to our notice that the expression 'public servant' is also defined under Clause 3(n) of the Regulation of 1976. The principles of interpretation of statutory provisions

provide that in the event, an expression is not defined in the statute itself, a meaning can be given to such interpretation as may be interpreted. But when an expression is defined in the same statute, the meaning given by the statute would have to be taken into consideration and not a general meaning that may be given to such expression.

23. In the instant case, as the expression 'public servant' has been defined under Clause 3(n) of the Regulation of 1976, we take note of the meaning given to such expression in the said clause rather than taking a general meaning given by the Supreme Court to the same expression, while interpreting a *pari materia* provision under Rule 23 of the Regulations of 1982. As the meaning to be given to the expression 'public servant' under Clause 3(n), as already noted hereinabove, has a reference to the expression 'public servant' under Section 21 of the IPC and a contention has been raised by Mr. D K Das, learned counsel for the respondent Bank that clause 6 of Section 21 of the IPC would be relevant for the purpose of this writ petition to examine whether a retired Chief Manager of a Bank would also be a public servant, we take note of the further contention of Mr. D K Das, learned counsel for the Bank that Clause 6 of Section 21 of the IPC takes into consideration the expression 'other person'. As the meaning to be given to the expression 'other authority' had been under a detailed deliberation in the judgment of the Supreme Court rendered in Alok Kumar (supra), we also examine the implication and meaning given by the Supreme Court to the expression 'other authorities' in Alok Kumar (supra). In Alok Kumar (supra), the Supreme Court examined the meaning of the expression 'other authority' appearing in Rule 9(2) of the Railway Rules of 1968, which is extracted as below:

Rule 9(2) Whenever the disciplinary authority is of the opinion that

there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a railway servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, [a Board of Inquiry or other authority] to inquire into the truth thereof.

24. Rule 9(2) of the Railway Rules of 1968 provides that the disciplinary authority may itself inquire or appoint under that Rule or under the provisions of *the Public Servants (Inquiries) Act, 1850* (for short, the Act of 1850), as the case may be, the Board of Inquiry or other authority to inquire into the truth of the allegation. In other words, Rule 9(2) provides for appointment of a Board of Inquiry or other authority under the Rule under consideration itself or under the provisions of the Act of 1850. Section 3 of the Act of 1850 provides that the inquiry may be committed either to the Court, Board or other authority to which the person accused is subordinate, or to any other person or persons, to be specially appointed by the Government, for the purpose.

25. We have noticed that under Rule 9(2) of the Railway Rules of 1968 read conjointly with Section 3 of the Act of 1850 two expressions are in use in the said provisions i.e., 'other authorities' and 'other person or persons'. Having taken note of the existence of the expressions 'other authority' and 'other person or persons' in the relevant provisions of law under consideration before the Supreme Court in Alok Kumar (supra), the Supreme Court in paragraph 38 provided that the expression 'authorities' as appearing in Rule 9(2) should be understood on its plain language and without necessarily curtailing its scope and that it would be more appropriate to understand this expression and give it a meaning which should be in conformity with the context and purpose for which it was used and further that the expression 'other authority' in Rule 9(2) is

intended to cover a vast field and there is no indication of the mind of the framers that the expression must be given a restricted or a narrow meaning. Accordingly the argument raised in the said matter before the Supreme Court that the expression 'other authority' shall have to be construed to cover only the persons who are in service of the Railway was examined in paragraph 40 thereof. Reference was also made to the decision of the Supreme Court in Ravi Malik (supra), but a view was formed that as there was no requirement to examine any such expression as 'other authority' being involved in the Rules under consideration in Ravi Malik, therefore, a conclusion that may have been arrived in Ravi Malik would not *ipso facto* be applicable in the matter in Alok Kumar (supra).

26. Accordingly, having taken note of Rule 9(2) of the Railway Rules of 1968, the Supreme Court in paragraph 40 of its judgment was of the view that there was an element of discretion vested in the competent authority to appoint 'other authority' for the purpose of conducting a departmental inquiry. In paragraph 41, the principle of interpretation was applied that any exclusion must either be specifically provided or the language of the rule should be such it definitely follows by necessary implications, and, therefore, the words of the rule should be explicit or the intent should be irresistibly expressed for exclusion. The Supreme Court also took note that after it was so intended, the framers of the rule could have simply used the expression like 'public servant in office' or 'an authority in office'. In the absence of such specific language exhibiting the mind of the framers, the Supreme Court was of the view that the principle of necessary implication further requires that the exclusion should be an irresistible conclusion and should be in conformity with the purpose in which it has been used. Accordingly, the contentions raised that Rule 9(2) therein had an implicit

exclusion in its language and the exclusion is absolute was held to be without merit. In paragraph 43, it is provided that an exclusion clause should be reflected in clear, unambiguous, explicit and specific terms or language and such exclusion could be read with reference to irresistible implicit exclusion. Accordingly, it was held that while interpreting Rule 9(2), it does not support the submission that a retired person was excluded from the purview of the meaning given to the expression 'other authority'.

27. Paragraphs 38 to 43 of Alok Kumar (supra) are extracted as below:

> "*38. It is clear from above that there is some unanimity as to what meaning can be given to the expression "authority". The authority, therefore, should be understood on its plain language and without necessarily curtailing its scope. It will be more appropriate to understand this expression and give it a meaning which should be in conformity with the context and purpose in which it has been used. The "other authority" appearing in Rule 9(2) is intended to cover a vast field and there is no indication of the mind of the framers that the expression must be given a restricted or a narrow meaning. It is possible that where the authority is vested in a person or a body as a result of delegation, then delegatee of such authority has to work strictly within the field delegated. If it works beyond the scope of delegation, in that event it will be beyond the authority and may even, in given circumstances, vitiate the action.*
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> *39. Now, we have to examine the argument of the respondents before the Court that the expression "other authority" shall have to be construed to cover only the persons who are in the service of the Railways. In other words, the contention is that the expression "person" used under Section 3 of the Act and expression "authority" used under Rule 9(2) contemplates the person to be in service and excludes appointment of an enquiry officer (authority) of a retired railway officer/official.*

40. Heavy reliance was placed by the respondents upon the judgment of this Court in Ravi Malik v. National Film Development Corpn. Ltd. [(2004) 13 SCC 427 : 2006 SCC (L&S) 882] We have already discussed at some length the scheme of the Rules. As already noticed, we are not required to discuss in any further elaboration the inquiries taken under the Act, inasmuch as none of the respondents before us have been subject to public departmental enquiry under the provisions of the Act. Rule 9(2) requires the authority to form an opinion, whether it should hold the inquiry into the truth of imputation of misconduct or misbehaviour against the railway servant itself or should it appoint some other authority to do the needful. Thus, there is an element of discretion vested in the competent authority to appoint "other authority" for the purposes of conducting a departmental enquiry.

41. It is a settled principle of interpretation that exclusion must either be specifically provided or the language of the rule should be such that it definitely follows by necessary implication. The words of the rule, therefore, should be explicit or the intent should be irresistibly expressed for exclusion. If it was so intended, the framers of the rule could simply use the expression like "public servant in office" or "an authority in office". Absence of such specific language exhibits the mind of the framers that they never intended to restrict the scope of "other authority" by limiting it to the serving officers/officials. The principle of necessary implication further requires that the exclusion should be an irresistible conclusion and should also be in conformity with the purpose and object of the rule.

42. The learned counsel appearing for the respondents wanted us to accept the argument that the provisions of Rule 9(2) have an implicit exclusion in its language and exclusion is absolute. That is to

say, the framers have excluded appointment of former employees of the Railway Department as other authority (enquiry officer) under these provisions. We find no merit in this contention as well.

43. An exclusion clause should be reflected in clear, unambiguous, explicit and specific terms or language, as in the clauses excluding the jurisdiction of the court the framers of the law apply specific language. In some cases, as it may be, such exclusion could be read with reference to irresistible implicit exclusion. In our opinion the language of Rule 9(2) does not support the submission of the respondents. Application of principle of exclusion can hardly be inferred in the absence of specific language. Reference in this regard can be made to the judgment of this Court in New Moga Transport Co. v. United India Insurance Co. Ltd. [(2004) 4 SCC 677 : AIR 2004 SC 2154]"

28. Having taken note of the proposition of law laid down in Alok Kumar (supra) in paragraphs 38 to 43 that if an inquiring authority in a disciplinary proceeding would exclude a retired personnel, such exclusion should be reflected in clear, unambiguous, explicit and specific terms or language.

29. Accordingly, when we examine the expression 'other person or persons' appearing in Clause 6 of Section 21 of the Indian Penal Code, we also have to accept that the expression 'other person or persons' in the absence of any clear, unambiguous, explicit and specific terms or language cannot be understood to be excluding a retired personnel from its meaning. From such point of view, a retired Chief Manager who was appointed as an inquiring authority can also be a public servant. As public servant can be given a meaning as provided under Clause 6 of Section 21 of the Indian Penal Code, where Clause 6 also includes any 'other person or persons', we are unable to convince ourselves that a retired Chief Manager would be excluded from the purview of the meaning of the expression 'public servant' appearing in Clause 6(2) of the Regulations of 1976.

30. The further contention of Mr. N Nath, learned counsel for the petitioner that the provisions of Clause 12(a) of Section 21 of the Indian Penal Code would be the appropriate provision to examine whether a retired personnel would also be included, we are in agreement with the learned counsel that Clause 12(a) of the Indian Penal Code can also be a relevant provision and from such point of view definitely, a retired person would not be included, *inasmuch as*, a retired personnel would not receive the pay, remuneration, or fees, or any commission from the Government or in the instant case, the respondent Bank authorities. But Section 21 of the Indian Penal Code provides that the word 'public servant' denotes any person falling under any of the Clauses therein, meaning thereby that if a person is included in either of the Clauses of Section 21 such person would be a public servant. As our conclusion is that a retired person by virtue of being 'other person' can also be a retired person, the retired Chief Manager of the respondent bank in the present case would come within the provisions of Clause 6(2) of the Regulations of 1976.

31. A further contention is raised by Mr. N Nath, learned counsel or the petitioner that in order to make Clause 6 of Section 21 of the Indian Penal Code being applicable, the expression 'other person' has to be referred for decision or report by any Court of Justice, or by any other competent public authority, but in the instant case, he had been referred by a disciplinary authority, therefore, Clause 6 of Section 21 of the Indian Penal Code would be inapplicable. We are in disagreement with the said contention for the reason that the disciplinary authority of the respondent Bank cannot be excluded from the concept of being any 'other competent public authority' although it may not be a report or decision sought for by the court of justice. Accordingly, the contention raised by the petitioner that the inquiry officer appointed by the respondent Bank was not

a 'public servant' and, therefore, the entire inquiry itself is vitiated stands rejected.

32. A contention is also raised by Mr. D K Das, learned counsel for the respondent Bank that by having appointed an inquiry officer who is a retired Chief Manager of the Bank, no prejudice had been caused to the petitioner, nor any prejudice had been pleaded in the writ petition. The learned counsel contends that the prevailing concept is that a mere procedural aberration on its own may not be sufficient requiring an interference with an impugned action, unless such aberration had resulted in a prejudice to the person concerned. Further no objection was raised by the petitioner against the appointment of a retired Chief Manager as the Inquiry Officer during the course of the disciplinary proceeding and therefore, the petitioner would be precluded from raising such plea for the first time in the writ proceeding.

33. Mr. N Nath, learned counsel for the petitioner raises a counter contention by referring to paragraph 12 of the judgment of the Supreme Court in *Rattan Lal Sharma Vs. Managing Committee, Dr. Hari Ram (Co-Education) Higher Secondary School and Others*, reported in *(1993) 4 SCC 10* that even if a plea is raised for the first time in a writ proceeding, and not specifically raised before the administrative or quasi-judicial bodies, but if the plea goes to the root of the question and is based on admitted and uncontroverted facts which does not require any further investigation into a question of fact, the High Court is not only justified in entertaining the plea and it is only desirable that a litigant should not be shut out from raising such plea which goes to the root of the lis involved.

34. Paragraph 12 of the judgment in Rattan Lal Sharma (supra) is extracted as below:

"***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 inquiry 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 inquiry proceeding as a member of the inquiry 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 inquiry committee has vitiated the inquiry 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 inquiry 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 proceeding, 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 a must as indicated by this Court in A.M. Allison v. B.L. Sen [AIR 1957 SC 227] 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 lis 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. St. Arunachalam Pillai v. Southern Roadways Ltd. [AIR 1960 SC 1191 : (1960) 3 SCR 764] and Cantonment Board, Ambala v. Pyarelal [(1965) 3 SCR 341 : AIR 1966 SC 108 : 1966 Cri LJ 93] . 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 inquiry 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 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 inquiry 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 inquiry committee had percolated throughout the inquiry proceeding thereby vitiating the principles of natural justice and the findings made by the inquiry 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 case [1958 SCR 595 : AIR 1958 SC 86] 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 of 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."*

35. A reading of the entire paragraph 12 in Rattan Lal Sharma (supra), it is noticeable that in the said matter before the Supreme Court one Maru Ram was a member of the inquiry committee and the person concerned therein had an apprehension in his mind that Maru Ram would be biased in the inquiry. The apprehension of the person concerned came true when Maru Ram deposed in the inquiry against the petitioner, but at the same time, also continued as the member of the inquiry committee. In the aforesaid circumstance, when a question of biasness was raised in a writ proceeding for the first time, the Supreme Court was of the view that the plea of biasness goes to the root of the question and is based on admitted and uncontroverted facts which does not require any further investigation, and, accordingly, arrived at its conclusion that a litigant should not be shut out from raising such plea.

36. But in the instant case, it is noticed that the plea of prejudice that may have been caused to the petitioner as because a retired Chief Manager was made the inquiry officer would require a factual determination as to whether, in fact, any prejudice had been caused to the petitioner. Merely because the retired Chief Manager had been made the inquiry officer there cannot be a presumption in favour of the petitioner that correspondingly a prejudice had also been caused.

37. The proposition laid down by the Supreme Court in Rattan Lal Sharma (supra) that the plea can also be raised for the first time in a writ proceeding or at any stage is applicable in such circumstance, where 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 the question of fact, which would mean that if the fact of having caused any prejudice is required to be substantiated, the aforesaid proposition in Rattan Lal Sharma (supra) may not be applicable. But, however, as we are also examining the other legal and factual aspects raised in this writ petition, we do not go into the question of non-maintainability of the writ petition on the ground that the plea of prejudice is being taken for the first time in the writ petition and nor it had been substantiated in any manner.

38. The other contention of Mr. N Nath, learned counsel for the petitioner is that the appellate authority in exercise of its power under Clause 17 of the Regulations of 1976 would necessarily have to consider whether the findings of the disciplinary authority had justified whether the penalty is excessive or inadequate, but in the instant case, the appellate authority in its order dated 18.05.2018 had neither provided that the findings of the disciplinary authority are justified nor any conclusion had been given that the penalty is excessive or

inadequate. We have examined the appellate order dated 18.05.2018. A reading of the appellate order dated 18.05.2018 makes it discernible that the first page of the order refers to the allegations against the petitioner, the second page of the order refers to the charges that were framed and the grounds that were taken by the petitioner in his appeal and having provided for everything, the appellate authority at the end of the appellate order concludes as extracted:

> "*I, in the capacity of Appellate Authority have carefully examined the Charge Sheet dated 10.06.2016, Enquiry Report dated 18.03.2017, Order dated 12.12.2017, appeal dated 23.01.2018 of Shri Brahma and all papers/documents in the matter, after applying an independent mind and observed as under:*
>
> '*CSO has not brought any new facts other than what has already been considered in inquiry and by DA. I uphold the penalty awarded.*'

39. We have noticed that the appellate authority firstly takes note that no new facts were brought in by the petitioner, other than what has been considered by the disciplinary authority. In an appeal, there is no requirement to bring in any new fact and the appellate authority is required to decide whether the findings are justified on the materials made available before such authority and whether the reasons given are acceptable in law. Secondly, Clause 17 clearly lays down the requirement of the appellate authority to consider whether the findings are justified and or the penalty is excessive or inadequate, but the aforesaid extraction of the order of the appellate authority does not in any manner give any indication that the appellate authority had applied its mind as to whether the findings are justified and or as to whether the penalty was excessive or inadequate. Accordingly, the appellate order is set aside and the matter stands remanded back to the appellate authority for a fresh consideration of the claim

of the petitioner by following the requirements as provided under Clause 17 of the Regulations of 1976.

Writ petition stands partly allowed as indicated hereinabove.

JUDGE

Comparing Assistant