CHAPTER-II

DEVELOPMENT OF RULE AGAINST BIAS IN INDIA – ROLE OF JUDICIARY

1. INTRODUCTION

NEMO IN PROPIA CAUSA JUDEX, ESSE DEBET (The Rule Against Bias). Nemo in propria causa judex, esse debet, i.e.; no one should be made a judge in his own cause. It is popularly known as the rule against bias. It is the minimal requirement of the natural justice that the authority giving decision must be composed of impartial persons acting fairly, without prejudice and bias. Bias means an operative prejudice, whether conscious or unconscious, as result of some preconceived opinion or predisposition, in relation to a party or an issue. Dictionary meaning of the term “bias” suggests anything which tends a person to decide a case other than on the basis of evidences.

The rule against bias strikes against those factors which may improperly influence a judge against arriving at a decision in a particular case. This rule is based on the premises that it is against the human psychology to decide a case against his own interest. The basic objective of this rule is to ensure public confidence in the impartiality of the administrative adjudicatory process, for as per Lord Hewart CJ, in R.v. Sussex, “justice should not only be done, but also manifestly and undoubtedly seen to be done. A decision which is a result of bias is a
nullity and the trial is “Coram non judice”. Principle of Natural Justice occupied the very important place in the study of the administrative law. These rules are not embodied rules which are not fixed in any Code. They are the judge-made principle and are regarded counter part of the American procedural ‘due process’. Any judicial or quasi-judicial tribunal determining the rights of individuals must confirm to the principle of natural justice in order to maintain ‘the rule of law’ as in Representation of the Committee on Minister’s Powers (1932) C.md. 4060 p.75. The reason is that these principles constitute the ‘essence of justice’ and must, therefore, be observed by any person or body charged with the duty of deciding the rights of the parts of the party which involves the duty to act judicially as in case of Spackman v. Plumstead Board of Works¹ & in another case of General Medical Council v. Spackman².

Though both in England and India it has been held that there is no universal or uniform standard of natural justice applicable to all cases coming within the purview of the doctrine and that the contents or requirements of natural justice vary with the varying constitution of different quasi-judicial bodies and their functions, the subject matter of

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1.   (1885) 10 App. Cas. 229(240)
2.   (1943) A.C. 627(641)
inquiry, the relevant statutory provisions as in case of Local Govt. Board v. Arlidge\(^3\) & in another case of Board of Education v. Rice\(^4\) and the other circumstances of the case, nevertheless, it is agreed on all hands that there are certain broad principles deducible from the two Latin maxims which form the foundation or basis of the doctrine of natural justice and extend to all cases where the doctrine is attracted.

These principles have been developed to secure justice and to prevent miscarriage of justice as in case of A.K. Kraipak v. Union of India\(^5\). They require fair play in action. Earlier these principles were applied only to the judicial functions but later on their ambit was extended to the quasi-judicial function and at present these principles apply not only to the judicial and quasi-judicial functions, but also to the administrative functions as in case of Ridge v. Baldwin\(^6\). It has now been established that the distinction between the quasi-judicial and administrative functions is not relevant as duty to hear is attracted wherever an action is likely to have civil consequences to a person as in case of Mohinder Singh v. Chief Election Commissioner\(^7\).

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3. (1915) A.C. 120
4. (1911) A.C. 179(182)
6. (1964) A.C. 49
As mentioned on page 32 in book of *Administrative Law* by K.J. Edeey, the basic principle is that where a person or public body has the power in reaching a decision to affect the rights of subjects, then that person must comply with what have become known as the rules of natural justice and the real test is the effect of the decision on the right of the person affected. The dividing line between administrative power and quasi-judicial power is quite thin and is being gradually obliterated and the horizon of the natural justice is gradually expanding and now the principles of natural justice has been extended even to pure administrative function as in cases of A.K. Kraipak v. Union of India\(^8\), Ridge v. Baldwin\(^9\) & Maneka Gandhi v. Union of India\(^10\).

These principles of natural justice are treated as a part of the Constitutional guarantee contained in Art. 14 and the violation of these principles by the administrative authorities is taken as violation of Art 14. Actually the concept of quasi-judicial, natural justice and fairness all have been developed to control the administrative action. The object has been to secure justice and prevent miscarriage of justice. The concept of rule of law would have its importance if the administrative authorities are not

\footnotesize{\begin{itemize}
\item[8.] A.I.R. (1970) S.C. 150
\item[9.] (1964) A.C. 49
\item[10.] A.I.R. 1978 S.C. 579
\end{itemize}}
charged with the duty of discharging their functions in fair and just manner. Art 14 & 21 have strengthened the concept of natural justice. Art. 14 applies not only to discriminatory class legislation but also to discriminatory or arbitrary state action. Violation of the principle of natural justice results in arbitrariness and, therefore, its results in the violation of Art. 14. Art. 21 requires substantive and procedural due process and it provides that no person shall be deprived of his life or person liberty except according to the procedure established by law. The procedure prescribed for deprivation of person liberty must be reasonable, fair, just and a procedure to be reasonable, fair and just must embody the principle of natural justice. A procedure which does not embody the principles of natural justice cannot be treated as reasonable, just and fair as in case of Vionet v. Barrett\(^\text{11}\).

The concept of natural justice has been defined by many judges, lawyers and scholars. In Drew v. Drew and Lebum, it has been defined by Lord Granworth as ‘universal justice’. Sir Robert P. Collier viewed natural justice as ‘requirements of substantial justice’ in case of James Dunber Smit v. Her Majesty The Queen\(^\text{12}\). In Voinet v. Barreet\(^\text{13}\), Lord Esher M.R. has defined as ‘the natural

\(^{11}\) (1885) 55 LJ RB, 29
\(^{12}\) (1877-78) 3 app.Cas. 614
\(^{13}\) (1885) 55 LJ B.R., 39
sense of what is right and wrong’. Subsequently in Hopkins v. Smethwick Local Board of Health\textsuperscript{14}, Lord Esher M.R. instead of taking the definition of the natural justice given by him earlier choose to define it as ‘fundamental justice’.

The rule of natural justice are not embodied rules and, therefore, it is not possible and practicable to precisely define the parameters of natural justice. Tucker L.J. in case of Russell v. Duke of Norfolk\textsuperscript{15} has observed

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

The Supreme Courts has observed in case of Union of India v. P.K. Roy\textsuperscript{16} that the extent and application of the doctrine of natural justice 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.

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14. (1863) 14 C.B. (N.S.), 214  
15. (1949) 1 All E.R. 109 (C.A.)  
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In A.K. Kraipak v. Union of India\textsuperscript{17} the Supreme Court has 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 inquiry 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 has 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.”

Rule of natural justice are foundational and fundamental concepts. They are regarded part of the legal and judicial procedures and they are further applicable not only to judicial or quasi-judicial bodies but also the administrative bodies in its decision-making process having civil consequences. The earlier view as in case of Franklin v. Ministry of Town & Country Planning\textsuperscript{18}, that the principles of natural justice were applicable to the judicial and quasi-judicial orders only and not to the administrative orders has been changed now. Both in English Law and in India the courts have made it clear that the principle of natural justice in applicable in administrative proceedings as in case of A.K, Kraipak v. Union of India\textsuperscript{19}.

\textsuperscript{17} A.I.R. (1970) S.C. 150
\textsuperscript{18} (1947) 2 All E.R. 289 (H.L.)
\textsuperscript{19} A.I.R. (1970) S.C. 150
In Sate of **Orisa v. Birapani Dei**\(^ {20} \) the Supreme Court has specifically held that even an administrative order which involve civil consequences must by made consistently with the rules of natural justice. The important question is what is the meaning of the ‘civil consequences’ has been made clear in case of **Mohinder Singh Gill v. Chief Election Commissioner**\(^ {21} \) where the **Supreme Court** has held that

‘civil consequences covers’ covers infraction of not merely property or personal right but of civil liberties, material deprivations and non-pecuniary damages. In its comprehensive connotation everything that affects a citizen in his civil life inflicts a civil consequences.’

As regards the application of the principles of natural justice the distinction between quasi-judicial and administrative order has gradually become thin and now it is totally eclipsed and obliterated. The aim of the rules of natural justice is to secure justice or put it negatively to prevent miscarriage of justice and these rules operate in the are not covered by law validly made or expressly excluded. The rules of natural justice would apply unless excluded expressly or by implication.

The principle of natural justice that no man should be condemned unheard intends to prevent the authority from acting

\(^{21}\) (1978) 1 S.C.C. 405
arbitrarily affecting the rights of the concerned person. It is the fundamental rule of law that no decision must be taken which will affect the right of any person without first being informed of the case and giving him an opportunity or putting forward his case as in D.K. Yadav v. I.M.A. Industries Ltd\textsuperscript{22}. Duty to provide reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which take administrative action involving any deprivation of or restriction on inherent fundamental rights of citizen, must take care to see that justice is not only done but manifestly appears to be done. They have to act in a manner which is patently impartial and meets the requirements of natural justice. Just, fair and reasonable action is an essential inbuilt of natural justice and the principles of natural justice are part of Art 14.

Natural justice, natural law, the law of God and ‘common right and reason’ were all aspects of the old fundamental and unalterable law. But according to H.W.R. Wade\textsuperscript{23} ‘natural justice is a well defined concept which comprises two fundamental rules of fair procedure that a man may not be a judge in his own case and a man’s defence must always

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\item \textsuperscript{22} (1993) 3 S.C.C. 267
\item \textsuperscript{23} HWR Wade, Administrative Law, p. 466
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be fairly heard. These are the common law as developed by British Courts. They are followed throughout the common law systems including India. They are followed throughout the common law systems including India. They fine express mention in Art. 311 of Constitutional of India. They have been implied in Arts. 14, 19 & 21 as essential part of procedural fairness against the states action.

Under common law, the expression ‘Natural Justice’ has been used as referring to the following two important principles based on Latin maxims:-

i) Audi Alteram partem i.e. the rule of fair hearing.
ii) Nemo Judix in causa mapotext i.e. no should be a judge in his own case.

According the Lord Ha rdene in case of Ridge v. Baldwin²⁴, natural justice possess the following three features:-

i) the right to be heard by an unbiased tribunal
ii) the right to have notice of charge of misconduct and
iii) the right to be heard in answer to those charges.

From the above discussions the broad principles of ‘Natural Justice’ may be summarized as under:-

a. that every person whose right is affected, must have a reasonable notice of the case he has to meet:
b. that he must have a reasonable opportunity of being heard.
c. that there must be a impartial tribunal.

²⁴ (1964) A.C. 49
2. CONCEPT OF FAIRNESS

At present, the Courts give much emphasis on the ‘concept of fairness which requires fairness in action of the administration whether the action is judicial, quasi-judicial inquiry both intend to arrive at a just decision and, therefore, both the administrative and judicial or quasi-judicial authorities are required to observe the principle of fair play or fairness in action. It’s now well established rule that every power should be exercise reasonably and not arbitrarily. Consequently, the administrative and judicial or quasi-judicial power both are required to be exercised justly and fairly and not arbitrarily or capriciously. The Supreme Court has made it clear that in the absence of contrary indication in statute, procedural fairness is an implied mandatory requirements to protect arbitrary action where statue confers vide power compelled with vide discretion on the authority as in the case of Roshan Lal Yadav v. State of Bihar\(^ {25}\). However, the doctrine of fairness cannot be invoked to alter express terms of contract of statutory nature as in case of Asstt. Excise Commissioner v. Issac Peter\(^ {26}\). Jain & Jain in Principles of Administrative Law on page 146 clarified that the term ‘fairness’ and ‘natural justice’ are used inter changeably.

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\(^{25}\) (1994) 5 S.C.C. 267
\(^{26}\) (1994) 4 S.C.C. 104
The idea of natural justice is ‘fair play of action’ as in cases of *Maneka Gandhi v. Union of India*\(^\text{27}\) and in another case of *Ridge v. Baldwin*\(^\text{28}\). However, the concept of fairness is a term having the impost wider than that of natural justice. Fairness includes the natural justice.

“The doctrine of fairness requires the observance of the principles of natural justice as well.”

The doctrine of fairness provide certain procedural safeguards in addition to the principles of natural justice where the principles of natural justice is not applicable. The doctrine of fairness has some weakness as observed by Dr. Jain\(^\text{29}\).

“If the natural justice is vague and flexible, the concept of fairness is still more. There is a danger that the universal adoption of the notion of fairness may dilute the rules of natural justice would have been applicable. Though ‘natural justice’ is flexible concept, yet it does embody a minimal content, absence of bias, right to know the others party case, duty to give reasons and to arrive at findings on the basis records etc. ‘Fairness’, may not comprehend all the safeguards’. Moreover, the doctrine of fairness should be applied in such a manner that natural justice is not weakened.”

\(^{27}\) A.I.R. 1978 S.C. 579

\(^{28}\) (1963) I.Q.B. 533

\(^{29}\) Jain & Jain in Principles of Administrative Law on page 146
Dr. Jain have rightly said that though the development of law in applying fairness to administrative proceedings is to be welcomed, yet special care has to be taken that it should not lead to the dilution of natural justice in a situation where it would otherwise have been applicable. Dr. S.N. Jain further said that if the doctrine of fairness becomes all pervasive replacing natural justice completely, than there is a danger of having reaching a vanishing point. Thus the principle of natural justice should be protected as they are useful in securing justice and preventing miscarriage of justice.

But the Hon’ble Supreme Court pointed in Union of India v. J.N. Singha:-

“Rules of natural justice are not embodied rules nor can they be elevated to the position of fundamental rights. Their aim is to secure justice or to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made……. If a statutory provision can be read with natural justice, then the court should do so. But if a statutory provision either specifically or by necessary implication excludes the application or by necessary implication excludes the application of any rule of natural justice, then the court cannot ignore the mandate of the Legislature or the statutory authority and read into the concerned provision the principles of natural justice.”
It should be noted here that the Hon’ble Supreme Court has not favoured the extension of the principles of natural justice to administrative field as evident from the observations of V.R. Krishna lyer, J., in Board of Mining Examination v. Ramjee\textsuperscript{30} which are as under:-

“Natural Justice is no unruly horse, no lurking land mine, nor a judicial cure at all. If ‘fairness’ is shown by the decision-maker to the man proceeded against, the form, features and the fundamentals of such essential procedural propriety being conditioned by the facts and circumstances of each situation, no breach of natural justice without reference to the administrate realities and other factors of a given case, can be exasperating.”

3. RECENT DECIDED CASES IN APEX COURTS OF INDIA

Following are the recent decided cases relating to Natural Justice involving rule against bias:

1. State of A.P. rep. by its Principal Secretary to Govt. v. S. Venkateswara Rao\textsuperscript{31}

\textbf{Andhra Pradesh Civil Service (Conduct) Rules, 1964}

This case CWP No. 2671 of 2008 dated 18.02.2010 was argued before Justice Ghulam Mohammad and Justice P.V. Sanjay Kumar in the Hon’ble Andhra Pradesh High Court. State of A.P. by its Principal Secretary to Govt. and respondents were S.Venkateswara Rao and

\textsuperscript{30} A.I.R. 1977 S.C. 967
31. **2011(2) SCT 413 (A.P.) (D.B.)**

other. Govt. Pleader represented the Petitioner and Shri J.R. Manohar Rao, Advocate represented respondent. Rule 3(1) - Punishment of two per cent cut in pension imposed on employee for causing loss to Government and Enquiry officer submitted report that charges against employee are treated as not proved. The Tribunal on basis of evidence on record set aside the order of punishment. No illegality in order of Tribunal. It was held by the Hon’ble High Court that High Court can invoke doctrine of proportionality only when punishment imposed is highly excessive and there are procedural irregularities while conducting enquiry and principles of natural justice have not been followed. Therefore, we find no illegality or irregularity in the order impugned warranting interference by this Court. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs. Petition is dismissed.

2. **Guru Nanak Dev University Amritsar v. Jaspal Singh**

Absent from duty – Inquiry – Termination from service – Whether order of termination from service can be passed in the case of misconduct of absence from duty, without holding proper inquiry and without following principles of natural justice (No) – Held that in a case of removal from service on the allegation of over stayed leave, an
inquiry is must despite the fact that service regulations provided automatical termination. Absence from duty and over stayed leave, is a misconduct and holding of inquiry is must. In this case a constitutional bench of Hon’ble the Supreme Court has taken the view that in case of removal from service on the allegation of over-stayed leave, an enquiry is must despite the fact that service regulation provided that there would be automatically termination from the service once an employee overstay leave. Therefore, absence from duty and overstay leave is considered to be misconduct and holding of an enquiry is a must. In view of the above, we are not inclined to admit the appeal as we do not find any legal infirmity in the view taken by the learned Single Judge. Accordingly, the appeal fails and the same is hereby dismissed. AIR 1985 SC 1416: AIR 1966 SC 1364 : AIR 1966 SC 492 are relied upon in this case.

3. Andhra Pradesh Civil Service (Conduct) Rules, 1964

*State of A.P. rep. by its Principal Secretary to Govt. v. S. Venkateswara Rao*[^33^]

This case was heard before double bench of his Lordship Mr. Ghulam Mohammad and Mr. P.B. Sanjay Kumar in Writ Petition No. 2671 of 2008 dated 18.02.2010. The case was represented on behalf of State of A.P. by its Principal Secretary to Govt., Hyderabad as Petitioner

[^33^]: 2011(2) SCT 413 (A.P.) (D.B.)
Versus S. Venkateswara Rao & another and Shri J.R. Manohar Rao, Advocate appeared on behalf of the Respondent. **Rule 3(1)** – Punishment of two per cent cut in pension imposed on employee for causing loss to Government. Enquiry officer submitted report that charges against employee are treated as not proved. Tribunal on basis of evidence on record set aside the order of punishment. No illegality in order of Tribunal. Held that High Court can invoke doctrine of proportionality only when punishment imposed is highly excessive and there are procedural irregularities while conducting enquiry and principles of natural justice have not been followed.

We accordingly do not find any substance in the arguments canvassed by the learned counsel for the petitioner. In our view, the petitioner was given reasonable opportunity to defend his case before the Inquiry Officer and it was found that the Petitioner was adopting dilatory tactics with a view to delay the inquiry proceedings, yet appropriate opportunity was given to the petitioner to defend his case and to examine his witnesses. In our view, it cannot be said that the petitioner was denied opportunity to defend his case in the inquiry proceedings in any manner. The Inquiry Officer has given detailed reasons and on the basis of material on record, three charges were held to be proved against the Petitioner. The Tribunal has also considered the Original Application of the Petitioner and has given cogent reasons.
for rejecting the same. In our view, this is not a case in which the order passed by the disciplinary authority as well as the Tribunal are required to be interfered with by this Court in its extra ordinary jurisdiction under Articles 226 and 227 of the Constitution of India. The above Writ Petition is accordingly dismissed with no order as to costs. Rule discharged and Petition dismissed.

4. **Central Industrial Security Force Rules, 2001**
   **Rishipal Singh v. Union of India**

The above case was argued in the Hon’ble Delhi High Court (D.B.) before Hon’ble Gita Mittal and Vipin Sanghi in W.P. (C) No. 745 of 2009, dated 26.03.2010. Shri A.K. Trivedi, Advocate appeared on behalf of the Petitioner – Rishipal Singh and Shri Anil Gautam, Advocate appeared for Respondent. Constitution of India, Articles 16 and 226 - Central Industrial Security Force Rules, 2001, Rule 32 and 36. Disciplinary proceedings. Accident of firing from petitioner’s weapon. Inquiry officer exonerated the petitioner. Disciplinary Authority disagreed with findings of inquiry officer without assigning any reasons. Not proper, Disciplinary Authority is required to record its tentative reasons for such disagreement and give an opportunity to charged officer to represent before records its finding. Any opportunity of making a representation afforded after the disciplinary proceedings.

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34. **2011(2) SCT 88 (Delhi) (D.B.)**
authority had made up its mind, would be violative of the principles of
natural justice and meaningless in the eyes of law. The representation
or submission which was invited by respondents was against the
finding of guilt and not against the tentative disagreement with the
inquiry report. Impugned orders set side, unsustainable. Petition
allowed.

The Petitioner has challenged the impugned order on several
grounds which were urged before the appellate and revisionary
authority as well. The petitioner, inter alia, places reliance on the
proceedings of the Board of Officers/Court of inquiry as well as the
findings of the Inquiry Officer to contend that the charge against him
was not made out. It has been vehemently urged that there was no
evidence to support the findings of culpability of the petitioner and the
orders have been passed without application of mind.

The main ground of challenge to the impugned orders
however is premised on the contention that the disciplinary authority
has failed to comply with the requirement of law in issuing the
disagreement memorandum dated 8th May, 2007 after holding
petitioner guilty of the charge framed against him. It is contended that
in the event of disagreement with the findings of the Inquiry Officer,
the disciplinary authority was bound to have communicated its
disagreement note and to give an opportunity to the petitioner to make
a representation against the same before drawing a final conclusion. Having failed to do so, the note dated 8th May, 2007; the final order dated 23rd May, 2007 as well as the appellate and revisionary orders are vitiated and not sustainable in law. The respondents, however, shall be at liberty to examine the matter afresh from the stage of consideration of the inquiry report by the disciplinary authority and to proceed in the matter in accordance with law. It is made clear that we are not examining any other issue or ground of challenge raised by the petitioner. It shall be open for the petitioner to assail any action taken by the respondents against him in future by way of appropriate proceedings in case the respondents proceed against him any further in the matter. We also make it clear that nothing herein contained is an expression of opinion on the merits of the petitioner’s contention or defence in the disciplinary proceedings. This petition is allowed to the aforesaid extent. Petition allowed.

5. **B.S. Bangarwa v. Ch. Charan Singh**

Civil Writ Petition No. 19685 of 2009 dated 20.01.2011 in which Dr. B.S. Bangarwa was Petitioner and Respondents were from Ch. Charan Singh, Haryana Agricultural University, Hisar & others. The case was heard before Lordship Ranjit Singh in Punjab and Haryana High

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35. 2011(2) SCT 502(P&H)
Court. Vikas Chatrath, Advocate for the Petitioner and Ms. Meena Madan, Advocate for the Respondents appeared before the Hon’ble Court. Article 14 and 226 - Natural Justice – Departmental proceedings – An essential witness for the defence of the petitioner not who submitted external examiner report was not examined. Allegation was that the petitioner changed that report. Examination of such witness would not only be essential for the defence but shall be in the interest of justice, no opportunity was given to the Petitioner to examine the defence witness. Petition allowed. Respondents directed to continue with the same enquiry and permit the petitioner to examine his defence witness.

The present Writ Petition is, therefore, allowed and the respondents are directed to continue with the same inquiry from the stage of defence and by permitting the examination of Dr. S.R. Ahlawat as a witness. The department would also be at liberty to examine any additional witness, in case it is so required or considered essential. If the earlier enquiry officer is not available to continue with the inquiry, the department would be at liberty to appoint any other inquiry officer to continue with the same inquiry. The impugned order need not be set aside and would continue unless some different view is taken after completion of the present proceedings. After examination of witness/witnesses, the competent authority would be at liberty to
pass a fresh order and can maintain the present order or the punishment. It is made clear that this Court has not expressed any opinion on merits. It is viewed that the petitioner did not get fair opportunity to defend himself and so the above directions. The respondents would be at liberty to pass any order on the basis of fresh evidence. The petitioner would be at liberty to challenge the same if he is still left with any grievance. Petition allowed.


Articles 14, 16 and 226

The Appellant was appointed as J.B.T. Teacher in the year 2000 and promoted as Hindi Teacher on the basis of seniority –cum-merit in 2007. On 30.05.2008 order of revision passed without giving any opportunity, Single Judge set aside the order of reversion on the ground of violation of principles of natural justice. State was given liberty to proceed afresh in accordance with law, without taking the appellant back on promoted post. However, it was made clear that appellant would be entitled to benefit of the order which may finally be passed. The Course adopted by Single Judge held, is proper. No prejudice would be caused to the appellant if liberty to proceed afresh in accordance with law is given and right of the appellant to benefit
accruing from final order is left undisturbed. In view of judgment of Apex Court in B.Karunakar, appellant not entitled to be restored to the promoted post, merely on setting aside order of reversion for violation of principles of natural justice.

   Constitution of India 1950, Article 16

Many Private unaided Degree Colleges did not have permanent principles. Hon’ble High Court taking suo motu action and directing that if colleges fail to fill in the post of principal by a specific date, the university will issue orders prohibiting admissions in the colleges concerned. None of the Colleges were made parties before the High Court. Hence the aforesaid direction is violative of the principles of natural justice. Impugned order set aside.

The above case Civil Appeal No. 2704 of 2011 was argued in the Hon’ble Supreme Court of India before Sh. Markandey Katju and Gyan Sudha Misra. The delay was condoned; leave was granted and heard learned counsel for the parties.

These Appeals have been filed against the impugned judgment and order dated 03rd December, 2008 passed by the High

37. 2011(2) SCT 756(SC)
Court of Judicature at Bombay, Bench at Nagpur in Writ Petition No. 2216 of 2006. At the very outset we may note that in fact there was no petition before the High Court on which the impugned order was passed. The High Court took suo motu action on the basis of some information which has not been disclosed in the impugned order.

The cause title in the impugned judgment reads:

“Court on its own motion v. State of Maharashtra through its Secretary, Education Department.”

None of the colleges in respect of which the impugned order was passed were made respondents, nor was notice issued to them, nor were they heard by the High Court. This was a stage procedure adopted by the High Court. By the impugned order, the High Court has directed that if the colleges fail to fill in the post of Principal by 31st May, 2009, the University will issue orders in the first week of June, 2009 prohibiting admissions in the Colleges concerned.

In our opinion, no such direction could have been validly given by the High Court. If there is no permanent Principal, obviously the Acting Principal shall officiate as Principal, but that does not mean that in the absence of the permanent Principal, admissions to the college should be prohibited. There is no statutory rule that in the absence of a permanent Principal admissions in the College cannot be made. Thus, the High Court has indulged in judicial legislation, which
is not ordinarily permissible to the courts vide Divisional Manager, Aravali Golf Club & Another v. Chander Hass & Another, 2008(1) S.C.T. 279: 2008(1) R.A.J. 116: (2008)1 SCC 683. Also, none of these Colleges were made parties before the High Court, and hence the aforesaid direction is violative of the principles of natural justice. Accordingly, we allow these appeals and set aside the impugned order of the High Court. No costs. However, we direct that the process for filing up the posts of Principal may continue in accordance with law, and should be done expeditiously. Appeals allowed.

8. Maan Singh v. Central Administrative Tribunal, Chandigarh Bench, Chandigarh

Departmental Inquiry against Misconduct was proceeded against a constable and an Inspector of Chandigarh Police while on traffic duty accepted illegal gratification from truck driver who entered ‘No Entry Zone’ and letting him off without challan. It was held that principles of natural justice has religiously been followed during inquiry. If the findings are based on evidence, Courts are not to act as a Court of Appeal and enter the area of re-appreciation of evidence. 2006(4) S.C.T. 98 relied upon. Ordinarily Court or Tribunal has no power to

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38. 2011(2) SCT 44(P&H)(D.B.)
interfere with the punishment awarded by the Competent Authority in the departmental proceedings on the ground of penalty being excessive or disproportionate of the misconduct, provided punishment is based on evidence and is not arbitrary, mala fide or perverse. *(1989)2 SCC 177 and 1999 (1) S.C.T. 738*, relied upon.

The above CWP No. 13332-CAT of 2009 dated 26.10.2010 in which Maan Singh was Petitioner and Central Administrative Tribunal, Chandigarh Bench, Chandigarh and others appeared as Respondents. Ms. Lisa Gill, Advocate appeared for the respondents. Before the Tribunal no procedural lapse prejudicing the rights of the applicant-petitioner or violation of the mandatory Rules was pointed out. The principles of natural justice has been religiously followed during inquiry and no complaint could be made in that respect. It is well settled that if the findings are based on evidence then the Courts are not to act as a Court of Appeal and enter the area of re-appreciation of evidence to record a finding other than the one recorded by the Enquiry Officer merely because another view is possible. Such a course is not permissible in law. In view of the aforesaid settled legal position, it is not possible to find any fault with the findings recorded by the Enquiry Officer as approved by the Tribunal. Even otherwise, the charge of accepting illegal gratification
is serious and it could not be argued that the punishment of dismissal is disproportionate to the charge.

Learned counsel for the Union Territory has rightly submitted that when the protector of law becomes predator then no leniency could be shown to them. In the present case the protector of law has been proved to be breaker of law. Moreover, it is well settled that in the absence of any violation of mandatory provision of the Rules concerning holding of inquiry it is not possible for the Courts to interfere in the quantum of punishment chosen by the employer. In that regard reliance may be placed on the judgment of Hon’ble the Supreme Court rendered in the case of *Union of India v. Parma Nanda*, (1989) 2 SCC 177. It has been observed therein that ordinarily the Courts or the Tribunal has no power to interfere with the punishment awarded by the competent authority in departmental proceedings on the ground of the penalty being excessive or disproportionate of the misconduct proved, provided the punishment is based on evidence and is not arbitrary, mala file or perverse. The aforesaid view has been followed in the case of *State of Karnataka v. H. Nagaraj*, 1999(1) S.C.T. 738: (1998) 9 SCC 671. It is also pertinent to mention here that the applicant-petitioner would not be entitled to pension as per Rule 9.18, which requires qualifying service of 25 years. The applicant-petitioner has merely put in about 15 years
of service and would not be eligible for earning pension in terms of the aforesaid Rules. Therefore, there is no room for us to interfere. The petition is wholly without merit and accordingly the same is dismissed.

9. **Housing Board Haryana v. Telu Ram Mehla**\(^{39}\)  
**Misconduct**

The above case relates to misconduct and this CWP No. 17941 of 2008 dated 25.10.2010 was heard in the Hon’ble Punjab and Haryana High Court before Justice Sh. Parmod Kohli. Departmental proceedings were conducted, Charges of misconduct proved against employee in regular enquiry. Disciplinary authority communicated employee the enquiry report along with its opinion for imposing penalty of removal from service. It was held that disciplinary authority formulated its opinion even without seeking response of delinquent to enquiry report which determines the issue. Such order bad in law and also violative of principles of natural justice and matter remitted back for initiating post enquiry proceedings afresh 2008(4) SCT 16, relied on the above case. The aforesaid provisions make it obligatory upon the disciplinary authority to give effect to the order made by the appellate authority. In view of this legal position, it was, otherwise,

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39. **2011(2) SCT 480(P&H)**
inappropriate for the petitioner-Housing Board to have challenged the order of the Appellate Authority. However, in view of the above clarifications, the order of the Appellate authority is hereby modified in the manner noticed here-in-above. The disciplinary authority will accordingly pass a fresh order after considering the response of the delinquent, in accordance with law and the case was disposed of by the Hon’ble Judge.

10. Union of India v. S.K. Kapoor

In this case there was a violation of Principle of Natural Justice. The above Civil Appeal No. 5341 of 2006 dated 16.03.2011 was heard before Justice Markandey Katju and Gyan Sudha in which appellants were represented by Union of India and others and Sh. S.K. Kapoor was respondent in this case. Sh. Qadri and Ms. Sunita Sharma, Advocates appeared for appellants and Sh. Haresh Raichura and Ms. Sashi Juneja, Advocates appeared for the respondent Sh. S.K. Kapoor. The respondent was absent without leave and departmental proceedings were held and the respondent was dismissed from service. It was held by Apex Court, that if any material is to be relied upon in departmental proceedings, principles of natural justice requires that a copy of the same must be supplied in advance to the chargesheeted

40. 2011(2) SCT 609(SC)
employee, so that he may have a chance to rebut the same. 2007(3) SCT 306; 2007(3) RAJ 572, distinguished. Civil Appeal No. 642/2004 decided by Supreme Court on 30.01.2004, relied upon.

This Appeal has been filed against the impugned judgment and order dated 25\textsuperscript{th} April, 2005 passed by the High Court of Gujarat at Ahmedabad in Special Civil Application No. 7201 of 2005. It appears that the respondent had been chargesheeted for absence without leave and a dismissal order was passed against him on 01.11.2001. The respondent approached CAT Ahmedabad Bench and then a Writ Petition was also filed in the High Court of Gujarat with Special Leave Application No. 7201 of 2005 which has been dismissed by the impugned order and hence this appeal. We do not find any infirmity in this case.

It may be noted that the decision in S.N. Narula’s case (supra) was prior to the decision in T.V. Patel’s case (supra). It is well settled that if a subsequent co-ordinate bench of equal strength wants to take a different view, it can only refer the matter to a larger bench, otherwise the prior decision of a co-ordinate bench is binding on the subsequent bench of equal strength. Since, the decision in S.N. Narula’s case (supra) was not notices in T.V. Patel’s case (supra), the latter decision is a judgment per incuriam. The decision in S.N. Narula’s case (supra) binding on the subsequent bench of equal strength and hence, it could
not take a contrary view, as is settled by a series of judgments of this Court. For the aforesaid reasons, this appeal is dismissed. Parties shall bear their own costs.

11. District Primary School Council, WB v. Mritunjoy Das

This case was heard in Supreme Court of India before Justice Mukundakam Sharma and Justice Anil R. Dave in Civil Appeal No. 6007 of 2011 decided on 27.07.2011. In this case District Primary School Council, West Bengal made a admission by fraud. Respondents inflated their marks in order to obtain admission in primary teachers training institute. After obtaining certificate appointed as teachers, Appellant issued show cause notice to respondents and called them for personal hearing after coming to know of the fraud played. Reply to show cause notice submitted but respondents did not avail opportunity of personal hearing. Therefore no violation of principles of natural justice. If a particular Act is fraudulent, any consequential order to such fraudulent act or conduct is nonest and void obinitio. Therefore no fault found with action of appellant in dismissing the service of respondents, Appeals allowed. 2003(4) S.C.T. 318, relied on.

41. 2011(4) SCT 24(SC)
In conclusion it cannot be denied that the ‘doctrine of fairness’ requires the observance of the ‘principles of natural justice’ as well. When none of the principles of the natural justice is applicable, the doctrine of fairness provides procedural safeguards.

**Institutional Decision: - (One who decides must hear)**

In ordinary judicial proceedings, the person who hears must decide. The decision is the decision of the specific authority i.e. Presiding Officer in such judicial proceedings. But in many of the administrative proceedings the decision is not of one man or one authority i.e. it is not the personal decision of any designated officer individually. Rather it is always treated as the decision of the concerned department which is called Institutional Decisions. In such decisions many a times often one person hears and another persons decides and there may be division in such decision making process as where one person may hear and another may decide. In England Institutional decisions were held in high esteem and Govt. may take the help of his staff while deciding the matter because a Minister of Govt. is entrusted with a large volume of work of the concerned department. There should be no hitch in taking the assistance of the officials because the Minister is not only at liberty but is compelled to rely on the assistance of his staff unlike a judge in a Court and, therefore, when a department is directed to dispose off an appeal, it doesn't mean that any particular official of the department is to dispose of
the matter in question. In the important case of *Local Govt. Board v. Arlidge*\(^42\) the Local Govt. Board passed an order closing the defendant's residence on the ground that it was unfit for human habitation. The hearing was given by the Town Planning Inspector and the decision was given by the Local Govt. Board. The defendant challenged the decision of the board on the ground that there was violation of principle of Natural Justice that one who hears must decide i.e. there was violation of the rule of fair hearing. But the House of Lord rejected the challenge and held that there was no violation of the rule of fair hearing and the order was valid. The House of Lord's held that in entrusting the power to a Govt. Deptt., Parliament must have intended that the department should act in its normal manner and should be able to take its decision without making public its papers and without having to conduct itself like a Court of Law. The Minister of the department is fully at liberty to rely on the assistance of his staff in public interest and its not necessary that any particular official who hears must decide.

In U.S.A. the Administrative Procedure Act 1946 makes provisions with respect to the hearing and decision also. It provides for positive decision from the person who actually receives the evidence. Where in such cases the person who decides, does not himself receives

\(^{42}\) *(1915) A.C. 120*
the evidence, then the Hearing Officer is required to make initial or recommended decision along with the reason, therefore, the Hearing Officer is required to mention the reason, for giving a particular weight to the testimony of the witness. Before final decision by the authority, the parties are given the opportunity to submit written argument. The Act contains many provisions for exercising the impartiality of the hearing officers which are also called Administrative Law Judges.

In U.S.A. the above principle ‘one who decides must hear’ has been considered thoroughly and in the case of Morgan v. U.S., the Secretary of Agriculture was empowered by a statute to make an order fixing the maximum rate for buying and selling livestock at the Kansas City Stock Yard where the statute required the Secretary to act after giving an opportunity of full hearing to the affected persons. In this case the hearing was given by the Subordinate Officer but the final order for fixing the maximum rate came from Secretary. The court quashed the order of the Secretary on the ground that he was required to consider and appraise the evidence or argument. It is not an impersonal obligation but duty of the Secretary like that of a Judge in a Court. The one who decides must hear and the hearing is the hearing of evidence and arguments. If the one person who determines the facts which underlie the order, has not

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43. 298 U.S. 468 (1936)
considered the evidence or argument, it is considered that hearing has not been given.

In India in the case of **G.Nageshwar Rao v. A.P. State Road Transport Corporation**\(^{44}\), the Supreme Court has held that

"the hearing by one person and decision by another person has been held to be against the principle of fair hearing."

In this case A.P.S.R.T.C prepared and published a scheme for nationalization of Motor Transport and the Transport Department invited objection against the scheme. The objections were heard by the Secretary of the Transport Department and the Scheme was approved by the Chief Minister. The order of the Chief Minister approving the Scheme was quashed by the Supreme Court on the ground that the divided responsibility of the hearing and deciding violated the rule of fair hearing. This decision is not in accordance with the Govt. practice and is also tuff to follow. However, the Administrative practice continues to allow the hearing by one person and the decision by another.

**Post Decisional Hearing:**

Post decisional hearing may be taken to mean hearing after the decision sometimes public interest demands immediate action and it is not found practicable to afford hearing before the decision or order passed by the competent authority. In such circumstances the Supreme

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44. **A.I.R. 1959 S.C. 1376**
Court insists on the hearing after the decision or order as was done in case of *Maneka Gandhi v. Union of India*\(^45\). In short, in situations where hearing is dispensed with on the ground of public interest or expediency or emergency the Supreme Court insists on the post decisional hearing.

De Smith has tried to justify this rule of post decisional hearing. Prior hearing may be better than a subsequent hearing but a subsequent hearing is better than no hearing at all and in some cases the Courts have held that statutory provisions for an administrative appeal or even full judicial review on the merits are sufficient to negate the existence of any implied duty to hear before the original decision is made. This approach may be acceptable where the original decision does not cause serious detriment to the person affected or where there is also a urgent need for prompt action or where it is impracticable to afford antecedent hearings.

In a case of *Swadeshi Cotton Mills v. Union of India*\(^46\), the Supreme Court has made it clear that in such cases where pre -decisional hearing is dispensed with on the ground of public interest or any emergency, a provision for post decisional hearing i.e. hearing after the decision of the case will be necessary.

\(^{45}\) A.I.R. 1978 S.C. 597  
\(^{46}\) A.I.R. 1981 S.C. 818
In *Trehan v. Union of India*\(^\text{47}\), the Supreme Court has held that the post decisional opportunity of hearing does not subscribe the rules of natural justice and the authority who embarks upon a post decisional hearing will normally proceed with a close mind and there is hardly any chance of getting a proper consideration of the representation at such post decisional hearing. In another case of *Charan Lal Saho v. Union of India*\(^\text{48}\), the Supreme Court has held that

"if the statute is silent with regard to the giving of a pre-decisional hearing, then the administrative action after the post decisional hearing will be valid."

The opinion of Chief Justice P.N. Bhagwati with regard to post decisional hearing is notable. In his forward to Dr. I.P. Massey's book, 'Administrative Law' he has stated that the Supreme Court's decisions in the cases of *Mohinder Singh Gill v. Election Commission*\(^\text{49}\) and *Maneka Gandhi v. Union of India*\(^\text{50}\) have been misunderstood where it is clear that if a prior hearing is required to be given as part of the rule of natural justice, failure to give it would indubitably invalidate the exercise of power and it can't be saved by post decisional hearing. In normal cases pre-decisional hearing is considered necessary, however, in

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\(^{47}\) A.I.R. 1989 S.C. 568  
\(^{48}\) A.I.R. 1990 S.C. 1480  
\(^{49}\) A.I.R. 1978 S.C. 851  
\(^{50}\) A.I.R. 1978 S.C. 597
exceptional cases, the absence of the provision for pre-decisional hearing does not vitiate the action if there is a provision for post decisional hearing i.e. hearing after the decision of the case.

**Reasoned Decision: - (Speaking Order)**

**Meaning: and Importance**

Reasoned decision may be taken to mean a decision which contains reason in its support where the adjudicators bodies give reasons in support of their decisions. Thus, a decision supported by reasons is called reasoned decision which is also known as 'speaking order' i.e. the order speaks for itself or the order tells its own story. The reasoned decision introduces fairness in the administrative action which is also important to check the abuse of administrative powers and thereby, helps in the exclusion or at least minimization of arbitrariness. It will convince the person against whom the decision has been given that the decision is genuine but not arbitrary. Furthermore, it gives satisfaction to the person against whom the decision has been given.

Besides, the reasoned decision will unable the person against whom the decision has been given to examine his right of appeal. If reasons are not stated, the affected party may not be able to exercise his right of appeal effectively. The requirement of stating the reasons in support of the decision makes the authority to consider the matter carefully and to apply seriously his mind to the facts and question of law
involved in the matter. It has been held that the giving of the reasons in support of the decision is considered one of the fundamentals of good administration as Lord Denning has expressed his views in *Breen v. Amalgamated Engineering Union*\(^5\).

The reasoned decision enables the court to understand the mind of the concerned authority and thus enables the court to take the decision as to whether there is any legitimate ground for the court to interfere the decision as in case of *Bhagat Raja v. Union of India*\(^6\). The speaking order, thus, enables the Appellate Court to examine the propriety of decision or the order concerned and the court cannot exercise its supervisory power or appellate power effectively unless the reasons for the decision or order are given.

In a recent case of *Maharashtra State Board of Secondary and Higher Secondary Schools v. K.S. Gandhi*\(^7\), the Supreme Court has observed that "the reasons are harbinger between the mind of the maker of the order to the controversy in question and the decisions or conclusion arrived at and they also exclude the chance to reach arbitrary whimsical or capricious decision or conclusion. The reasons assure an inbuilt support to the conclusion or decision reached."

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\(^5\) (1971) 1 All. E.R. 1548  
\(^6\) A.I.R. 1967 S.C. 1606  
\(^7\) (1991) 2 S.C.C. 716
Position in England

In England, the Committee of Minister's powers insisted that the of natural justice must be extended so as to include the reasoned decisions and further, the Frank Committee also insisted that there should be a general practice for adjudicatory bodies to give reasons in support of their decisions so that the affected parties may get justification.

Sec. 12 of the Tribunals and Inquiries Act, 1958 which is now Act of 1971, makes provisions that the Tribunals must give reasons for its decision if so demanded by the parties, however, reasons can be withheld if the disclosures of reasons will affect the national security adversely. It is to be noted that outside the aforesaid Act, the courts have not recognised the giving of reasons as a part of natural justice i.e. out of this Act giving the reasons in support of decision is not considered as a part of natural justice as in case of R. v. Gaming Board ex. P.Benaim54. Hence the courts give due importance and recognized the reasoned decisions or the speaking order because the decision itself tells the real story supported by reasons.

Position in U.S.A.

In U.S.A., the Administrative Procedure Act of 1946 requires all administrative decisions to be accompanied by finding and

54. (1970) 2 All E.R. 528
conclusion as well as the reasons or the basis therefore. It requires the reasons to be given in support of the decision or the speaking order. However, it is necessary that the adjudicating authorities are required to give reasons in support of their decisions even outside the scope of this Act as in an important case of U.S. v. Forness where the adjudicating authority have given the due reasons in support of the decision of the case which is self-speaking.

**Position in India**

In India there is no general statutory provision which requires the adjudicatory authority to give reasons, however, on the basis of natural justice and some constitutional provision of Articles 32, 136, 226 & 227, the court has imposed a general obligation on the adjudicatory authorities to give reasons for their decisions. It is now very well established that the adjudicatory authority must give reasons in support of its decisions as in the cases of Mahabir Parsad v. State of U.P. and Siemens Engineering & Mfg. Co. v. Union of India.

At present, the requirement of giving reasons in support of the decision is held as one of the principle of natural justice as in the above case of Siemens Engineering & Mfg. Co. v. Union of India

55. (1942) 125 F. 2d. 928
56. A.I.R. 1978 S.C. 1302
57. A.I.R. 1976 S.C. 1785
and also in the cases of *Maneka Gandhi v. Union of India*\(^ {58}\) and *S.N. Mukherjee v. Union of India*\(^ {59}\). Procedural fairness requires the giving of reasons in support of the decision, whereas in the case of *Maneka Gandhi v. Union of India*\(^ {58}\), the Supreme Court has expressed the view that

"a law which gives power to the administrative authority to take a decision affecting the rights of the persons without assigning any proper cannot be said of laying down a procedure which is just, fair and reasonable and consequently such a law will be treated as violation of Articles 14 & 21 of Indian Constitution. If a particular statute requires the adjudicatory authorities to give reasons for their decisions, it is mandatory on the part of the authorities to give reasons for their decisions and in such condition, thus, the authorities will be bound to give reasons and their failure to give the reasons would be viewed seriously and it would be fatal to their decisions."

Where the statute provides for appeal or revision against the orders, the requirements of giving reasons for the orders is considered implied because in such condition if the reasons are not given, the party affected cannot exercise its right of appeal or revision effectively and thus, the right of appeal or revision shall become an empty and a fake

\(^{58}\) A.I.R. 1978 S.C. 597

\(^{59}\) A.I.R. 1990 S.C. 1984
formality as was held in the above case of Maneka Gandhi v. Union of India\textsuperscript{60} and furthermore, in such condition if the authorities fail to give reasons for their decisions, their failure will amount denying or depriving the party of its right to appeal or revision.

In the case of Tarachand v. Delhi Municipal Corporation\textsuperscript{61}, the Supreme Court has held that

"in disciplinary proceedings the disciplinary authority is not required to record a sound reasons in case it fully agrees with the finding of the inquiry officer that if it differs from the conclusions and recommendations of the inquiry officer, it must record its own reasons therefore. Further, if the appellate authority reversed the order of the lower authority it must record the reasons whether the lower authority has given reasons or not"

as in case of C.I.T. v. Walchand & Co.\textsuperscript{62} and also in the case of State of Gujrat v. Raghav\textsuperscript{63}. If the lower authority has not given reasons in support of its order and the appellate authority fails to recognize it and affirms the order without giving reasons, it will also be bad on the part of the order of the appellate authority as in case of

\textsuperscript{60}. A.I.R. 1978 S.C. 597  
\textsuperscript{61}. (1977) I S.C.C. 472  
\textsuperscript{62}. A.I.R. 1967 S.C. 1435  
\textsuperscript{63}. A.I.R. 1969 S.C. 1297
**Bhagat Raja v. Union of India**[^64], where the lower authority give reasons in support of its order and the appellate authority affirms it, the present position appears to be this that the appellate authority must give its own reasons and at least it should indicate that reasons given by the lower authority has been accepted by it. Dr. Jain have rightly summed up the present position as to the requirement of giving reasons by the appellate authority in case the lower authority has given reasons in support of its order and according to them the position seems to be well established that the appellate body should give its own reasons even man it affirms a reasoned order of the lower authority. **Each authority should record a speaking order and thus each authority is required to give reasons in support of its order**[^65].

There is no prescribed form for recording the reasons. The requirement of giving reasons for the order will be satisfied if relevant reasons have been given by the authorities and further, duty to give reasons in support of their decision is an obligation and it cannot be taken to have been discharged by using the vague words as in case of **Elliot v. Southern London Borough Council**[^66]. If the reasons given by an authority are totally irrelevant, the duty to give reasons cannot be

[^64]: A.I.R. 1967 S.C. 1606
[^66]: (1976) 1 W.L.R. 499
considered to have been discharged and the order of the authority would be bad in the eye of law as in case of Collector of Monghur v. Keshav Parsad\textsuperscript{67}. The nature and elaboration of the reasons is determined on the basis of the fact and circumstances of each and every case as has been held in case of \textit{M.P. Industries. v. Union of India}\textsuperscript{68}.

There must be rational nexus between the facts considered and conclusion derived by the authority as held in the case of \textit{Union of India v. M.L. Kapoor}\textsuperscript{69}. Further, the reasons given by the authority to show that it has applied its mind to the case as in \textit{V. Mudaliar v. State of Madras}\textsuperscript{70} and the reasons given by the authority are subject to judicial scrutiny and the reasons given by the adjudicatory authority may be examined or scrutinized by the court and the court finds the reasons given by the authority irrelevant or incorrect or extraneous, it may set aside the order passed by the authority as was held in the case of \textit{Hochtief of Gaunmar v. State of Orissa}\textsuperscript{71} and also in the cases of Padfield v. Minister of Agriculture\textsuperscript{72} and Maneka Gandhi v. Union of India\textsuperscript{73}.

\textsuperscript{67} A.I.R. 1962 S.C. 1694
\textsuperscript{68} A.I.R. 1966 S.C. 671
\textsuperscript{69} A.I.R. 1974 S.C. 87
\textsuperscript{70} A.I.R. 1975 Madras 59
\textsuperscript{71} A.I.R. 1975 S.C. 2226
\textsuperscript{72} (1968) A.C. 997
\textsuperscript{73} A.I.R. 1978 S.C. 597
Where the authority fails to give reasons on the ground of public interest, it will have to satisfy the court that giving of reasons would be against the interest of the general public and if the court is not satisfied that the non-disclosure of the reasons is in public interest, it would require the authority to disclose the reasons and further, the court has made it clear that the authorities is not the final authority in determining the question that the disclosure of the reasons would be against the public interest as in the above case of *Maneka Gandhi v. Union of India*\(^74\).

The requirement of giving reasons applies not only to the quasi-judicial orders but also to the administrative order. The Supreme Court has made it clear in the case of *C.B. Gautam v. Union of India*\(^75\) that when an order affects the right of a citizen or a person irrespective of the fact whether it is quasi-judicial or administrative order and unless the rule expressly or by necessary implication excludes recording of that the principles of natural justice a fair play, require recording of genuine and precise relevant reasons as a part of fair procedure. Hence in reasoned decision i.e. speaking order the authority must give reasons in support of their decision as a requirement of principles of natural justice as well as on the basis of constitutional provisions (e.g. Articles 32, 36, 226 & 227)

\(^74\). A.I.R. 1978 S.C. 597

\(^75\). (1993) 1 S.C.C. 78
which insists the authority on giving of the reasons in support of their decision.

Following are recent court cases involving principle of natural justice including Rule against Bias decided in the Apex Court of India:

**Indian Hardware Industry Ltd. v. Presiding Officer, Labour Court-II**\(^78\)

The above case was heard in Punjab and Haryana High Court (D.B.) before Chief Justice Rajan Gogoi and Justice Augustine George Masih in the LPA No. 1121 of 2009 decided on 23.02.2011. Appeal against reinstatement with full back wages and workman remained under treatment from 14.1.1985 to 30.7.1986 under the provisions of ESI Act, there was legal bar on employer from dismissing the employee from service under treatment and Services workman terminated without any enquiry or opportunity to him held to void ab-initio being in violation of principles of natural justice. Workman held entitled to full back wages and Order of Industrial Court and Single Judge held proper and upheld. Hence, appeal was dismissed accordingly.

**Panchmahal Vadodara Gramin Bank v. D.M. Parmar**\(^79\)

\(^78\) 2011(4) SCT 135 (P&H)(D.B.)

\(^79\) 2011(4) SCT 725(SC)
The above Civil Appeal No. 2093 and 2094 of 2007 decided on 21.09.2011 was heard in Hon’ble Supreme Court of India before Justice A.K. Patnaik and Justice H.L. Gokhale. Constitution of India 1950, Article 136 – Manager of Gramin Bank was charge sheeted on account of various acts of omission and commission. Disciplinary proceedings were held against him and he was dismissed from service. Proportionality and validity of reasonable opportunity of hearing, whether not given to delinquent in the Enquiry proceedings – Held that:

Document called by delinquent during enquiry has been found by Enquiry Officer as not relevant for the charges against delinquent. If the said documents were not allowed to be inspected by delinquent Officer, there has been no violation of principles of natural justice. Charges against him were of serious nature which were largely proved. Findings of Enquiry Officer include not only serious acts of negligence by delinquent but also acts of dishonesty and lack of probity. Punishment of dismissal from service was not shockingly of charges, 1996 (2) SCT 760, (2005) 4 SCC 364 and 2010 (4) SCT 120, relied upon 2006 (2) SCT 446, 2009 (1) SCT 563 and (2003) 9 SCC 480, distinguished. Petition was dismissed.

G.S.R.T.C. v. Kishore B. Shah\textsuperscript{81}

The above Second Appeal No. 4 of 1993 decided on 21.01.2011 was

\textsuperscript{81} 2011(4) SCT 631(Gujarat)
heard before Justice Rajesh H. Shukla in the Hon’ble Gujarat High Court article 226 and 311 – Violation of Principles of natural justice and it was held that disciplinary Enquiry was conducted in respect of second default, after taking lenient view in respect of first default and lesser punishment imposed in respect of first default and after providing opportunity of being heard order of dismissal was passed in such inquiry. It cannot be set aside merely on ground that while inflicting punishment, no notice of previous record was taken by the authority and there is no question of violation of principles of natural justice when impugned order has been passed admittedly the charges are established after affording opportunity. Therefore, the present second appeal deserves to be allowed and accordingly stands allowed. The impugned judgment and order dated 06.01.1992 passed by the Assistant Judge, Gondal in Regular Civil Appeal No. 14 of 1988 is hereby quashed and set aside. Rule is made absolute. No order as to costs allowing the above appeal accordingly.

**Saint Sahara College of Ayurveda, Bathinda v. Union of India**82

The above CWP No. 17149 of 2009 decided on 19.05.2011 in Hon’ble Punjab and Haryana High Court was heard before Justice Permod Kohli.

**Indian Medicine Central Council Act, 1970, Sections 13-A(5), 22 and 27** Principles of natural justice is involved and Petitioner college declined

82. 2011(4) SCT 363(P&H)
permission to admit students due to certain deficiencies found out in surprise check. Case of petitioner not effectively considered by Central Government in accordance with Sections 22 and 13-A as it simply endorsed recommendations of Central Council – Petitioner not furnished with recommendation of Central Council to be enabled to effectively reply for meaningful hearing and hearing without furnishing grounds on which rejection order has been made amounts to violation of principles of natural justice. Therefore action of Central Government vitiated for non-observance of principles of natural justice. Matter remitted back to Central Government for reconsideration with the direction that Petitioner to be afforded an effective and meaningful opportunity of being heard. Petition was allowed accordingly.