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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH.

Original Application No.536 of 2001

New Delhi, this the 6th day of March, 2003.

Hon'ble Mr. Justice V.S. Aggarwal, Chairman.
Hon'ble Mr. A.P. Nagrath, Member (A).

N.K. GoelApplicant
Ex-Cash Clerk, Delhi Milk Scheme,
R/o 24, Pyare Lal Building, Ram Nagar,
Paharganj, Delhi-110055.

(By Advocate: Shri S.M.Garg)

versus

1. Union of India, through
the Secretary,
Department of Agriculture,
Krishi Bhawan, New Delhi-1.
2. General Manager,
Delhi Milk Scheme,
West Patel Nagar,
New Delhi-110008

....Respondents

(By Advocate: Shri S. Mohd. Arif)

ORDER (ORAL)

JUSTICE V.S. AGGARWAL:-

Applicant (N.K. Goel) was working as a Cash Clerk in Delhi Milk Scheme. On 9.5.1996, he was placed under suspension on the ground that the disciplinary proceedings were contemplated against him. Shri B.B. Garg, Deputy General Manager (Admn.) issued a memo to the applicant stating that on scrutiny of the accounts by the incharge of the Discrepancy Section for the period 27.2.95 to 30.4.95 it had been revealed that substantial amount of Rs.2,45,517/- has not been deposited by the applicant, cash clerk, by adopting fraudulent and surreptitious meanings which is a criminal offence. It was further stated that the applicant was given an opportunity to deposit the said amount within seven days. In response to the memo dated 16.8.96, the applicant wrote a letter to the General Manager (Admn.) stating that in reference to the said memo, he should be allowed to reconcile the discrepant

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amount said to be outstanding against him and that since it was huge amount, he may be given sufficient time in this regard. The applicant contends that he was threatened that criminal case would be registered against him. The marriage of his daughter was to be solemnized and, therefore, he agreed to deposit the amount and on 2.12.96, he wrote a letter to the Deputy General Manager (Admn.) informing him that No Dues Certificate had been issued to him. However, he contends that no time was given to reconcile the said amount by providing the list of documents. He deposited Rs.1 lakh.

2. A charge-sheet was issued to the applicant with respect to temporary embezzlement of Government money referred to above. He had denied the charges. On 27.6.97, Director (Admn.) had appointed Shri B.B. Garg who has now become Manager (Quality Control) as the inquiry officer. The applicant wanted certain documents which according to him were not supplied. According to the applicant, prejudice was caused to him. The disciplinary authority in pursuance of the report of the inquiry officer passed an order imposing a penalty of compulsory retirement on the applicant. He preferred an appeal. The same was dismissed by the appellate authority on 14.8.2000. By virtue of the present application, the applicant seeks quashing of the said orders on various pleas.

3. In the reply filed, the respondents have contested the application. The repondents point out that the charge-sheet was served on the applicant for the alleged misconduct. Fair opportunity had been given to him. The inquiry officer had conducted the proceedings as per the prescribed procedure under the Central Civil Services (Classification, Control & Appeal) Rules, 1965, and all the witnesses, he wanted to be examined, were permitted. It is denied that fair enquiry was not held or that Shri B.B. Garg could not act as an inquiry officer.

4. During the course of arguments, the learned counsel for the applicant contended that Shri Garg could not have acted as the

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inquiry officer because he could not be a judge of his own cause. The memo had been served by Shri B.B.Garg as Deputy General Manager (Admn.). Later on, he was appointed as inquiry officer and this has caused prejudice and Shri Garg must be held to be a biased person.

5. This fact is not being disputed that Shri B.B.Garg had issued the memo to the applicant to deposit Rs.2,45,517/-, which reads as under:

"On scrutiny of the accounts by the Incharge of Discrepancy Section for the period from 27.2.95 to 30.4.95 have revealed that a substantial amount of Rs.2,45,517/- has not been deposited by Sh.N.K.Goel, Cash Clerk by adopting fraudulent and surreptitious manners which is a criminal offence.

However, Shri N.K.Goel, Cash Clerk is given an opportunity to deposit an amount of Rs.2,45,517/- as per details enclosed within 7 days of the receipt of this memo."

It is also not in dispute that later Shri B.B.Garg was appointed as inquiry officer. He had submitted a report in this regard.

6. It is on these facts that the first and foremost question that comes up for consideration would be as to whether Shri Garg could act as the inquiry officer or not after having served the memo pertaining to the dereliction of duty on the part of the applicant.

7. It is a fundamental principle of natural justice that an officer selected to make an inquiry should be a person with open mind and not one who is either biased against the person against whom action is sought to be taken or prejudice. The Madras High Court in the case of K. Sundara Rajan Vs. Deputy Inspector of Police, Tiruchirapalli and ors., 1972 S.L.R.723 further went to hold that the punishing authority has to consider report and come to his conclusion. The same would not cure the defect attached to the enquiry if the same is conducted by an officer having a bias against the charged officer.

8. Reliance is further being placed on a decision of the Delhi High Court in the case of ASHOK KUMAR MONGA Vs. UCO BANK & OTHERS, 81 (1999) DELHI LAW TIMES 879. One of the argument raised

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before the High Court was that the inquiry is vitiated on the ground that the inquiry officer was biased and was associated with the preliminary enquiry as well as the investigation conducted. It was the inquiry officer who had reported the matter to the C.B.I. The Delhi High Court found that this was a good ground to quash the report of the inquiry officer and it was a case of likelihood of bias. The relevant findings of the Delhi High Court in this regard are:

"Next argument of the petitioner was that the enquiry is vitiated on the ground that Enquiry Officer was biased against him as he was associated with the preliminary enquiry as well as in the investigation conducted by CBI. It is the Enquiry Officer who had report the matter to CBI stating that case was made out against the petitioner and, therefore, he could not act as Disciplinary Authority.....

In the present case the admitted facts are that Shri R.K. Somaiya was entrusted with preliminary investigation who, after conducting the said investigation found prima facie case against the petitioner and handed over the matter to CBI to register a criminal case against the petitioner and other co-accused. The petitioner also contended that the fact that during CBI investigation Shri Somaiya continued to assist CBI is not denied. In these circumstances he should not have been appointed as Enquiry Officer. On the very first date of enquiry i.e. 30.8.1984 the petitioner had objected to his appointment as Enquiry Officer but Shri Somaiya was not changed as Enquiry Officer and continued to conduct the enquiry and ultimately returned the findings holding that charges levelled against the petitioner stood proved. Thus it is a case of "likelihood of bias" inasmuch as a person who has conducted the preliminary investigation and has come to the prima facie conclusion that charges against the petitioner are proved would not sit with open mind when he acts as an Enquiry Officer in an enquiry into the same charges.

The test of personal bias of the decision-maker is not whether there was actual prejudice against the petitioner or not. The Courts do not go into the facts of the case to see whether or not the petitioner had been prejudiced in fact. The Court would interfere, if, the facts tend to establish that there was "real likelihood of bias" or "reasonable suspicion of bias". In A.K. Kraipak & Others v. Union of India & Others (supra) the Supreme Court emphasised that the real question was not whether the person concerned was biased "because it is difficult to prove the state of mind of a person" but whether facts on record "raise a reasonable ground for believing that he was likely to have been biased". The Court further held that there must be a reasonable likelihood of bias. In deciding the question of bias one has to take into consideration human probabilities and ordinary course of human conduct. Likewise in S. Parthasarathi v. Andhra Pradesh, AIR 1973 SC 2701, the Supreme Court applied the "real likelihood of bias" test, which was based on "reasonable apprehension of a reasonable man fully cognizant of the facts." Thus in deciding the question of bias, human probabilities and ordinary course of human conduct have to be taken into consideration. In Kamini Kumar v. West Bengal, AIR 1972 SC

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2060, the Supreme Court observed that a person should not act both as a Judge and a witness, or as a Judge and the Prosecutor, or as a complainant and a Judge at one and the same time.

Keeping in view the law laid down in aforesaid cases, it is clear that there was a real likelihood of a bias in the present case and the apprehension of the petitioner about this real likelihood of a bias was reasonable and well founded. A person who has held preliminary enquiry and prima facie found that the charges levelled against the petitioner are established, as an Enquiry Officer he would be interested in substantiating the charges and also to establish that his preliminary enquiry was right. It would have been, therefore, proper that the enquiry is held by completely fresh mind having no association with the case."

9. Very close to the cited decision are the facts of the present case. Herein also it is Shri B.B.Garg who had served notice on the applicant pertaining to dereliction of duty, and became the inquiry officer himself. The "likelihood of bias" or "reasonable suspicion of bias" would come into play. The human probabilities and human conduct cannot be lost sight of. In that view of the matter, we have no hesitation in concluding that the inquiry as such could not have been conducted by the same person who had issued the memo.

10. In face of the said findings, it will be unnecessary and an exercise in futility to go into other controversies which may or may not arise subsequently.

11. For these reasons recorded above, the present application is allowed. The impugned orders are quashed. The respondents if so advised may appoint a fresh inquiry officer who should start an inquiry in accordance with law.

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(A.P.NAGRATH)
Member (A)

V.S. Aggarwal
(V.S. AGGARWAL)
Chairman

/sns/