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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA.No.63 of 1996.

Dated New Delhi, this 31st day of July, 1996.

HON'BLE MR A. V. HARIDASAN, VICE CHAIRMAN (J)
HON'BLE MR K. MUTHUKUMAR, MEMBER (A)

Vijay Bahadur Mathur
R/o A/78 Major Bhola Ram Enclave
Puchanpura, Palam
NEW DELHI-45. ... Applicant

By Advocate: Shri J. K. Kaushik

versus

1. Union of India, through
Secretary to Government of India
Ministry of Defence
South Block
NEW DELHI.
2. The Chairman
Canteen Management Committee
Army Headquarters Canteen
Rajaji Marg
NEW DELHI-11. ... Respondents

By Advocate: Shri Avinash Gupta

O R D E R (Oral)

Hon'ble Mr A. V. Haridasan, VC(J)

In this application filed under Section 19 of the Central Administrative Tribunals Act, 1985, the applicant working as Security Man ^{under} (suspension) in the Army Headquarters Canteen, Sena Bhawan, New Delhi, has impugned the chargesheet dated 26.10.1995 (Annexure A-1) issued by Major General Nandwani and the order dated 21.12.1995 (Annexure A-2) issued by the 2nd respondent on his representation against the

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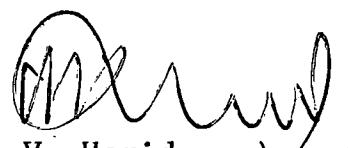
chargesheet and it is prayed that in case the Tribunal come to a conclusion that the disciplinary proceedings should be continued, a direction may be given to the competent authority to take up the matter with the Central Government for appointment of ad hoc disciplinary authority by a Presidential order. The impugned orders are assailed on the ground that Major General Nandwani who issued the memorandum of charges, is a person against whom allegations were alleged to have been made by the applicant in a poster displayed at the Canteen premises and that therefore Major General Nandwani being a person personally involved in the matter, is not competent to issue the chargesheet and hold the disciplinary proceedings. The other ground on which the applicant assails the order is that the person holding the enquiry in this case not being of a higher rank than the material witnesses, the enquiry initiated is not in accordance with law and that the action of the applicant in displaying the poster being only a part of the ^{be} Trade Union activity, is entitled to the immunity under Section ¹⁸ 40 of the Trade Union Act, 1926 and therefore the disciplinary proceedings in this case cannot be held.

2. The respondents have filed a reply to which the applicant has filed a rejoinder. We have heard Shri J. K. Kaushik, the learned counsel for the applicant and Shri Avinash Gupta, the learned counsel for the respondents. On a careful scrutiny of the materials placed on record, we are of the considered view that there is no infirmity either in the chargesheet or in the order passed on the representation of the applicant against the chargesheet. It is true that the applicant is being proceeded against departmentally on the allegation that he displayed a poster in which allegations were made against Major General Nandwani who issued the chargesheet. If Major General Nandwani were a person who would continue the disciplinary proceedings and would take a decision in the matter, it can be well said that there is a *cannons* violation of ~~all kinds~~ ^{Role} of justice as none can be a judge of his own case. In this case, Major General Nandwani apart from issuing the memorandum of charges, has no other right to ~~plead~~ ^{Play} as disciplinary authority. It has come out from the pleadings that the Major General ~~has~~ ^{Nandwani} already been transferred out of the Army Headquarters and one Shri I. Kashyap has taken over as the Chairman, Canteen Management

Committee. Therefore, there is no possibility that Major General Nandwani would take ~~any~~ any decision in the impugned disciplinary proceedings. There is no rule which lays down that a person who is personally interested or is likely to be a material witness, is incompetent to issue a chargesheet. Therefore, we do not find any merit in this contention that the chargesheet is bad in law for the reason that Major General Nandwani has issued the same. Major General Nandwani is likely to be a witness in the enquiry and the person who holds the enquiry is another Major General. So, it cannot be said that the disciplinary proceedings is bad because the person who holds the enquiry is not either a subordinate or an ~~officer who is likely~~ ^{inferior in rank to} ~~the~~ material witness. The contention of the applicant, therefore, for this reason that the proceedings is bad, has no force and only to be rejected. The further contention of the applicant that as the imputation of misconduct relates to his activities as a Trade Union leader and ~~therefore~~ he is entitled to immunity under Section ~~40~~ ¹⁸ of the Trade Union Act, is a matter which the applicant can plead in the enquiry proceedings.

3. In the light of what has been stated above, we are convinced that there is no infirmity in the orders assailed in this case and the application has no merit at all. In the result, the application is dismissed, leaving the parties to bear their own costs.


(K. Muthukumar)
Member(A)


(A. V. Haridasan)
Vice Chairman(J)

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