

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1924/89
XXXXXX

198

DATE OF DECISION 22.12.1989

(3)

Shri Toby Nainan Applicant (s)

Shri G.D. Bhandari Advocate for the Applicant (s)

Versus
Union of India & Another Respondent (s)

Shri S. Dayal Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. To be circulated to all Benches of the Tribunal ? No

JUDGEMENT

(of the Bench delivered by Hon'ble Shri D.K. Chakravorty,
Administrative Member)

The applicant, who is working as Zoo Ranger in the National Zoological Park under the Ministry of Environment and Forests, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for setting aside and quashing the impugned memorandum dated 7.11.1988 whereby an enquiry under Rule 14 of the CCS (CCA) Rules, 1965 has been initiated against him. The application was listed for admission on 14.12.1989 when we heard the learned counsel of both parties and perused the records of the case carefully. In our opinion, the application could be disposed of at the admission stage itself.

2. The applicant was appointed as Zoo Ranger in the National Zoological Park on 18.7.1962. He has rendered about 27 years of service in the National Zoological Park. On 18.2.87,

he was deputed by the Joint Director, National Zoological Park to assist/help the Wildlife Department to capture a Leopard which was spotted in the premises of Indo Danish Tool Factory, Wazirpur, Delhi. He succeeded in capturing it on the next day. This received wide publicity in the news papers. The Director, National Zoological Park, Sh. Kamal Naidu (respondent No.2) was out of station during that period. On his return, it is alleged that he felt jealous on account of the appreciation received by the applicant in capturing the animal. Instead of appreciating his work, he was rebuked and his explanation was called for as to how and under whose orders he went to capture the animal. According to the applicant, this was the starting point of his troubles with respondent No.2, who was bent upon harassing and demoralising him. He is alleged to have developed personal animosity against the applicant. Respondent No.2 made certain adverse remarks in the Confidential Reports of the applicant for the years 1986 & 1987 and communicated the same to him on 29.7.1988. These remarks pertain to the period from 1.4.86 to 31.12.86 and from 1.1.87 to 31.12.87. There was a delay of 2 years and 7 months for communicating the adverse remarks for the year 1986 and a delay of 1 years and 7 months for communicating the adverse remarks for the year 1987. The apprehension of the applicant is that these remarks came to be made because of the incident of February, 1987, when the applicant successfully caught the wild animal. The Respondent No.2 was the reporting authority as well as the reviewing officer for both the years.

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The applicant submitted a detailed representation on 31.8.88 against the adverse remarks conveyed to him. On 23.3.89 he was informed that the adverse entries made in his Confidential Report for the year 1986 had been expunged but those for the year 1987 would stand. On 4.4.89, the applicant submitted a further representation against the adverse entries in his Confidential Report for the year 1987. He has also alleged that the main purpose sought to be achieved by these adverse remarks was to stall his promotion to the post of Curator for which he was the senior-most eligible person to be considered.

3. A DPC was held around June, 1988 and the adverse remarks were communicated much thereafter. The respondents have, however, stated that this averment is not correct.

4. On 22.10.1988, the applicant was placed under suspension under Rule 10(1) of the CCS(CCA) Rules, 1965. The impugned memorandum for holding enquiry against the applicant under Rule 14 of the CCS(CCA) Rules, 1965, was issued on 7.11.1988.

5. The Article of Charge framed against the applicant is as follows:-

" That the said Shri T. Nai-nan while functioning as Zoo Ranger was posted in the Animal Section. An assignment of getting logs fixed in the cages was given to him by the Director, National Zoological Park but he did not complete the work upto 22.10.88. Director, N.Z.P. during the course of inspection on 22.10.88 questioned him as to why the cages furnishing had not been completed he replied that it was not his duty and also refused to get the work done. Further he started arguing with Director at the top of his voice very unbecomingly to his superior, using undesirable language like "care a dam" "you dam" well do what you want" "I don't care, you cannot do anything". He is thus charged with insubordination and misbehaviour.

Thus Shri Nainan, Zoo Ranger has breached good conduct by his disorderly behaviour in dealing with his official superior tantamounting to subverting discipline and also failing to carry out orders of his superior and thus neglecting his duty, not for the first time but repeatedly".

(Vide page 41 of the Paper-Book)

6. The statement of imputations of misconduct or misbehaviour in support of the charge framed against him is as follows:-

" On questioning why the cage furnishing had not been completed for over a week by fixing the logs in the holes already dug, he replied that the size of the hole was too small. On being asked why it could not be widened a bit, he replied it was not his duty. When told that it is a question of initiative to get it done, he replied why he should do it. When Director stated I can also do such a simple job, he stated "come along we will do it" but again when told to do it, he refused to do or get it done by his staff-thus obstructing work by his staff on pretext it be done by the maintenance staff. When further questioned on his failure to get it done by the maintenance staff in the past when they were under him, inspite of his repeated instructions to improve the working, management and functioning of his staff and himself, he started shouting at top of his voice using undesirable slang in a tone unbecoming and of disorderly behaviour stating "care a dam", "you dam well do what you want", "I don't care, you cannot do anything more to me, I refuse to carry out your dam orders". When Director asked him to speak politely in lowered polite voice, he refused and walked away shouting, thus setting a bad example of misconduct and indiscipline, disobedience of orders of his superior by refusing to do work or get work done which had been done in the past in the same cages of similar type by same staff by a different Range Officer, during his period of leave on an earlier occasion".

(vide pages 41-42 of the Paper-Book)

7. The report of the Director, National Zoological Park dated 22.10.1988 is one of the documents listed in support of the charge. The name of Shri M. Kamal Naidi Director, National Zoological Park figures as the first witness in the list of witnesses.

8. The applicant denied all the charges framed against him and contended that they were false, misconceived,

motivated, frivolous and maliciously fabricated.

9. On 21.2.1989, the order of suspension was revoked.

On the same day, it was directed that he would look after the work of Education Assistant.

10. The applicant has challenged the validity of the impugned order dated 7.11.1988 on the following grounds:-

(i) The action of respondent No.2 ordering disciplinary proceedings is in violation of statutory rules and smacks of bias ^{or} personal and animosity borne out of professional jealousy, which came to surface in February, 1987 when the incident of Leopard being caught by the applicant took place, which respondent No.2 viewed as a disgrace for himself when the applicant, his junior, ~~who~~ received wide appreciation and publicity.

(ii) Respondent No.2 has combined in himself multiple roles of the reporting authority and reviewing authority (as regards the adverse remarks communicated to the applicant) the complainant, the prosecution witness and the disciplinary authority in regard to the pending enquiry and Chairman of the DPC which has to recommend the suitability of an officer for promotion to the post of Curator.

(iii) Two prosecution witnesses were examined on 2.6.89 when neither the applicant nor his defence assistant was present. This amounts to denial of a fair opportunity to cross-examine the witnesses.

(iv) The documents requested to be supplied have not been supplied even though the Enquiry Officer had requested the disciplinary authority for supplying the same to him.

(v) The witnesses were examined at the back of the applicant without setting him ex-parte.

(vi) No orders have been passed on his request for change of the Enquiry Officer against whom allegations of partiality and bias were levelled by him.

11. ^{the present} Shri I.H. Khan, Director of the National Zoological Park has filed a counter-affidavit on behalf of the respondents. The respondents have raised two preliminary objections as to the maintainability of the application, namely (i) no cause of action has arisen and (ii) no breach of rules have been alleged. The application has been filed prematurely as no final orders have been passed on the pending enquiry. They have denied the allegation of bias and malafides and have stated that the question of professional jealousy does not arise between the head of an organisation and his employees/ subordinates/working under him.

12. We may first consider the tenability of the preliminary objections raised by the respondents. It is true that in terms of Section 20(1) of the Administrative Tribunals Act, 1985, the Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant has availed of all the remedies available to him under the relevant rules as to the redressal of grievances.

The grievances ^{normally} arise out of any adverse order passed by the respondents. No such adverse order has been passed in the instant case where the disciplinary proceeding initiated against the applicant has not concluded. However, in the exceptional circumstances, it will be open to the Tribunal

to entertain an application without insisting on the applicant waiting till the final order is passed in the pending enquiry and only after he exhausts the remedies available to him under the relevant service rules. As observed by the Calcutta High Court in Dola Gobinda Das Vs. U.O.I., 1981(2) SLR 185 at 188, there cannot be any fixed principle for not entertaining a petition before the departmental enquiry is finally concluded. It was observed as follows:-

" If, a delinquent officer can satisfy the writ Court that the departmental proceeding is vitiated either for violating the principles of natural justice or for not following the procedure resulting in gross injustice to the petitioner, it will be quite open to the writ Court to interfere and quash the departmental proceeding even at the intermediate stage so that a proper proceeding is started and the delinquent officer does not suffer unnecessary agony for a prolonged period".*

13. The main thrust of the case of the applicant is that the adverse entries made in his Confidential Reports for the years 1986-87, his suspension, initiation of disciplinary proceedings against him and his being transferred as Education Assistant, all stem from bias and jealousy of the then Director of the National Zoological Park (Respondent No.2). The Director of the said Park at the relevant time was Shri M. Kamal Naidu. Shri Naidu has not filed a separate counter-affidavit denying the allegations of bias and malafides levelled against him by the applicant. The proper course would have been for him

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* See also the decision of Calcutta High Court in Dr. A.K. Dutta Vs. U.O.I. & Others, 1978(2) SLR 17; decision of this Tribunal in Shankari Pada Mukherji Vs. U.O.I. & Others, ATR 1986 CAT 424; and

to file a separate affidavit in order to vindicate his position by explaining the true facts. The counter-affidavit filed by Shri Khan, the present Director will not serve the purpose.

14. From the facts narrated in the application, it would appear that the relationship between the applicant and Shri Naidu had been strained. There is, however, no direct evidence that Shri Naidu was actuated by bias toward the applicant. In a case of this kind, what has to be seen is whether there is a reasonable ground for believing that a person is likely to have been biased. It is true that Shri Naidu has written the Confidential Reports of the ~~and 1987~~ applicant for the years 1986 ^{and 1987} and he has also reviewed it as the reviewing authority, as there is no person superior to Shri Naidu in the National Zoological Park. The delay in communicating these remarks to the applicant and the fact that the order of suspension and the impugned memorandum dated 7.11.1988 have been issued by Shri Naidu all lend credence to the contention of the applicant ~~inimical~~ as regards the disposition of Shri Naidu towards him. The Articles of Charge framed against the applicant and the statement of imputation of misconduct or misbehaviour in support of the charge clearly indicate that he is an interested party. This is further confirmed by the fact that his ~~report~~ dated 22.10.1988 has been included in the list of documents annexed to the charge and that Shri Naidu is the star witness for the prosecution.

15. In Arun Chaubey Vs. Union of India & Others, AIR 1984 SC 1356 at 1354, the Supreme Court has observed that "no person can be a judge in his own cause and no witness can certify that his testimony is true. Any one who has a personal stake in an enquiry must keep himself aloof from the conduct of the inquiry".

16. In the aforesaid case, the allegations were that the appellant had committed misconduct in the office of respondent No.3 (Deputy Chief Commercial Superintendent, Northern Railway). The Supreme Court observed that evidently respondent No.3 assessed the weight of his own accusations against the appellant and passed a judgment which is one of the easiest to pass, namely, that he himself was a truthful person and the appellant a liar. In doing this, respondent No.3 violated a fundamental principle of natural justice. It was further observed that "the main thrust of the charges against the appellant related to his conduct qua respondents No.3. Therefore, it was not open to the latter to sit in judgment over the explanation offered by the appellant and decide that the explanation was untrue".

17. The Supreme Court relied upon its earlier judgment in State of Uttar Pradesh Vs. Mohammad Nooh, AIR 1958 SC 86 at 94 wherein S.R. Das, C.J. while speaking for the majority, observed that the roles of a judge and a witness cannot be played by one and the same person and that it is futile to expect, when those roles are combined, that the judge can hold the scales of justice even. Borrowing the language of Das, C.J. it

was observed in Arjun Chaubey's case that the illegality touching the proceedings was "so patent and loudly obtrusive that it leave an indelible stamp of infirmity" on the decision of respondent No.3.

18. The aforesaid observations in Mohammad Nooh's case and Arjun Chaubey's case equally apply to the case of the applicant before us.

19. The Government of India is not unaware of the position where there is likelihood of bias on the part of the disciplinary authority. According to the Government of India's instructions No.4 under Rule 12 of the CCS(CCA) Rules, 1965, "in a case where the prescribed appointing or disciplinary authority is unable to function as the disciplinary authority in respect of an official, on account of his being personally concerned with the charges or being a material witness in support of the charges, the proper course for that authority is to refer such a case to Government in the normal manner for nomination of an ad hoc disciplinary authority by a Presidential Order under the provisions of Rule 14(2) of the CCS (CCA) Rules, 1957 (now Rule 12(2) of the CCS(CCA) Rules, 1965)".

(vide D.G., P&T's memo No.6/64/64-
Disc. dated 27.1.1965)

20. In the instant case as the procedure envisaged in the aforesaid instructions were not followed and as the disciplinary proceedings were initiated against the applicant by Shri Naidu himself wherein he is the prosecutor, witness and judge, the entire proceedings are vitiated. The applicant is entitled

to succeed in the present application on the sole ground mentioned above. In view of this, we do not propose to adjudicate upon the merits of the various contentions advanced by both sides.

21. In the light of the above, we quash the impugned memorandum dated 7.11.1988 and all the proceedings conducted pursuant thereto against the applicant. We also hold that the applicant's service prospects should not be adversely affected by the remarks made in the Confidential Report of the applicant by Shri Naidu in any of the years during which the applicant has worked under him as a subordinate. We also hold that the suspension of the applicant by the impugned order dated 22nd October, 1988 was not legally sustainable and the applicant would be entitled to full pay and allowances during the period of suspension from 22nd October, 1988 to 21st February, 1989. The said period will also count for duty for all purposes.

22. The application is disposed of at the admission stage itself with the aforesaid orders and directions. The parties will bear their own costs.

D. K. Chakravorty
(D. K. CHAKRAVORTY)
MEMBER (A)

22-12-1988

Onwards
22-12-1988
(P. K. KARTHA)
VICE CHAIRMAN (J)