

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.**

Original Application No.310 of 2000.

ALLAHABAD THIS THE 12TH DAY OF SEPTEMBER. 2005.

Hon'ble Mr. D.R. Tiwari, Member-A
Hon'ble Mr.K. B.S. Rajan, Member-J.

Hira Lal Dhar Dubey, S/o Late Chhabi Lal Dhar Dubey, Cash Overseer Head Post Office, Gorakhpur, R/o Village & Post Via Shiv puri New Colony.

.....Applicant.

(By Advocate : Sri M.K. Upadhyay)

Versus.

1. Union of India through the Secretary, Ministry of Communication, Department of Posts, New Delhi.
2. The Post Master General, Gorakhpur Region, Gorakhpur.
3. Director of Postal Services, Gorakhpur Region, Gorakhpur.
4. Senior Superintendent of Post Offices, Gorakhpur Division, Gorakhpur.
5. Abdul Waheed Beg, S/o Mirza Mohd. Sayeed Beg, Assistant Director of Postal Services, Gorakhpur, R/o Mohalla Chhotey Qazipur Shahr, Gorakhpur.
6. Senior Post Master Gorakhpur, Head Post Office, Gorakhpur.

.....Respondents.

(By Advocate : Mr. S. Singh)

O R D E R

BY K.B.S. RAJAN, MEMBER-J

The short question involved in this case is whether the Senior Post Master, who had complained



that he was abused by the applicant could be a judge in his own case. In the case of *Canara Bank v. Debasis Das*, (2003) 4 SCC 557 the Apex Court has held as under:-

21. How then have the principles of natural justice been interpreted in the courts and within what limits are they to be confined? **Over the years by a process of judicial interpretation two rules have been evolved as representing the principles of natural justice in judicial process, including therein quasi-judicial and administrative process. They constitute the basic elements of a fair hearing, having their roots in the innate sense of man for fair play and justice which is not the preserve of any particular race or country but is shared in common by all men. The first rule is "nemo judex in causa sua" or "nemo debet esse judex in propria causa sua" as stated in Earl of Derby's case 16 (1605) 12 Co Rep 114 at is, "no man shall be a judge in his own cause". Coke used the form "aliquis non debet esse judex in propria causa, quia non potest esse judex et pars" (Co. Litt. 1418), that is, "no man ought to be a judge in his own case, because he cannot act as judge and at the same time be a party". The form "nemo potest esse simul actor et judex", that is, "no one can be at once suitor and judge" is also at times used. The second rule is "audi alteram partem", that is, "hear the other side". At times and particularly in continental countries, the form "audietur et altera pars" is used, meaning very much the same thing. A corollary has been deduced from the above two rules and particularly the audi alteram partem rule, namely "qui aliquid statuerit, parte inaudita altera acquum licet dixerit, haud acquum fecerit" that is, "he who shall decide anything without the other side having been heard, although he may have said what is right, will not have been what is right" [see Boswel's case 17 (Co Rep at p. 52-a)] or in other words, as it is now expressed, "justice should not only be done but should manifestly be seen to be done". Whenever an order is struck down as invalid being in violation of principles of natural justice, there is no final decision of the case and fresh proceedings are left upon (sic open). All that is done is to vacate the order assailed by virtue of its inherent defect, but the proceedings are not terminated.**

In the case of *Ashok Kumar Yadav v. State of Haryana*, (1985) 4 SCC 417 the Apex Court had held as under:-

16. We agree with the petitioners that it is one of the fundamental principles of our jurisprudence that no man can be a judge in his own cause and that if



there is a reasonable likelihood of bias it is "in accordance with natural justice and common sense that the justice likely to be so biased should be incapacitated from sitting". The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision.


2. With the above law in mind, the facts of the case are to be considered.

3. The applicant was issued with a charge sheet, the Article of charge and imputations of which are as under:

On 9-5-96, a pamphlet against the disciplinary authority was received in H.O. It contains malicious and derogatory material and filthy language designed to bring the disciplinary authority in disrepute in public estimation. The pamphlet bore name of Sri Heera Lal Dhar Dubey among others.

On 11-05-96, in the presence of Sri R.L. Yadav, PRO (East) and Sri Asfaque Ahmad, APM, (Administration), Sri Rameshwar Pd P.O. (West) contacted Sri Heera Lal Dhar Dubey, to make necessary inquiries on the pamphlet. Sri Dubey read the pamphlet and refused to give statement. The refusal to give statement ipso facto makes linkate of Sri Dubey in the manufacture of the malafide pamphlet.


In publication of false pamphlet and in refusal to give statement in this case, it is thus, alleged that Sri Heera Lal Dhar Dubey, Sorting Postman, Gorakhpur HO did a thing which is unbecoming of a Government servant, contravening the provisions of Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964."



4. The charge sheet specifically spelt out that the pamphlet contained malicious and derogatory material and filthy language designed to bring the disciplinary authority in disrepute in public estimation. It is the very same authority who issued the Charge sheet vide order dated 17-05-1996 at Annexure A-9 ; it is the very same senior Post Master who had passed the penalty order as well vide order dated 31-05-1996, Annexure A-1.

5. The applicant questioned the validity of the impugned order of the Disciplinary Authority, inter alia on the ground that the disciplinary authority should not have acted in that capacity in this case as he becomes a judge in his own case.

6. Arguments were heard and the pleadings perused. Admittedly the disciplinary authority in this case is the Sr. Post Master and the charge clearly shows that the pamphlet to which the applicant had been linked threw certain derogatory remarks against the disciplinary authority. As such, the applicant's contention that the disciplinary authority became a judge in his own case holds good. For, the doctrine is applied not only when the person acts as a judge and is also a party, but also, under a situation, where the justice likely to be so biased should be



incapacitated from sitting. Here, the likelihood of bias needs no special emphasis.

7. In view of the above, the OA succeeds. The impugned order dated 31-05-1996 is quashed and set aside. Once this goes, the appellate order also sinks into oblivion. The applicant is entitled to the restoration of his original pay and allowances and the respondents are directed to calculate the extent of reduction in salary on account of implementation of the penalty order and pay the same to the applicant within a period of five months from the date of receipt of a copy of this order.

8. Under these circumstances, there would be no order as to costs.


MEMBER-J

GIRISH/-


MEMBER-A