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**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH**

**O.A. 148 of 1992**

**DATE OF DECISION : 24-11-88**

**Mr. Dipakkumar Rasiklal Shah** : Petitioner [s]

**Mr. K.C. Bhatt** : Advocate for the petitioner [s]

**Versus**

**Union of India & ors** : Respondent [s]

**Mr. B. N. Doctor** : Advocate for the Respondent [s]

**CORAM**

**THE HON'BLE MR. V. RAMAKRISHNAN : VICE CHAIRMAN**

**THE HON'BLE MR P.C. KANNAN : MEMBER [J]**

**JUDGMENT**

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

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Dipakkumar Rasiklal Shah  
U.D.C., Estt. 'B' Section,  
Planning Section,  
O/o. The C.P.M.G. A'bad - 1.

-- Applicant --

(Advocate : Mr. K. C. Bhatt)

Versus

- 1) Union of India Through  
The Director - General  
Department of Posts  
Ministry of Communication  
Govt., of India, Parliament Street,  
New Delhi. - 110 001.
- 2) The Director Postal Services,  
O/O. The Chief Postmaster General  
Gujarat Circle,  
Ahmedabad - 380 001.
- 3) The Asstt. Postmaster General (PLI)  
O/O. The Chief Postmaster General  
Gujarat Circle, Shahibaug,  
Ahmedabad - 380 004.

-- Respondents --

(Advocate : Mr. B. N. Doctor)

**JUDGMENT**

**O.A 148 OF 1992**

**Date : 24-11-99**

Per Hon'ble Shri. P.C. Kannan : Member (J).

We have heard Mr. K.C. Bhatt, counsel for the applicant and Shri. B.N. Doctor, counsel for the respondents. The applicant in this present O.A has challenged the punishment order dated 03.10.89 (Annexure A1-2) withholding increments for a period of three years without any cumulative effect by way of minor punishment under Rule-16 of CCS (CCA) Rules 1965.

*For*

2. Mr. K.C. Bhatt, counsel for the applicant submitted that Shri. T.S. Gohil who acted as preliminary inquiry officer and submitted his report, also acted as the disciplinary authority and issued the punishment order (Annexure A-12). He submitted that Shri. Gohil had acted as a Judge in his own cause which is not permissible. He further submitted that the whole inquiry is vitiated against the applicant on this ground <sup>alone.</sup> ~~also~~. He also raised many other objections as given in paragraphs 6.9 to 6.17 of the O.A.

3. Mr. Doctor, counsel for the respondents submitted that it is ~~not~~ permissible for the authority who conducted preliminary inquiry to act as the Disciplinary authority also and in this connection he referred to Rule-50 of the P & T Manual of Vol. III which reads as follows:-

" The authority who conducts preliminary enquiry into a case of misconduct etc. of a Government servant will not be debarred from functioning as a disciplinary authority in the same case provided, it has not openly given out its findings about the guilt of the accused official."

4. At our direction, the respondents produced the relevant files including the preliminary inquiry report. A perusal of the record shows that Shri. T.N. Gohil, who had acted as the preliminary inquiry officer gave his findings about the guilt of the applicant in clear terms. Shri. Gohil had questioned the applicant and held the applicant guilty of the charge that he obtained business during his tenure by un-fair means. Subsequently, Shri. Gohil became the disciplinary authority and issued the punishment order dated 03.10.89. In the grounds of appeal preferred by the applicant, he had raised this issue as one of the main ground. The Appellate authority in his order dated 23.05.90 as at Annexure A-14 summarily rejected the same on the ground that "it does not make any difference in view of the fact that some blank proposal forms duly signed by the Civil Surgeon were found from his custody."

5. Mr. K.C. Bhatt also raised certain other objections regarding the procedure adopted by the respondents in imposing the punishment. He contended that Dr. B.T. Trivedi, Civil Surgeon and certain other witnesses were not examined and therefore the inquiry report and order of punishment are liable to be quashed.

*DR*

6. As regards the merits of the case, and the validity of the impugned order of punishment, it will suffice to say that in view of the order we propose to make, these grounds can more appropriately <sup>be</sup> agitated before the disciplinary authority when the case goes back to it for further necessary action. We are <sup>convinced</sup> ~~convinced~~ that the order imposing the punishment is vitiated on the ground that Sri. Gohil, who had conducted the preliminary inquiry and held the applicant guilty of the charges, had also acted as the disciplinary authority and issued the impugned order of punishment at Annexure A-12.

In this case, Shri. Gohil, who had conducted the preliminary inquiry, made the following observations at para 7 :-

- (i) Now it can be proved from the documents and oral witnesses that Shri. D.R. Shah had obtained the business without getting the proponents medically examined hence disciplinary actions against him under Rule 14 or 16 of CCS (CCA) Rules required to be taken.
- (ii) As discussed in para-6 above, medical fee of Rs. 4595/- is to be recovered either from Shri. B.T. Trivedi if not from Shri. D.R. Shah due to whom we had to pay the medical fee to the doctor fraudulently. This point can also be left to the disciplinary authority who can decide while awarding the punishment.

x x    x x    x x    x x    x x

Subsequently, Shri. Gohil, also acted as the disciplinary authority and imposed the punishment order at Annexure A-12.

7. It is now a well established principle of law that justice has not only to be done but it has also to be seen to be done. Any officer may have any grudge or bias against the applicant. But, if the circumstances are such that the applicant may apprehend that the officer who will take the final view in the matter of his guilt as the disciplinary authority is likely to be biased against him as he had earlier conducted preliminary inquiry and held the applicant guilty of the charges, then this Tribunal should intervene in the matter for the ends of justice.

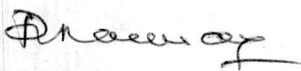
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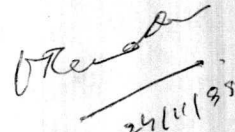
8. In our view, Rule-50 of the P & T Manual does not apply to the present case as the disciplinary authority in his preliminary inquiry report<sup>had</sup> openly given out his findings regarding the guilt of the applicant.

9. In the facts and circumstances, we quash the punishment order(Annexure A-12), appellate order (Annexure A-14) and the order passed by the revising authority (Annexure A-16) and direct that the duty of passing a final order in the departmental proceedings against the applicant should be entrusted to any other competent authority other than Shri. Gohil.

The O.A is disposed of with the above directions. No costs.



(P.C. Kannan)  
Member (J)



(V. Ramakrishnan)  
Vice Chairman

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