

42

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

O.A. No.212 of 2010


Cuttack, this the 24<sup>th</sup> day of July, 2013

|                          |                 |
|--------------------------|-----------------|
| Shri Jugal Kishore Bisoi | .....Applicant  |
| Versus                   |                 |
| Union of India & Othres  | ....Respondents |

FOR INSTRUCTION

1. Whether it be referred to reporters or not? ✓
2. Whether it be circulated to PB, New Delhi for circulation/report? ✓

  
(R.C.MISRA)  
Member (Admn.)

  
(A.K.PATNAIK)  
Member (Judl.)

43

**CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK**

**O.A. No.212 of 2010**

Cuttack, this the 24<sup>th</sup> day of July, 2013

**CORAM**

**HON'BLE MR. A.K. PATNAIK, MEMBER (JUDL.)**

**HON'BLE MR. R. C. MISRA, MEMBER (ADMN.)**

.....

Shri Jugal Kishore Bisoi, Aged about 67 years, Son of Lat Judhistir Bisoi, At-Subhadrapur, PS-Sadar, Dist. Cuttack (retired Telecom Employee).

....Applicant

(Advocate(s):-M/s.J.M.Pattnaik,C.Panigrahi,A.K.Mishra, D.K.Malick)

**-Versus-**

Union of India represented through –

1. The Secretary, Ministry of Telecommunication, Sanchar Bhawan, New Delhi-110 001,BSNL Delhi.
2. The Enquiry Officer-Cum-OSD (D.I), Eastern Region, GPO Building, Office of CGMT, Bihar Circle, Patna.
3. The Chief General Manager Telecommunication (now designated as General Manager, BSNL), Orissa Circle, At-Unit-IX, BBSR, Dist. Khurda.
4. The Telecom District Manager (BSNL), Cuttack, Cantonment Road, At/Po/Dist. Cuttack.
5. The Director General, Bharatia Sanchar Nigam Ltd., 102-B, States Man House, New Delhi-110 001.

.....Respondents

(Advocate(s)-Mr.U.B.Mohapatra & Mr.P.N.Mohapatra)

*Alor*

**ORDER****A.K. PATNAIK, MEMBER (J):**

The Applicant who is now retired on reaching the age of superannuation on 30.04.2005 while working as Telephone Supervisor in the BSNL has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 praying to quash the charge sheet dated 26.11.1990, report of the IO dated 24.8.1992, order of the Disciplinary Authority dated 28.10.1992, order of the Appellate Authority dated 14.10.1999, order of the Revisional Authority dated 23.11.2000, order of the Reviewing Authority dated 25.1.2003 and to direct the Respondents to pay him all his service and financial benefits retrospectively.

The sum and substance of the grounds taken by the Applicant in support of the above prayers are as under:

- (i) One Shri M.K.Goel, was working as the Telecom District Manager at that relevant point of time under whom the Applicant was working. The entire allegation in the charge sheet is that the Applicant violated the orders of the TDM (MKGoel), showed him insubordination and uttered other obscene and derogatory words to TDM (MKGoel) and TDE. The same TDM (Mr.MKGoel) issued the charge sheet and punished him as his Disciplinary Authority. Hence, the Disciplinary Authority violated the Law/principle that one cannot be the judge of his own action. As such, the



45  
charge sheet dated 26.11.1990 under Annexure-A/5 is not sustainable in the eyes of law;

- (ii) Rule 23(i) of the CCS (CC&A) Rules, 1965 provides that after conclusion of the inquiry a report shall be prepared and it shall contain (a) the articles of charge and the statement of the imputations of misconduct or misbehavior; (b) the defence of the Government servant in respect of each article of charge; (c) an assessment of the evidence in respect of each article of charge; (D) the findings on each article of charge and reasons thereof. As per Rules and law the IO should not have taken into consideration anything not cited by any of the parties WHEREAS, the instant report conclusively establishes as to how the IO is biased and input certain things which were not cited by either of the parties. Therefore the IO has acted as a jealous prosecutor rather than an impartial quasi-judicial authority. Secondly, the report is based on conjecture and surmises without any valid evidence like as the IO reaching the conclusion based on "had it been so it would have been so". There is no provision in the Rule or Law that charges can be held proved on conjecture and surmises. As such, the report dated 24.8.1992 under Annexure-A/8 has no legs to stand and hence is liable to be set aside;

- (iii) The Disciplinary Authority abruptly came to the conclusion of guilty of the Applicant, based on the said biased report of the IO without due application of mind. The Disciplinary Authority held that the letter in question was issued to the applicant in his personal

*W. A. K.*



46

name and therefore he was bound to receive the same. The Disciplinary Authority failed to appreciate that the letter was addressed to the District Secretary. Most vital witness i.e. person who had sent the letter and who had tendered the letter to whom and when the applicant refused to receive the said letter was not examined during enquiry;

(iv) Had there been any material or evidence, the Disciplinary Authority would not have held that "there is no other evidence also that may conclusively prove that the said Sri Jugal Kishore Bisoi was available at some other place at that point of time. It is, thus reasonable to conclude that Sri Jugal Kishore Bisoi was present at Gateman's Room at 17.10 pm on 7.11.1990. Law is well settled that however/whatever suspicion grave may be that cannot be proved in a domestic enquiry. Since the Disciplinary Authority reached the conclusion in so far as charge No.VI is concerned simply on conjectures and surmises, therefore the same is not tenable in the eyes of law.

(v) The allegation of imputation is of dated 14.11.1990. The witnesses deposed on 13.1.1992 i.e. more than one year after the issuance of the charge memo. Human memory is ephemeral and delay vanishes the memory and material. Therefore the Disciplinary Authority while accepting their statement would have taken into consideration the above aspects of the matter and if this aspect of the matter would have been taken into consideration, then the charge at V would not have been sustained. Therefore the order of

Alor

47

the Disciplinary Authority being without due application of mind and being biased, the same is liable to be set aside;

(vi) It is the trite law that misconduct means 'any unlawful behavior by a public officer in relation to the duties of his office, willful in character. Term embraces act which the office holder had no right to perform acts performed improperly and failure to act in the face of an affirmative duty to act. Even if for the sake of argument it is accepted that the applicant has refused the letter, it is not known as to how the same attracts the conduct rules so as to proceed against the applicant in the disciplinary proceedings. Therefore, the very initiation of the proceedings is liable to be set aside;

(vii) One Shri Raja Rao, Gateman was on duty on 7.11.1990. Said Shri Raja Rao bluntly denied that he has not seen the Applicant at the relevant time in the Gate Room. Thus, it was not reasonable and practicable on the part of the Disciplinary Authority to come to the conclusion that the Applicant was present at Gateman's room at 17.10 pm on 7.11.1990. As such his orders (in so far as charge Nos. VI & VII) cannot be said to be with due application of mind, based on material or free from bias and prejudices. Hence the said order of the Disciplinary Authority is liable to be set aside;

(viii) The alleged Dharana (made in Article No.VII) was due to the call given by the Central Headquarters of Employees Service Union. In Letter

*Alles*

48

No.241016/1(s)/90-Estt.(B) dated 1.5.1991 the DoPT has taken a decision not to take any action against the employees who had proceeded on strike during the relevant period. Therefore participation of the applicant in the Dharana should not have been treated as misconduct. Therefore the initiation of the departmental proceedings for such dharana and imposition of punishment is a sheer case of victimization to the Applicant. But this aspect of the matter has not been considered by the authority while initiation of the Disciplinary Proceeding and imposing the Punishment. As such, the entire disciplinary proceedings is liable to be set aside;


- (ix) The orders of the Disciplinary as well as Appellate Authorities suffer from arbitrariness as both the authorities have not acted judiciously as required under the Rules and Law. As such, both the orders are liable to be set aside;
- (x) The Appellate Authority instead of considering the points raised by the Applicant in his appeal independently with due application of mind rejected the appeal in letter dated 14.10.1999 by repeating/reiterating the order of the DA. Hence, the order of the Appellate Authority is not sustainable in the eyes of law;
- (xi) Accordingly, the order of the Revisional and Reviewing authorities are liable to be set aside.

*Allee*

2. In the counter, besides giving the reasons of initiating the Disciplinary Proceedings against the Applicant, the Respondents have bluntly denied the allegations that report of the IO, orders of the Disciplinary Authority, Appellate Authority, Revisional as well as the Reviewing Authorities are based without any evidence and on conjecture and surmises. It has been stated that the allegations in the charge sheet was duly enquired into after allowing adequate opportunity to the applicant after which the competent authorities in well-reasoned order dealt with the matter. Absolute there was no bias against the applicant either by the IO, DA, AA or RA. The Applicant has unnecessarily brought certain new allegation bereft of records with a view to achieve the goal and, therefore, this OA is liable to be dismissed.

3. Heard and perused the records.

4. In course of hearing, Mr. J.M.Patnaik, Learned Counsel appearing for the Applicant, by drawing our attention to the allegations levelled against the applicant in the charge sheet and the order of the Disciplinary Authority, has primarily led emphasis that as the entire allegation in the charge sheet is that the Applicant did not obey the orders and refused to receive the letter of Shri M.K.Goel, TDM, therefore he should not have issued the charge sheet and imposed the punishment and having done so he has acted contrary to the law that no man should be the judge of his own action and,



50

therefore, it was contended by him that if it is accepted then there is no further need to go to the other grounds cited by him.

On the other hand, it was the contention of Mr. P.N.Mohapatra, Learned panel counsel for the BSNL-Respondents that out of seven charges only three charges were kept in abeyance and not enquired into due to pendency of Criminal Case relating to the said charges. The IO also held that the charge No.4 is not proved. Therefore, the allegations levelled in **Articles 5, 6 and 7** remained for inquiry against the Applicant.

It has been contended that as per the Rules, if the original Disciplinary Authority is personally concerned in a case, Ad-hoc Disciplinary Authority can be appointed to deal with the matter. In the instant case, the Disciplinary Authority (Mr.M.K.Goel, TDM) was neither personally concerned nor was he a complainant or witness in the matter. Whether the Disciplinary Authority is personally concerned, complainant or witness is to be decided by the Disciplinary Authority himself and should not be raised by the delinquent official. The Applicant has participated in the enquiry. But at no stage of the disciplinary proceedings even upto filing of this OA the applicant has raised this point. Therefore, now he is estopped under law to raise this point. In this connection, Mr.Mohapatra, has placed reliance in the case of **Manak Lal Vrs Dr.Prem Chand**

*Ades*

**Singhvi and others**, reported in AIR 1957 SC, pages 425&432. It has been stated that in the case of **Asstt. Supdt. of Post Offices and Others Vrs G.Mohan Nair** reported in AIR 1999 SC 2113 it was alleged that the original disciplinary authority was the complainant and he appointed the IO. Subsequently adhoc disciplinary authority was appointed. Basing on the report of the IO, the adhoc disciplinary authority imposed the punishment. Question was raised that since the original disciplinary authority appointed the IO, the report was vitiated. But the Hon'ble Apex Court held that the inquiry report is not vitiated and the imposition of punishment was held justified. It has been contended that in another case reported in AIR 2006 SC page 2540 though the DA himself was the complainant as well as witness yet the Hon'ble Apex Court did not interfere in the matter as the applicant has not taken that point at any point of time in the proceedings by applying the principle of acquiescence and waiver and it has been stated that this being a case similar, the applicant is estopped to raise this point now. Further stand of Mr.Mohapatra is that the applicant has not alleged as to how he was prejudiced by issuance of the charge sheet and punishment by Shri MKGoel, TDM and having not specifically stated so, by applying the law laid down by the Hon'ble Apex Court in the case **Sarabhai M Chemicals Vrs Commissioner of Central Excise, Vadodara** reported in AIR 2005 SC 1128 (sic)



52

1126 interference of this Tribunal in the present case is not warranted. By placing reliance in the case **Union of India and others Vrs Nagamalleswar Rao** reported in **AIR 1998 SC 111** it has been stated that as the Tribunal lacks competence to examine the evidence based on which the IO, DA, AA and RA reached the conclusion, this OA is liable to be dismissed.

5. Before proceeding to deal with the arguments advanced by the respective parties, it is worthwhile to quote the allegations levelled against the applicant in Articles V, VI & VII and they are as under:

**"Article of Charge-V:**

That the said Shri Jugal Kishore Bisoi on dt. 14.11.1990 refused to accept the letter No.G 22 (1)/90-91/162 dated 14.11.1990 of TDM, Cuttack made false statements and showed insubordination and thus acted in a manner which is unbecoming of a Govt. servant, thereby violating Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

**Article of charge -VI:**

That the said Shri Jugal Kishore Bisoi while under suspension entered into the Telephone Bhawan Compound on dt. 07.11.1990 made derogatory and absence statements against senior Departmental Officers and instigated staff on duty to leave important position like watching the main entrance gate and thus acted in a manner which is unbecoming of a Govt. servant thereby violating Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.

**Article of Charge-VII:**

That the said Jugal Kishore Bisoi while under suspension vide TDM's Cuttack letter No. TD/X-54/90-91/5 dt.6.11.1990 participated in an illegal Dharana inside

*Alley*



53

the compound of TDM's office and shouted frequent slogans during office hours and caused disturbance to office work and thus acted in a manner which is unbecoming of a Govt. servant, thereby violating rule 3(1)(iii) & 7(i) of CCS (Conduct) Rules, 1964."

6. Statement of imputation in support of the above Articles of charges framed and issued by the authority reads as under:

**"Article-V**

A letter bearing No. C-22(1)/90-91/162 dt.14.11.1990 in a closed cover was taken by Shri M.K.Mishra, Steno Office of the TDM, Cuttack at 17.20 hrs on dt.14.11.1990 for delivery to Shri Bisoi who was under the Shamiana near the cycle shed of 15 cantonment road cuttack. Shri Bisoi refused to receive the letter. Further Shri Bisoi said that the letters to him should be delivered personally by the TDM, Cutack and not by his Steno. Letters addressed to him. (Shri Bisoi should be mailed through post. He further said to Shri Mishra that he (Shri Bisoi) is not present there. By the above acts Shri Bisoi refused to accept the official correspondence made by the TDM, Cuttack to him and he took resort to falsehood and insubordination and thereby acted in a manner which is unbecoming of a Govt. servant and thus violated the provisions of Rule 3 (1) (iii) of CCS (Conduct) Rules, 1964.

**Article-VI:**

Shri Jugai Kishore Bisoi, TS (O), Truck Exchange, Cuttack while under suspension was specifically instructed to enter into the Telephone Bhawan compound only with prior permission of the TDM, Cuttack vide TDM's letter No. TDM/X-54/90-91/6 dated 6.11.1990. But without obtaining necessary approval of the TDM, Cuttack he entered into the Telephone Bhawna compound of Cuttack in the evening of 7.11.1990 and got into the Gateman's Room. There he instigated the Watchman on duty to close the Gateman Room and to leave his duty and go inside the Telephone Bhawna. Afterwards when the rains subsided Shri Bisoi went inside the campus. While inside the Gateman's Room he accused that TDM and TDE, Cutack being cowards were taking protection of the Police. He further stated that these officers should be treated in the same manner as was once done to Shri Bisweswar Dash, Ex DE Phones, Cuttack by throwing night soil on their heads and as it happened at Boiangir also other obscene and derogatory words were also uttered by Shri Bisoi against the TDM and TDE, Cuttack.





By the above acts Shri Bisoi used derogatory and obscene words against the Senior Govt. Officers and indulged himself in instigating the staff on duty to leave the important position of watching the main entrance gate of the Telephone Bhawan, Cuttack and thereby acted in a manner which is unbecoming of a Govt. servant and thus violated the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

**Article VIII:**

Shri Jugal Kishore Bisoi, TS (O), while under suspension vide the TDM, Cuttack Memo No. TDM/X-54/90-91/5 dt.6.1.1990 participated in an illegal Dharana staged by a group of employees inside the office compound of 15-Cantonment Road, Cuttack. He was often found sitting in the Dharana under the Shamiana staged inside the compound and frequently joined himself in the slogans during office hours and caused disturbance to the normal functioning of the officers of Sr.Suptd. of Post Offices, Cuttack (City) Divn., Cuttack, the Suptd. Of Post Offices, Cuttack (North) Divn., Cuttack, the Suptd. Of Post Offices, Cuttack (South) Divn., Cuttack and the Telecom District Manager, Cuttack who are housed in the same building in the compound.

By the above acts Shri Bisoi acted in a manner which is unbecoming of a Govt. servant and thus violated the Rules 3(1)(iii) & 7(i) of CCS (Conduct) Rules, 1964."

To the above charge charges the IO held as under:

Now before going on discussion on the merits of the charges, the technical points raised in the defence brief in para-2 needs clarifications. As per the SPS, when Rule-4 to 22 of conduct rules mentions specific misconduct, then the SPS should not have been chargesheeted for misconduct under Rule 3(1) (iii) OF CCS (CONDUCT) RULES 1964.

For information to the SPS, it may be quoted that in Mahendra Singh Dhantual vs. Hindustan Motors Ltd. AIR 1976 SC 2062 & N.S. Makwana vs. Union Bank of India, 1985 lab IC 422. The Supreme Court has held that if the history and entire circumstances of the case point out to a misconduct, the penal action will not be illegal on the ground that the misconduct, as found, was not within the four corners of the descriptions of the various misconducts mentioned in the standing orders. The reason as described "Even though a given misconduct may not come within the specific terms of misconduct described in the standing orders, it may still be a misconduct in the special fact of a case for which it may not be possible to condone and for which the employer may take appropriate action"

*Alor*

55

In the case of A.R.R Despande vs. Union of India, 1972 lab IC 516, the Delhi High Court observed "the conduct rules cannot be exhaustive of every conceivable kind of misconduct that may be committed by a civil servant. Whatever conduct of the civil is regarded as being contrary to an ideal master and servant relationship between the two may be regarded as a lapse on the part of the civil servant and may be considered to be a misconduct in varying degrees."

In short a misconduct may be defined as, "any Act inconsistent with the faithfully discharges of duties or pre judicial to the interest or reputation of the master would constitute misconduct."

Now as per D.P. & A.R. O.M. No.14013/18/76-Estt dated 7<sup>th</sup> Feb 1977 says, "it will not be in order to issue a charge sheet indicating violation of Rule 3(1) or if any other specific conduct rule has been violated. The same O.M. it is been further directed that Rule-3 not to be invoked in cases of Trivial Nature. But, in the instant case the SPS did not mention as to under what specific Rules the charges leveled are coming and how the rules are violating and it is to be seen as to whether the charges are of trivial nature."

Regarding the opinion about the charges in para-3, the SPS had started that the charges itself is not specific and precise as per the departmental Rules - It is imperative upon the Disciplinary Authority to frame specific charge in clearest terms and with full particularity. The language used should be clear concise free from ambiguity and incapable of misconstruction. It is essential that the charges indicated are precise and the statement of misconduct or misbehaviour on which the charges are based give all necessary information to understand the charges and to answer them effectively. The time and place of the incident must be clearly mentioned with date and manner.

Now, on scrutiny, it is seen that the charges under Article-IV, the particulars as to the date and time of entrance in the Telephone Exchange compound by the SPS violating directions as under Memo No. TDM/X-54/90-91/6 dated 06.11.1990 are not there. So the charge under Article-IV is true to be a non-specific charge as per Rules.

The charge under Article-V is correct in all respect.

The charge under Article-VI is also a specific one.

The charge under Article-VII is specific, as the charge clearly says that the SPS during his suspension period took part in demonstration inside the office period and the copy of suspension letter was attached with the charge sheet, which was in original given to him at the time of putting him under suspension. This is also in continuation to Article-V to VI.



56

So the merit of the charges what are not specific will not be discussed. Because as per case of State of Rajasthan vs. Rattan Lal, ILR 1967 RAJ 764, I.P. Gautam Vs. State of U.P., 1968 SLR 417, 1968. All LJ 103 and lots others the opinion drawn by the learned judges are "where the charge sheet is not properly drawn, it would vitiate the entire proceedings. The basis requirement of a charge sheet is that the charge must be specific supported with allegations in each case so as to apprise the delinquent Govt. servant the nature or dereliction of duty committed by him they have opinioned that "punishment imposed on vague charge would be illegal".

So far as the charge under Article -V, the S.EXT.13 is the statement given by Sri M.K. Mishra as S.W-7 Steno to T.D.E., Cuttack dated 14.11.90. He confirmed his statement along with all of its contents on dt.13.01.92. He narrated in details as to how the SPS Shri Jugal Kishore Bisoi refused to take delivery of the letter, when he personally went to deliver the same on 14.11.90 at 1720 hours, when Shri Jugal Kishore Bisoi, as a district secretary of E.III, AITEU Gr 'C', Cuttack and TOA O/o. The T.D.M. Cuttack, was sitting on dharna under a Shamiana erected by them near cycle shed of the 15, Cantonment Road Office Campus.

The S.W-7 of course tried to provide some safeguard in replying some cross questions and in replying the re-examination by the P.O, the S.W.-7 is not correct to say that the union secretaries are not to be abide by the conduct Rules. The union office bearers limitations are clearly of guideline under Rules-6 and 7 CCS (CCA) Rules 1964, and under Article 19 of the Indian Constitutions. The Secretaries are not to be treated separately, Sri Bisoi Showed indisciplined mannerism by opening the close cover and refusing to receive the same after reading the contents of the letter.

As per Rule 6 of CCA (CCS) Rules 1964, an Office bearer or a member of the Executive Committee of the Service Union or Association should not himself deal in his official capacity with any representation or other matters connected with that Association (MHA O.M. No.24/1/60-Ests (B) dt.25.01.1980). The directions thus indicates that the union bearers are not to act according to their sweet will.

Now as per Constitution of India under Article 19(1) (e) with article 19(4) thereof provides that all citizen shall have the right to form Association or Unions. While Article 19(4) puts - " nothing in sub clause (C ) of the said clause shall affect the operation of any existing law in so far as it impose or prevent the state from making any law imposing, in the interest of the sovereignty and integrity

Alec

of India or public order or morality, reasonable restriction on the exercise of the right conferred by the said clause.

Thus, it indicates that the union bearers or members of the union do not enjoy unlimited facilities or right to Act.

The Rule- 7 of CCS ( Conduct ) Rules 1964 says, no Govt. servant shall engage himself or participate in any demonstration which is prejudicial to the interest of the sovereignty and integrity of India. The security of the State, friendly relation with foreign States, public order, decency or morality, or which involves contempt of court, defamation or incitement to an offences."

This Rules give the right to an official to participate in any demonstrations but restrict at the same time on certain points.

The S. Ext. 5 and S.Ext.6, the letters written by S.S. Posts, Cuttack City Division, Cuttack. The SSP did not turn up. He rather refused to appear before the inquiry commission and thereby violated the Enforce of Attendances of Witness and production of documents at 1972. The IO vide Section 5 is entitled to enforce of witnesses and production of documents (.G.P & T, New Delhi Letter No.-6/20/72-Disc.-1 dated 23<sup>rd</sup> November 1972).

As per para 91, P&T Manual Vol.VIII, there are sufficient reasons to initiate disciplinary proceedings against him, as he simply refused to attend the inquiry and paid no heed to the telephonic reminder of T.D.M., Cuttack on 13/01/1992 and ignored the summon issued by Inquiring Authority.

In absence of the SSP, the letter under S.Ext-5 and S.Ext-6 could not be properly authenticated. The S.D.O.P. Shri Gadadhar Das as S.W.-1 tried to authenticate both the letters. But, the S.W.-1 not being working under S.S.P, Cuttack City Division nor a investigation Officer and not being in direct communication link with the SSP, the authentication of the said exhibits by the S.D.O. phones carries no meaning.

The above portion of Inquiry report is being sent to the CPMG, Bhubaneswar and DDG (Vigilance) Postal Directorate, New Delhi for suitable action against the SSP Cuttack City Division.

But, now coming to S.EXE-1, the statement of SDO phones, SW.-1, it is seen that the SPS had been on dharana under the Shamiana fitted inside the compound and raised objectionable slogans naming Sri M.K. Goel.

The S.Ext-12, given by Sri S.K. Lenka S.W-6, only confirmed the participation of the SPS in the Dharana on the 16<sup>th</sup> and 17/11/1999 inside the compound. But, in his statement Sri Lenka never stated that the SPS has given slogans or created any noise there.

Similarly the statement of SW-7 under the S.EXT-13, the participation in the Dharana by the SPS inside the compound gets

*Alor*

confirmation. But, taking part in the dharana is a legitimate right of the official as per C.C.S. (conduct) Rules 1967 Rules 7. But, now it is to be seen as to whether the SPS (1) took report of indecency, (2) and demonstrated inside the office premises or not.

From the S.Ext.1, S.W.1, which tallies with stated particulars of S.Est.5 and 6, establishes that the SPS shouted indecent slogans.

The SPS demonstrated inside the office premises and as per W&H Circular No.AV-366 dated 10/06/1969, the demonstration within office premises are strictly prohibited. The same opinion has been expressed by the Supreme Court in the Case Railway Board Vs. Niranjan Singh, AIR 1969 SC 966) – The Supreme Court observed – “The right to hold demonstration cannot be exercised in such a manner that it results in violation of the right of property to someone else. A demonstration in office premises is bound to create chaos and hence can be prohibited by the management. There is no right to hold meeting in office premises.

Nowhere in the Rules, the office bearer or any member of any union is permitted to get relaxation of Rules when they act as per the call of the CHQ.

Now, question comes the SPS was in a group of officials, then how a individual can be brought to book. The case between Union of India Vrs. Tulsiram Patel, AIR 1986, SC 1416 and Ekramuddin Ahmed Vrs. Supdt. Of Police, Sec. (1988) Supl. 663 decided on 27.09.1988 may be referred. The verdict was – “in the case of concerted action by a group of employees the Supreme Court held (1) it is not necessary to segregate the pin point the particular role played by each individual, it will suffice if the commission of the offence and presence of the employee charges, at the place of incident at the time is proved (2) if the witnesses are scared and evidence is not forthcoming, giving rise to a situation where the disciplinary authority is satisfied for the reasons to recorded by him in writing, that it is not reasonably practicable to hold an Inquiry, the Inquiry may be dispensed with.”

So, in the instant case, the SPS was specifically asked not to enter in the office premises vide S.Ext.3 and he was found in the demonstration within the office premises. Although the DW-1, Shri Kasinath Jee gave a different story, but now it was their turn to establish it with documentary and other evidences, but they failed to do so. Therefore, the presence of the SPS in the dharna inside the office premises is confirmed beyond doubt.

So far as incident of 7.11.90 evening the SW-2 Shri M.D. M.F. All trunks confirmed his statement under S.Ext.8 which states that the happening as described under Article-VI was true. He categorically stood to his point in reply to cross question No.2.





59

The SW-2 was firmly denied the possibilities expressed by the SPS, that it is because of sympathy towards his colleague, the SW.2 stated likewise.

The SW.4, Shri S. Barik of course did not say anything about any objectionable remark by the SPS. But, confirmed the entrance of the SPS inside the telephone exchange compound on 07.11.90. I personally observed during my stay in Cuttack that there is no check in the gate, self with P.A. and peon being totally a stranger to Cuttack telephone exchange never checked in the gate. So the gateman's visitors registered under D. Ext.1 does not play any vital role. It will be marked that No. of visitors per day is very low.

There is no reason why the statement of M.D. Ali should not be trusted, there was no sympathy supports between the officer or pressure. In that case Shri Lenka too would have given a strong support to the derogatory statement made by the SPS on 07.11.90 and the two JTO's too. The situation tallied. It was dark and raining, Shri Sethi said because of sound of rain he did not hear anything and the relation with TDM as described in the defense brief was not amicable. So the probabilities of passing such remarks by the SPS cannot be ruled out as per departmental Rules under 'preponderance of probabilities'

As such all the charges under Article-V,VII and VII stands proved."

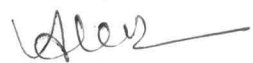
7. We have considered the rival submissions of the parties with reference to the pleadings and materials placed in support thereof.

8. The incident was during the strike call given by the Employees Trade Union in which the applicant was a Member is not in dispute. Similarly from the charge sheet, enquiry report and all other materials placed on record, it is proved that Shri M.K.Goel was the TDM and the allegation was that the applicant has used obscene language and slogans against him and violated the orders issued by him. Therefore, as per the Rules and various judge made laws he

Alor

60

being a complainant, should not have dealt with the matter. Respondents' stand is that the applicant having not raised this point at any point of time is estopped to raise at this stage. In this connection Mr. Mohapatra has placed reliance on certain decisions. We have gone through the same. We find that the first case relied on by Mr. Mohapatra in the case of **M/s. Crawford Bayley & Co & Ors Vrs Union of India and Ors**, AIR 2006 SC 2544 in which one of the submissions of the Appellant was that the provisions of Section 3 of the Public Premises Act are violative of Article 14 of the Constitution of India as it makes the Estate Officer of the statutory authority as a Judge in his own cause, in which the Hon'ble Apex Court held that the Estate Officer appointed by the concerned administrative department cannot be said to be a judge in his own cause as there is no personal bias of Estate Officer in these proceedings because he has no personal interest. In the instant case the specific allegation that the applicant made obscene slogans against the TDM and it is not in dispute that at that relevant time Mr. M.K. Goel was the TDM. Besides, it was held by the Hon'ble Apex in the aforesaid case that the observation made therein will depend upon the facts of each case and no generalization can be made. The factual aspects of the case before the Hon'ble Apex Court vis-à-vis the case in hand is totally different and distinct and, therefore the said decision has no



application to the present case. In view of the above, it cannot be said that issuance of charge sheet and awarding of punishment by Shri M.K.Goel, TDM is not opposed to the doctrine that 'no man can be a judge in his own cause'.

In the case of G.Mohan Nair (surpa) the Hon'ble Apex Court quashed the order of the Tribunal on the ground that there was no material to indicate that any prejudice was caused to the employee concerned as a result of the appointment of an Inquiry Officer and a Presenting Officer by the original disciplinary authority. No allegation of any kind whether of bias or mala fides has been made against the Enquiry Officer or the Presenting Officer so appointed in the conduct of the enquiry. The actual order against the respondent has been passed by the ad-hoc disciplinary authority after taking into account the report of the Enquiry Officer and the evidence led in the case. In the absence of any prejudice or any allegations of mala fides, the enquiry should not have been set aside and the action of the Disciplinary Authority should not have been quashed only on a technical ground that instead of the ad-hoc disciplinary authority, the actual Disciplinary Authority had appointed the Enquiry Officer in respect of the present case. Here in the instant case the allegations levelled against the applicant is violation of the orders of the TDM (Sh.MKGoel) applicant has made slogans against him and as such,





62

he should not have issued the charge sheet, appointed the IO and issued the order of punishment. The facts of the above case being different and distinct to the present case the same has no application.

The Nagamalleswar Rao (Supra) case stands in different footing in which the charge against the employee was that he had obtained the appointment by disclosing incorrect percentage of marks in SSC examination. He has not produced original certificate of marks despite repeated demands. Register maintained by Deptt showing delinquent to have obtained high percentage of marks. Such entry could not have been made but by mistake or fraud. Delinquent was found to have obtained much less marks than last person appointed. In the said context it was held by the Hon'ble Apex Court that the Tribunal cannot examine evidence produced before the IO as if it is Appellate Authority which is not the case in hands and as such, the said decision has no application to the present case.

Similarly, we find that the decision in the case of Manak Lal (supra) relied on by Mr. Mohapatra has no application as the facts and issues involved therein vis-à-vis the present case are totally different and distinct as justifiability of issuance of charge, appointment of IO and PO and imposition of punishment by an authority personally concerned is a point of law and point of law can be raised at any point of time is no more *res integra*, especially when

Alec

being conscious it has been made clear by the Government vide DGP&T Memo No.6/64/64-Disc. Dated 27<sup>th</sup> January, 1965 that 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 adhoc Disciplinary Authority by a Presidential Order under provisions of Rule 12 (2) of CCS (CCA) Rules, 1965. In view of the above, a duty casts upon the original Disciplinary Authority to do so and having not done so even though personally concerned makes his action vulnerable. We find no such case reported in AIR 2005 SC 1128 on the context the same has been relied on by Mr. Mohapatra.

9. Rather we may state that it is not to be forgotten that in a democratic polity, justice in its conceptual eventuality and inherent quintessentiality forms the bedrock of good governance. In a democratic system that is governed by Rule of Law, fairness of action, propriety, responsibility, institutional impeccability and non-biased justice delivery system constitute the pillars on which its survival remains in continuum (Ref: **Chandra Kumar Chopra-Vrs-Union of India & Ors**, 2012 (3) SLJ 230 (SC)) (paragraph 22). It is

*Alex*

64

well settled law that no man should be a judge in his own cause and that justice should not only be done but manifestly and undoubtedly seem to be done.

In the case of **Gulluapalli Ngeswara Rao and Others Vrs Andhra Pradesh State Road Transport Corporation and Another** (1959) Supp.1 SCR 319 it has been held that the principles governing the "doctrine of bias" vis-a-vis judicial Tribunals are well settled and they are (1) **no man should be a judge in his own cause**. Justice should not only be done but manifestly and undoubtedly seem to be done.

In **A.K.Kraipak and others-Vrs-Union of India and others**, AIR 1970 SC 150 the Apex Court was dealing with constitution of a Selection Board. One of the members was to be considered for selection. In that context it was observed by the Apex Court that it was against all canons of justice to make a man judge in his own cause.

In **Ramesh Ahluwalia -Versus-State of Punjab & Ors**, 2012 (3) SLJ 386 (SC) it has also been held by the Apex Court that 'none can be a judge in his own cause. Paragraph 16 of the said decision is relevant which is quoted herein below:-

"16. In the petition before the High Court as well as the appeal before this Court, the appellant has submitted that the entire disciplinary proceedings are vitiated due to the participation of the Principal, who was biased against



the appellant. In our opinion, the order passed by the Disciplinary Committee cannot be sustained on the short ground that Smt. Neera Sharma was a member of the aforesaid Disciplinary Committee. In our opinion, she was clearly disqualified from participating in any deliberations of the Disciplinary Committee as she had appeared as Management Witness No.2. It is well settled principle of law that **no person can be a judge in his own cause.** Having supported the case of the management, it was not appropriate for Smt. Neera Sharma to participate in the proceedings of the Disciplinary Committee. Given the background the allegations made by the appellant at all stages of the enquiry not only against the principle, but also the Manager of the School, it was necessary for her to disassociate from the proceedings, to nullify any plea of apprehended bias. Further, when the appeal was being decided by the Disciplinary Committee with regard to the legality or otherwise of the order passed by the Disciplinary Authority, the decision of the Disciplinary Committee not only had to be fair but it has also to appear to be fair. **This is in conformity with the principle that justice must not only be done but must also appear to be done. Actual and demonstrable fair play must be the hallmark of the proceedings and the decisions of the administrative and quasi judicial Tribunals.** In particular, when the decisions taken by these bodies are likely to cause adverse civil consequences to the person against whom such decisions are taken. For the aforesaid reason, the order dated 18<sup>th</sup>/19<sup>th</sup> December, 2008 passed by the Disciplinary Committee is hereby quashed and set aside."

In the case of **Ranjit Thakur Vrs Union of India and others**, 1989 (1)SLJ 109=(1987) 4 SCC 611 the appellant had sent a written complaint complaining ill treatment at the hands of Respondent No.4 directly to the higher officers as a result of which he was punished with 28 days rigorous imprisonment by the said Respondent. Keeping the said fact in view the Apex Court held that

*Alex*

the participation of the Respondent No.4 in Court Martial rendered the proceeding *coram non-judice*.


10. In view of the above we do not hesitate to hold that issuance of charge sheet, appointment of IO and imposition of punishment by Shri M.K.Goel, TDM being opposed to the doctrine of "no man should be a judge in his own cause" as held by the Hon'ble Apex Court rendered the proceeding *coram non-judice*. The manner the IO prepared the report supplements to reach the conclusion that not only the TDM but also the IO was fully biased against the applicant. It is trite law that if initial action is not in consonance with law subsequent proceedings would not sanctify the same. In such a fact situation the legal maxim *sublato fundamento cadit opus* is applicable, meaning thereby in case a foundation is removed the superstructure falls. This principle of consequential order which is applicable to judicial and quasi-judicial proceedings is equally applicable to administrative orders also (Ref. **Chairman Cum Managing Director, Coal India Limited and Others -Vrs- Ananta Saha and others**, [(2011) 1 SCC (L&S) 750 paras 32 & 33) as the orders of the Appellate Authority, Revisional and Reviewing Authorities are held to be not sustainable.


11. In the result, we quash the charge sheet dated 26.11.1990 under Annexure-A/5, report of the IO dated 24.8.1992

*Alor*

under Annexure-A/8, order of the Disciplinary Authority dated 28.10.1992 under Annexure-A/10, order of the Appellate Authority dated 14.10.1999 under Annexure-A/13, order of the Revisional Authority dated 23.11.2000 under Annexures-A/16 and the order of the Reviewing Authority dated 25.1.2003 under Annexure-A/17. In ordinary course we would have remitted the matter back to the Respondents to deal with the matter in accordance with Rules/Law but taking into consideration the fact that the applicant has retired long since and the matter has been prolonging for one reason or the other and that the applicant is by now 70 years old, we are of the considered view that the matter should not proceed any further and curtain should finally be drawn in this drama. Accordingly we hold that the Applicant is entitled to all consequential and financial benefits retrospectively which should be calculated and paid by the Respondents at any early date preferably within a period of ninety days from the date of receipt of copy of this order.

12. With the aforesaid observation and direction this OA stands allowed to the extent stated above. There shall be no order as to costs.

  
(R.C.MISRA)  
Member (Admn.)

  
(A.K.PATNAIK)  
Member (Judl.)