

(12)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No. 400/1995

DATE OF DECISION : 24.07.2000

Jeewan Khan ... **Petitioner**

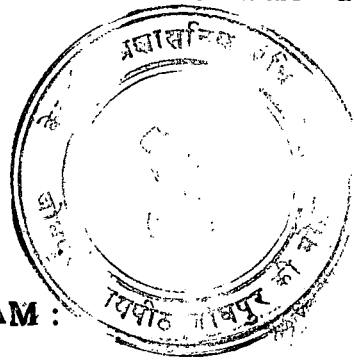
Mr. Vijay Mehta ... **Advocate for the Petitioner (s)**

Versus

Union Of India & Ors. ... **Respondent s**

Mr. Vinit Mathur ... **Advocate for the Respondent (s)**

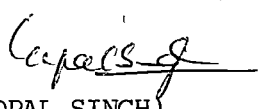
CORAM :




The Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

The Hon'ble Mr. Gopal Singh, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? **NO**
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. Whether it needs to be circulated to other Benches of the Tribunal ? **No.**


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR

Date of order : 24.07.2000

O.A. No. 400/1995

Jeewan Khan son of Shri Faiz Mohd. Khan aged 49 years Asrafi Manzil,
Village Bansil District Nagaur, Post Master, Nagaur (under transfer).

... Applicant.

v e r s u s

1. Union of India through the Secretary to the Government, Ministry of Communication, Department of Posts, New Delhi.
2. Superintendent of Post Offices, Nagaur.
3. Director, Postal Services, Jodhpur.
4. Shri S.R. Sharma, Senior Superintendent of Post Offices, Ajmer.

... Respondents.

Mr. Vijay Mehta, Counsel for the applicant.

Mr. Vineet Mathur, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. Gopal Singh, Administrative Member.



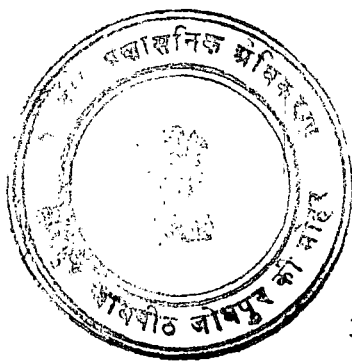
: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

This application is filed being aggrieved by the order dated 18.8.94 (Annexure A/1) passed by the disciplinary authority and also the order dated 16.3.95 (Annexure A/16) passed by the appellate authority.

2. The contention of the applicant is that these two orders are illegal and without jurisdiction for more than one reason. It is his contention, (regarding the jurisdiction of the disciplinary authority, who passed the order Annexure A/1) that he being the material witness is not authorised to function as disciplinary authority. This point he

elaborated stating that according to the charge, there was a telephonic conversation on 10.6.94 at 11.00 a.m. between the applicant and the disciplinary authority alleging favoritism against the disciplinary authority, then the disciplinary authority would be a material witness in support of the charges. If that is so, such disciplinary authority is not authorised to proceed with the enquiry. A reliance was placed on Government of India's Instruction No. 6/64/64- Disc dated 27.1.65, printed below Rule 12 (4) (ii) of Swamy's Compilation of CCS (CCA) Rules. We think it appropriate to extract the said instruction as under:-



"12(4)(ii) : When the competent authority is unable to function as the disciplinary authority :- In 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 the 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 12 (2) of CCS (CCA) Rules, 1965."

3. From the above instruction, it is clear that in case the disciplinary authority is likely to be a material witness, on account of his being personally concerned with 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. In the instant case, the disciplinary authority, himself being a material witness as per the alleged telephonic conversation, should have followed the above instruction. The applicant specifically submitted this very point before the appellate authority, but the appellate authority in the impugned order stated that in contempt matter, the Court itself initiates proceedings and passes orders and the same could be done by the disciplinary authority. This type of approach is totally erroneous. The High Court constituted under Article 214 of the Constitution of India and this Tribunal exercising the powers of the High Court are "Court of record" as specifically provided, by Article 215 of the Constitution of India. Such Court,

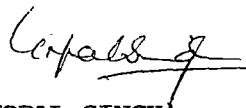
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which is a Court of record, has all the powers "including the power to punish for contempt of itself". In a case of contempt proceedings the Court is both the complainant and judge. Normally, one and the same authority shall not be both the complainant and judge. An exception is created in favour of a Court having power to punish for contempt of itself. It is such Court, which can be both the complainant and judge at the same time, as specifically conferred by the Constitution under law. But on the basis of an analogy of this power of contempt of Court, no other authority in India can claim that it can also become a complainant and judge at the same time. Therefore, the impugned order stating that the disciplinary authority himself being a material witness can conduct an enquiry as the disciplinary authority, is illegal. It is only to avoid such a situation, the Government of India issued the above instructions stating that when the disciplinary authority is unable to function as the disciplinary authority on account of his being personally concerned with the charges or being a material witness, he should refer such case to the Government, for nomination of an ad hoc disciplinary authority by a Presidential Order. Therefore, we are of the considered opinion that the impugned orders cannot be sustained.



4. For the above reasons, we deem it appropriate to quash both the order dated 18.8.94 (Annexure A/1) passed by the disciplinary authority and the order dated 16.3.95 (Annexure A/16) passed by the appellate authority. Accordingly, we pass the order as under:-

5. The application is allowed and the impugned orders dated 18.8.94 and dated 16.3.95 at Annexures A/1 and A/16 passed by the disciplinary authority and appellate authority respectively, are hereby quashed. However, we make it clear that, if the authority so desires at this belated stage, that the disciplinary proceedings are required to be initiated even after five years, it is open to such authorities to follow the instructions, as indicated above. No costs.


(GOPAL SINGH)
Adm. Member


(B.S. RAIKOTE)
Vice Chairman

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H. S. Gyle
V. S. Gyle
R. W. M. M. M. M.
R. C. M.
V. S. Gyle
7/18

Part II and III destroyed
in my presence on 4-11-50
under the supervision of
section officer () as per
order dated 4-11-50.

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Section officer (Record)