IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 480/ 1989

DATE OF DECISION 21.9.1990

K.K.Narayanan Applicant (s)

M/s. M.R Rajendran Nair and P.V Asha Advocate for the Applicant (s)

Versus

Senior Supdt. of Post Offices, Ernakulam and 3 others Respondent (s)

Mr.N.Sugunapalan, SCGSC Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. N.V KRISHNAN, ADMINISTRATIVE MEMBER

&

The Hon'ble Mr. N.DHARMADAN, JUDICIAL 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? Yes
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

HON'BLE SHRI N.DHARMADAN, JUDICIAL MEMBER

The applicant is a Postman. He challenges in this application the disciplinary proceedings which culminated in the punishment of reduction of pay by one stage from Rs.920/- to Rs.900/- in the time scale of Rs.825-15-900-EB-20-1200 for two years with effect from 1.3.88 with a further direction that he will not earn increments during the period of reduction, but it will not have the effect of postponing his future increments.

2. Annexure I memo issued by the Senior Postmaster, Ernakulam discloses the following charges:-

"Article I

That the said Shri K.K Narayanan, Postman, Ernakulam HO entered the cabin of the Senior Postmaster, Ernakulam on 2.4.86 at 1030 hours , caused obstruction to the latter's work from 1030 to 100 hours and using indecerous language threatened him, thereby violating the provisions of Rule 3 (1)(iii) of C.C.S(Conduct) Rules, 1964.

Article II

That the said Shri K.K Narayanan, Postman, Ernakulam H.O. took part in demonstrations inside the post office premises between 1700 and 1730 hours on 17.4.86, 18.4.86 and 23.4.86, causing obstruction to office work and shouted defamatory slongans against the Senior Post Master, thus violating Rule 7(i) of the C.C.S(Conduct)Rules, 1964."

3. The applicant denied the charges. He also raised an objection in the sitting held on 3.11.86, that since PW 1 , N.Sachidanandan is acting as Disciplinary Authority the enquiry is violative of Rule 51 of the P&T Manual Vol.III. But this was overruled and PWs 1 to 8 and DWs 1 to 11 were examined as witnesses and after considering the entire evidence a report dated 8.12.87 was submitted finding the applicant guilty. Agreeing with the finding in the report the Disciplinary Authority by Annexure III imposed the punishment which was corrected by Annexure III A corrigendum. The appeal filed against the same was rejected as per Annexure VI confirming the punishment imposed by the Disciplinary Authority.

4. The points urged by Shri M.R Rajendran Nair, learned counsel for the applicant are:

i) The entire enquiry proceedings were vitiated because the Senior Postmaster acted as the Disciplinary Authority framed the charges, gave evidence as witness, considered the enquiry report, came to the conclusion that a major penalty should be imposed and forwarded the papers to the 1st respondent. Thus it is violative of the principles of natural justice and that 'no man shall act as a judge of his own case '.

ii) No preliminary enquiry was conducted as per Rule 3 of P&T Manual, copies of all documents were not given to the applicant and the findings are based on no evidence.

5. The respondents filed a detailed counter affidavit denying all allegations and produced the enquiry files for our perusal.

6. The principle pressed into service in this case is 'no man shall act as a judge in his own case '. According to the learned counsel, the 3rd respondent, the Disciplinary Authority, acted as a judge in his own case when he has initiated disciplinary proceedings against the applicant and gave evidence as PW1.

7. One Sri N.Sachidanandan was Senior Postmaster at Ernakulam when the alleged act of misconduct was committed. As Disciplinary Authority he initiated the action by framing charges and appointing Sri K.T Cherian as Enquiry Authority . (He was transferred after 13 sittings and Sri Balaganesan was appointed as Enquiry Authority). Being the person in office at the relevant time, he gave evidence as PW1 along with seven other witnesses to prove the act. Eleven witnesses were examined on the side of the applicant. Considering the entire evidence the Enquiry Authority found the applicant guilty and submitted report to Sri S.Rangarajan Potty, Senior Postmaster, Ernakulam as per letter No.8/1A/KKN/87 dated 8.12.87, who forwarded the files to Senior Superintendent of Post Offices, when it was found that it is a case in which major penalty should be imposed. Thus Annexure III order of punishment was imposed by the 1st respondent, the Senior Supdt. of Post Offices, Ernakulam.

8. On these facts the question is whether the applicant's contention is sustainable. Before proceeding further it would be worthwhile to refer to certain Government decisions relevant for decision.

> " 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 charge or being a material witness in support of the charges, the proper course for that authority is to refer such a case to Govt. in the normal manner for nomination of an adhoc disciplinary authority by a Presidential Order under the provisions of Rule 12(2) of C.C.S(CCA) Rules,1965."
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> (D.G.,P&T memo No.6/64/64-Disc, dated the 27th January 1965).
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> " The case regarding adhoc disciplinary authority was taken up with Directorate and it has been clarified by the Directorate in their letter No.15-53/85-Vig.III dated 11/85 that there is no objection to an authority who is a material witness issuing a charge sheet subject to the condition that subsequently, the disciplinary proceedings are finalised by an ad-hoc disciplinary authority appointed by the President." (emphasis added)
>
> (D.O No.INV/13-9/83-84 dated 24.12.85 of APMG(C),D/o the PMG, Kerala Circle)

9. Under Rule 14(2) of the C.C.S(CCA) Rules, 1965, a disciplinary authority may itself enquire into the truth of any imputation. It reads as follows:-

> "(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants(Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

But when such disciplinary authority itself is the complainant or/and witness, he may initiate the proceedings under this rule read with the decisions of PMG subject to the condition that the finalisation of such proceedings are done only by some other competant authority appointed by the President. In the instant case admittedly the finalisation of the proceedings was effected by a different disciplinary authority, Sri Rangarajan Potty, and the consequent punishment was imposed by the Senior Supdt. of Post Offices,Ernakulam. So on the facts and circumstances, there is nothing wrong in having set the

matter in motion by having initiated the disciplinary proceedings in this case by PW1 who was also the complainant. The Karnataka High Court considering a case of disciplinary action in Karnataka Rashtriya Education Society, Bidar vs. E.A.T, Bidar and others, 1985(2) SLR 273, held " ... unless a statutory provision requires that a particular prescribed authority should frame the charges, there is no bar in law in the managing committee of a private educational institution in whom the power of administration is vested to entrust the task of framing as well as that of holding enquiry to a person or committee appointed and authorised by it and to pass final orders on consideration of the enquiry report".

10. The next question is whether the disciplinary proceedings initiated in this case by Sri Sachidanandan, who was both the principal witness and complainant, are vitiated in any manner merely on account of the fact that the original disciplinary authority happened to be the complainant as well as the main witness.

11. It is a fundamental rule in the administration of justice that a person cannot be judge in a cause wherein he is interested; 'nemo sibi esse judex vel suis jus dicere debit'. This rule is observed in practice and of the application of which instances not unfrequently occur, that, where a judge is interested in the result of a cause he cannot sit in judgment upon it. "This is founded upon justice and good sense; and affords a safe and certain guide for the administration of law". The reason behind this rule is that "justice should not only be done, but manifestly and undoubtedly be seen to be done". So any shadow of bias on the part of the disciplinary

authority is a good reason for quashing quasi-judicial decisions. A judge should not only be impartial but also be shown to have taken the decision uninfluenced by any other extraneous considerations. Mere circumstances may give rise to personal bias in the adjudicator for or against one party in a dispute. So the test to be applied, according to De Smith's "Judicial Review of Administrative Page 236
Action", 4th Edn.,/" is based on reasonable apprehensions of a reasonable man fully appraised of the facts. It is no doubt desirable that all judges, like Ceasar's wife, should be above suspicion". (Leeson vs. G.M.C (1889) 43 Ch D 366). In Metropolitan Co. vs. Lannon(1968,SLR 815) the Court took the view that 'bias' is an attitude of mind leading to predisposition towards the issue'. So the law looks 'to suspicion' rather than to 'likelihood' of bias arising from the factual situation of a given case. In Manek Lal vs. Prem Chand (AIR 1957 SC 425) the Supreme Court has taken the view that the test is not whether in fact bias has affected the judgment, but whether litigant could reasonably apprehend that bias attributable might have actually operated against him in the final decision. The same view was taken in A.K Kraipak vs. India (AIR 1970 SC 150). The position seems to boil down to the "reasonable suspicion" test. Therefore proof of actual bias on the part of the adjudicator is not necessary; what is really necessary is that, in the opinion of an ordinary reasonable man there is real likelihood or every possibility of bias on the facts and circumstances of the case.

12. In the instant case the applicant has no allegation of bias against the enquiry authority and

the disciplinary authority, Shri Ranganathan Potty, who received the enquiry report and forwarded the papers for imposing major penalty to the Senior Supdt. of Post Offices, Ernakulam. There is also no allegation of bias against the Senior Supdt. of Post Offices who actually considered the evidence in detail and imposed the penalty in this case. So there is no proof or even allegation of bias against the adjudicators in this case. The only allegation is against PW1, N.Sachidanandan, who happened to initiate the disciplinary proceedings because of his official position and gave evidence along with other seven witnesses in the formal manner. He has not persued the matter further nor did he personally involve in the matter or take any further specific interest in the case other than giving oral statement. Merely because the alleged action was aimed at PW1 and he was also the victim in this case, it cannot be presumed without any further evidence or other circumstance that PW1 has personally involved in the matter for imposing the punishment. Even if this argument is accepted, on the facts and circumstances of this case, PW1 can never be considered as the adjudicating authority in this case.

13. "To be a witness", in the opinion of Sinha C.J. in State of Bombay vs. Kathi Kalu(AIR 1961 SC 1808) "is not equivalent to 'furnishing evidence' in its widest significance; that is to say, as including not merely making of oral or written statements, but also production of documents or giving materials which may be relevant at a trial to determine the guilt or innocence of the accused". "To be a witness means imparting knowledge in respect of relevant facts by an oral statement or a statement in writing, made or given in a Court or otherwise". Even though the applicant has a case that Sri Sachidanadan was the most important witness in this case, the report of the enquiry authority establishes that the admitted facts complied with the evidence

of other witnesses, are sufficient to establish the guilt of the applicant. He has no case that but for his deposition as PW1, there would not have been any punishment. In the enquiry seven other witnesses were examined on the side of the Govt. and eleven witnesses on the side of the applicant. In the statement given by PW1 he had denied the allegation that the disciplinary action was initiated by him against the applicant with a view to wreak his vengeance on account of the complaint given to the higher authority and that he did not know anything about it. He had also stated that he wanted to avoid from initiating the proceedings by writing a letter to SSP to appoint ad-hoc disciplinary authority for this enquiry. But the letter No. INV/13/9/83-84 dated 24.12.85clarified that there is no objection to an authority who is a witness in issuing charge sheet provided finalisation is done by some other authority. Accordingly he issued the charge sheet and appointed enquiry authority as desired by the higher authorities. But since he was relieved from the post on transfer on 29.4.86, he did not do anything in this case for taking a final decision and imposition of punishment against the applicant. The finding in the enquiry report is relevant. It is as follows:-

> "11.3. It is an admitted fact that S/Shri P.G Mukundan, V.K.Thankachan and V.N Parameswaran Nair and the CGS went into the cabin of Senior Postmaster, Ernakulam at about 10.30 hrs on 2.4.86 without his permission and prior notice."

If the fact of entry of the applicant to the cabin is admitted notwithstanding the evidence of PW1, there is preponderance of probability and other available materials to come to the conclusion that the subsequent act on the part of the applicant followed his entry to the cabin. However on the facts and circumstances of this case applying the reasonable man's test, it cannot be found that PW1 had acted as judge in his own cause as alleged by the applicant. Moreover the applicant is estopped from raising such a plea in this application because he had not challenged the decision of the enquiry authority to overrule the applicant's above objection in the sitting held on 6.2.87 relying on

the D.O letter No INV/13/9/83-84 dated 24.12.85.

14. The learned counsel for the applicant relied on a decision in Chandra Deo Singh vs. Union of India and others, 1989(9) ATC 133. That was a case in which enquiry was initiated by an authority incompetant under law. So the Tribunal held the disciplinary proceedings against the applicant therein is bad in law. The decision reported in Arjun Chaubey vs. Union of India and others (AIR 1984 SC 1356) is also distinguishable on the facts. These cases have no application to the facts in this case. The Senior Central Government Standing Counsel, on the other hand placed considerable reliance on the decision of the Bangalore Bench of C.A.T in M.S.Manjunath vs. The Supdt. of Post Offices and others (1989(2) CAT 10). In that case the disciplinary authority had acted as a witness and hence the contention was raised that he was 'personally concerned' with the charges framed against the delinquent. But the Tribunal found after considering the evidence that "the evidence on record and the pleadings by both sides before us, do not disclose, that Sri Srinivasamurthy was 'personally concerned' in this case, so as to taint the disciplinary proceedings with any illegality as alleged". Same is the position in the instant case as well. Hence there is no merit in the first ground urged by the learned counsel.

15. There is no substance in the next ground also. The failure to conduct a preliminary enquiry is stated to be a procedural flaw. The preliminary enquiry is meant only for satisfying the disciplinary authority as to whether there is any prima facie case for proceeding with the disciplinary enquiry in a given case. This fact finding enquiry results in the collection of some evidentiary materials intended to be relied on in the regular departmental enquiry. The Supreme Court held in R.C.Sharma vs. Union of India (AIR 1976 SC 2037) that "if an enquiry is held, at a particular stage, possibility

to determine whether regular proceedings should be drawn upon started, it does not debar a departmental trial." ... ...Prejudice to the Government servant resulting from an alleged violation of a rule must be proved". No rule has been brought to our notice making it obligatory for the respondents to conduct a preliminary enquiry. The applicant also has no case that the failure of the preliminary enquiry prejudicially affected him. There is also no violation of Rule 3 of the P&T Manual Vol.III because no report was called for after conducting a preliminary enquiry in this case. On the other hand the disciplinary authority was fully satisfied of the existence of a prima facie case against the applicant even without any enquiry because the alleged act was done in his presence. So absence of any preliminary enquiry in this case is not illegal and prejudicial to the applicant.

16. The contention that all the documents relevant for his defence were not supplied to the applicant has been dealt with in detail in para 7.1 of the enquiry report. Out of the five documents required for production by the applicant by his letter dated 18.11.86, two have been produced and the applicant was informed that since there was no preliminary enquiry , two of the documents were not available. The remaining one was inspected by the applicant on 1.12.86. After the close of the enquiry the applicant filed a representation on 7.2.87 for requesting four more documents. However these were also called for , but not produced. The applicant has not explained in this application how these documents are relevant for shaping up his defence and that these documents were not available for inspection

on 1.12.86. This bench, in which one of us (Hon'ble Shri N.Dharmadan) was party held in OA 172/87 that mere request for production of documents without explaining their relevancy and the requirements for shaping up the defence, will not make it obligatory on the part of the disciplinary authority to call for the same and make available to the delinquent officer especially when the officer was afforded sufficient opportunity of inspection of documents. In the instant case the applicant has not stated that in spite of the fact that the relevancy of the documents was appraised to the enquiry officer, the copies of them were not given and thereby he was prejudiced. The findings recorded in this case are supported by evidence available on record and there is no merit in the second ground also.

17. To sum up, therefore, this application cannot be allowed. It is devoid of any merit and the same is accordingly dismissed. However, in the circumstances of the case, no order is made as to costs.

21.9.90

(N.DHARMADAN)
JUDICIAL MEMBER

HON'BLE SHRI N. V. KRISHNAN, ADMINISTRATIVE MEMBER

18. I have perused the judgment of my learned brother. While agreeing with the conclusion reached by him for a different reason, I find it necessary to add a few paragraphs on one issue involved in this case.

19. The question is whether Shri N. Sachidanandan, the Senior Post Master, Ernakulam in whose room the incident mentioned in Article-I of the charge on 2.4.1986 took place could have initiated any proceedings at all against the applicant.

..

20 It is evident from Article-I that Shri Sachidanandan the Senior Post Master, was a person directly involved in the incident as it is alleged that the applicant and certain others went to his room caused obstruction to his work and used uncolloquial language threatening him. I am of the view that in this background Shri Sachidanandan is not an ordinary disinterested witness to an indicent which took place before him for, he is the victim of the incident and therefore he stands in the position of a complainant and would be the principal witness in the case. In fact, if he ~~did~~ had not deposed that such an incident took place in his room, Article-I of the charge ~~can~~ would never be held to be proved against the applicant, whatever may be the statements of the other persons.

21 The guidelines given in DGP&T memorandum dated 27.1.1965 reproduced in paragraph-8 of the ~~main~~ judgment should have been followed by him and he should have referred the case to the higher authority for appointment of the disciplinary authority. Therefore, in my view Shri Sachidanandan, Sr.Post Master should not have initiated these proceedings.

22 The learned counsel for the applicant vehemently submitted that by framing charge-sheet in the aforesaid circumstances Shri Sachidanandan, the Senior Postmaster has flagrantly violated the aforesaid instructions and therefore, the proceedings are vitiated and invalid ab-initio. For this purpose, he relies on the judgment of the Supreme Court in AIR 1984 SC-1356 Arjun Chaubey Vs. Union of India.

We have perused that judgment and are of the view that in the circumstances of this case that judgment is of no avail to the applicant. For, that was a case where the appellant therein was asked to offer explanation in regard to 12 charges of indicipline, out of which as many as 6 charges referred to mis-conduct in relation to third respondent, who was the disciplinary authority and who dismissed his from service. The Court observed as under:

> "5 The letter dated May 22, 1982 which contains accusations of gross misconduct against the appellant enumerates 12 charges, out of which charges Nos 2 to 7 and 11 refer to the appellant's misconduct in relation to respondent 3. For example, the second charge alleges that the appellant entered the office of respondent 3 and challenged him in an offensive and derogatory language. Charge No.3 says that the appellant was in the habit of forcing himself on respondent 3 two or three times every day with petty complaints. Charge No.3 alleges that the appellant stormed into the office of respondent 3 and shouted at him using foul words. Charge 5,6 and 7 contain similar allegations. The allegation contained in Charge No.11 is to the effect that behaving as a leader of goondas, the appellant hired the services of other goondas and created security problems for respondent 3 and the members of his family. It is obvious that if an inquiry were to be held into the charges framed against the appellant, the principal Witness for the Department would have been respondent 3 himself as the main accuser and the target of appellant's misconduct. It is surprising in this context that the explanation dated June 9, 1982 which was furnished by the appellant to the letter of accusation dated May 22, 1982 was considered on its merits by respondent 3 himself. Thereby, the accuser became the Judge. The letter written to the appellant by respondent 3 on June 10, 1982 says:
>
> " I have carefully gone through your defence explanation dated 9.6.1982 to the charges given in this office letter of even No. dated 22.5.1982 and the same is not convincing at all. Before taking any action under D&A.R, I would like to offer you another chance for giving your explanations to the specific charges conveyed to you vide this office letter dated 22.5.1982.
>
> Please submit your defence explanation within three days as to why a deterrent disciplinary action should not be taken against you".
>
> The appellant submitted his ~~fourth~~ further explanation, which also was considered by respondent 3 himself. The order of dismissal dated June 15, 1982 which

> was issued by respondent 3 recites that he was fully satisfied that it was not reasonably practicable to hold an inquiry into the appellant's conduct as provided by the Rules and that he had come to the conclusion that the appellant was not fit to be retained in service and had, therefore, to be dismissed. Evidently, respondent 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 3 violated a fundamental principle of natural justice. The main thrust of the charges against the appellant related to his conduct qua respondent 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 unture. No person can be a judge in his own cause and no witness can certify that his own testimoney is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. The order of dismissal passed against the appellant stands vitiated for the simple reason that the issue as to who, between the appellant and respondent 3, was speaking the truth was decided by respondent himself".

23 Unfortunately for the applicants, these are not the facts in the present case though, such a ground has been taken in Ground 'C' wherein it is stated as follows:

> " The 3rd respondent did not stop with the issue of chargesheet. He after giving evidence as a witness considered the enquiry report and come to the conclusion that in his opinion penalties specified in clauses (v) to (ix) of Rule II should be imposed and therefore forwarded the records to the 1st respondent, under Rule 14(21A). Here again the 3rd respondent acted as a judge in his own cause".

24 The respondents have denied that Shri Sachidananadan the Senior Postmaster took the above steps in relation to the applicant. It is contended that only the charge-sheet was issued by Shri Sachidanandan. The rest of the proceedings were conducted by other authorities. The inquiry report was not considered by Shri Sachidanandan, but by his successor in office, Shri S Rangarajan Potty. It was he who forwarded the inquiry report to the fourth

respondent within his opinion, that a major penalty should be imposed in this case which was beyond his powers.

25 The respondents, on the other hand, contend that there is no irregularity in initiation of the disciplinary proceedings by Shri Sachidanandan, Senior Postmaster in such circumstances. They rely on a judgment of the Bangalore Bench of the Central Administrative Tribunal NS Manjunath Vs. Supdt. of Post Offices (1989(2) SLJ (CAT) 10). I have seen that judgment and am of the view that it does not lend any support to this contention because the facts therein were totally different. The applicant had contended that Shri Sreenivasamurthy; SPO Tumkur Division could not have acted as the Disciplinary Authority, since he was a material prosecution witness. This has been disposed of by the Bench in paras 46 to 48 of their judgment in this case. The Bench held that the evidence on record and the pleadings did not disclose that Shri Sreenivasamurthy, Disciplinary Authority was " personally interested" in the case so as to taint disciplinary proceedings with any illegality as alleged. It also noted that the irregularity and misconduct of the applicant was first detected by Shri Seshappa ASPO, In-charge Tumkur Sub Division, the PW I, and it was his report which was the foundation for the initiation of the Departmental inquiry against the applicant. In the present case, there can be no manner of doubt that Shri Sachidanandan, being the victim of the alleged happenings on the basis

of which Article-I of the charge has been framed, should not have initiated the proceedings ~~case~~ case in the light of the Departmental instructions dated 27.1.65. In fact, Swamy's Compilation of CCS (CC&A) Rules (18th Edition) and corrected upto 18th August, 89, indicates at page 34 on the authority of Ministry of Home Affairs File No.7/29/61-Estt.A that even a preliminary inquiry under Rule 14(2) should not be held by the prescribed disciplinary authority if he is or will be the complainant and or witness in the subsequent disciplinary proceedings.

26. The respondents also contend that the initiation of proceedings by Shri Sachidanandan is valid in the light of the second instruction of the DG, P&T dated 11/85 (sic) referred to in para 8 supra. I am of the view that this instruction is at variance with the DG, P&T's instruction dated 27.1.65 and the spirit of the ~~xxxxxxxx~~ decision of MHA referred to in the previous para regarding Rule 14(2) and hence it cannot validate the proceedings. As this letter is not impugned, further comment is unnecessary.

27. However, despite this irregularity, I am of the view that the applicant can neither impugn the proceedings nor can the proceedings be invalidated on that ground. For, I am of the view that the applicant was not unaware of the fact that a disciplinary authority who is personally involved and who is a material witness should not initiate proceedings but leave it

to an ad hoc disciplinary authority. As seen from the Inquiry Report, the applicant questioned the propriety of the issue of charge sheet by Shri Sachidanandan, Senior Postmaster at the 3rd sitting held on 18.11.86. This objection was, however, over-ruled by the inquiry authority. The applicant, however, did not take up this issue before the Appellate Authority or approach this Tribunal at that time for quashing the chargesheet prepared by an interested party. It appears that he did not even declare that his participation in the proceedings thereafter was under protest, reserving to himself his right to question this proceedings on the above ground. One can only surmise that the applicant did not pursue his objection before the proper forum to its logical conclusion as Shri Sachidanandan had been transferred on 29.4.86, i.e., the day after he framed the Annexure-I Charge-memorandum and was thus out of his way. By this conduct, the applicant had waived his objection to these proceedings and, therefore, he is estopped now from questioning those proceedings on that ground.

28. Reliance is placed on the Supreme Court's judgment in Maniklal Vs. Prem Chand AIR 1957 SC-425 for this view. No doubt, the facts of that case are somewhat different. The applicant therein willingly participated in the proceedings of the Bar Council

Tribunal held to enquire into charges of professional misconduct against him. The Tribunal included as its Member-Chairman Shri Chhaugani, as person about whom it was contended by the appellant that he was disqualified from acting as a Member of the Tribunal because he had appeared against the appellant in proceedings under Section 145 Cr. PC, from which the alleged complaint of professional misconduct arose. While the Supreme Court held that such a person ought not to have been appointed as Chairman of the Tribunal and that this was a serious infirmity, yet, the applicant was not given the relief he claimed, because firstly, he had willingly participated in that proceeding, taking a chance that he might win and secondly, that he could not be permitted to take that objection for the first time in the High Court. The conduct of the applicant here is also somewhat similar, except that he feebly objected and gave up his effort.

29. For the rest, I fully agree with the views expressed by my learned brother and accordingly, I agree that this application is devoid of any merit and deserves to be dismissed.

21.9.90

(N.V. Krishnan)
Administrative Member

For the reasons mentioned in our judgments above, the application is dismissed.

There will be no order as to costs.

21.9.90.

(N. Dharmadan)
Judicial Member

21.9.90

(N.V. Krishnan)
Administrative Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 480/89 199

DATE OF DECISION 3.5.91

KK Narayanan — Applicant (s)

M/s MR Rajendran Nair & ~~MissPV Asha~~ — Advocate for the Applicant (s)

Versus

Senior Superintendent of Post Offices, Ernakulam and others. — Respondent (s)

Mr NN Sugunapalan, SCGSC — Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. NV Krishnan, Administrative Member

The Hon'ble Mr. N Dharmadan, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not? Y
3. Whether their Lordships wish to see the fair copy of the Judgement? Y
4. To be circulated to all Benches of the Tribunal? Y

JUDGEMENT

Shri NV Krishnan, A.M

The applicant who is a Postman in the Ernakulam Head Post Office is aggrieved by the punishment meted out to him in disciplinary proceedings initiated by Respondent-3. The proceedings related to two charges is as follows.

" Article-I

That the said Shri KK Narayanan, Postman Ernakulam H.O, entered the cabin of the Senior Postmaster, Ernakulam on 2.4.86 at 1030 hours, caused obstruction to the latters work from 1030 to 1100 hrs. and using indecerous language threatened him, thereby violating the provisions of Rule 3 (1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Shri KK Narayanan, Postman, Ernakulam H.O, took part in demonstrations inside the post office premises between 1700 and 1730 hours on 17.4.86, 18.4.86 and 23.4.86, causing obstruction to office work and shouted defamatory slogans against the Senior Postmaster,

..2

thus violating Rule 7(i) of the CCS(Conduct) Rules, 1964".

2 The Enquiry Officer found that the first charge was completely proved and the second charge was partly proved. The respondent-3 felt that a major penalty has to be imposed and therefore, he referred the proceedings to the Respondent-1, the Senior Superintendent of Post Offices who passed the impugned Annexure-III order dated 29.2.1988 imposing a punishment of reduction by one stage from Rs 920/- to Rs 900/- for a period of two years. The penalty imposed was clarified by the order dated 22.3.88 (Annexure-III(A)). An appeal preferred by him to the Respondent-2, the Director of Postal Services was dismissed by the Annexure VI order dated 27.9.88. Being aggrieved by these orders, the applicant has filed this application seeking that the charge-sheet, Penalty and Appellate orders be quashed.

3 The applicant had also impugned the charge-sheet on certain preliminary grounds relating to the incompetency of Respondent-3 to initiate these proceedings. These objections have been over-ruled by us in our order dated 21.9.90 by which we had also dismissed the application. By our review order dated 5.12.90 we have restored the application to file after maintaining our order dismissing his objections to the Annexure-I charge-sheet. In the circumstances, the Annexure-I charge-sheet cannot be assailed.

4 It is contended that there is no evidence to support the conclusion of Respondent-1 who has found him guilty. He alleges that the impugned Annexure-III order

does not examine the evidence in the case in detail even though the Disciplinary Authority is purported to do so. It is further alleged that though the Disciplinary Authority granted the applicant an opportunity by the Annexure IV Memorandum dated 22.2.88 to represent against the penalty provisionally proposed to be imposed, by sending him a copy of the report, and gave him a time of 10 days to make a representation, yet, without even waiting for the expiry of 10 days, she passed the impugned Annexure-III order on 29.2.88. The applicant was intimated later on by the Annexure IV-A letter dated the 7th March, 1988 that the Annexure IV Memorandum was cancelled as it was not necessary.

5 It is also alleged that the Appellate Authority has not considered the various points raised by him and has rejected the appeal by the Annexure VI order, without applying his mind.

6 The respondents have filed a reply denying that the applicant is entitled to any relief. It is contended that there is sufficient evidence to prove the guilt of the applicant and he has been given full opportunities to defend himself properly.

7 We have heard the learned counsel of both the parties and also perused the records. In proceedings under Article 226 against the punishment imposed on Government employees in disciplinary proceedings, the Tribunal has a limited jurisdiction. It is not the duty of the Tribunal to reappraise the evidents recorded in the enquiry, as this function is necessarily to be discharged by the Disciplinary and Appellate Authorities. The Tribunal is only, therefore, concerned whether

there is any serious infirmity in the orders passed by the subordinate authorities, particularly in regard to failure to adhere to the principles of natural justice and to comply with the mandatory provisions of the rules governing disciplinary proceedings.

8 If the Disciplinary Authority had merely endorsed the findings of the Enquiry Officer, there would not have been any impropriety. However, in the present case, we notice that the Disciplinary Authority, instead of following such procedure, deliberately stated that though she agreed with the findings of the Enquiry Authority, she would also go into the evidence in detail. The manner in which the evidence recorded has been examined in the Annexure-III orders leaves much to be desired. Suffice it to say that the Disciplinary Authority has failed in the task which she had set before herself.

9 The Appellate Order is equally perfunctory. The Appellate Authority does not enjoy the freedom to merely endorse the Disciplinary Authority's findings. It is bound to dispose of the appeal in the light of Rule-27 of the CCA Rules and necessarily, it has to deal with the major issues raised in the appeal by the delinquent employee, however, briefly it might be, the Appellate order at Annexure-IV does not measure up to this standard.

10 We are deliberately making these observations with a view to ensuring that this type of mistake is not repeated again, as we have decided to remand this

case for further hearing on another ground.

11 The learned counsel for the applicant submitted though a that copy of the Inquiry Report was ~~xxx~~ given to the given an opportunity applicant, he was not to make representations ~~before~~ to & before that Authority the Disciplinary Authority, concluded that he was guilty. The applicant has such a right and the non-observance of this Rule of natural justice will vitiate the proceedings as held by the Supreme Court (AIR 1991-SC 471.

12 We have heard the learned counsel on both the parties on this issue. We are satisfied that the disciplinary proceedings suffer from this major infirmity and therefore, the impugned Annexure-III, Annexure -III A and Annexure-VI orders are liable to be set aside and the proceedings ~~xxxxxx~~ remanded for further necessary action.

13 For the aforesaid reasons, we quash the Annexure-III, Annexure-III A and Annexure-VI orders. Now that the applicant has already received a copy of the Enquiry Officer's Report, he is directed to submit his representation, if any, to the Respondent-1 within a period of 15 days from the date of receipt of a copy of this judgment and the Respondent-1 is directed to consider such representation, if any, made in the manner as directed above, and pass such orders in accordance with law as may be advised, keeping in view the observations that we have made in this regard.

14 As the orders imposing penalty have been set aside the applicant is entitled to payment of salary for the

past period as if the impugned Annexure-III and Annexure-III A orders had not been passed. The amount due to the applicant should be quantified and paid to her within a period of three months from the date of receipt of a copy of this judgment.

15 There will be no order as to costs.

3.5.91

(N Dharmadan)
Judicial Member

3/5/91

(NV Krishnan)
Administrative Member

R.A. No. 127/90

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Placed below is a Review Petition filed by Mr. K.K. Narayanan (Applicant/ ~~Respondents~~ in OA/~~TA~~ No. 480/89) seeking a review of the order dated 21.9.90 passed by this Tribunal in the above noted case.

As per Rule 17(ii) and (iii), a review petition shall ordinarily be heard by the same Bench which passed the Order and unless ordered otherwise by the Bench concerned, a review petition shall be disposed of by circulation where the Bench may either dismiss the petition or direct notice to the issued to the opposite party.

The Review petition is therefore, submitted for orders of the Bench consisting of Hon'ble Shri N.V. Krishnan & Shri N. Dharmadan

which pronounced the Order sought to be reviewed.

[illegible] 23/11

PS to Hon'ble Member (J-II)

[illegible] 23/11/90

[illegible] We have heard the parties [illegible] we have [illegible] stated at this [illegible] disposal stage [illegible] [illegible] in review. Hear [illegible] file a [illegible] Bench after getting [illegible] before Bench from Hon'ble Member (A) [illegible] 26/11/90

[illegible] 26/11

Hon'ble Member (A)

[illegible]

May be posted for 5/12/90

[illegible] 27/11/90

DSO (J-II) 27/11

5.12.90
(28)

NVK & ND RANo.127/90 in
OA No.480/89

Mr MR Rajendran Nair-for applicant
Mr NN Sugunapalan for the respondents by proxy.

In this Review Application the prayer of the applicant is to set aside the judgment dated 21.9.90 and post the case for hearing because due to want of time many of the grounds raised in this application could not be urged by the learned counsel at the time of final hearing. In fact, according to the learned counsel for the applicant he confined his arguments on the main points under the above circumstances i.e., the incompentency of the Senior Postmaster in initiating the disciplinary proceeding when he himself was a witness in this case.

2 We heard the arguments of both the counsel and taken this case for orders on 23.8.90. On 21.9.90 when the judgment was pronounced in the open court, the learned counsel for the applicant submitted that he wanted to argue the case further on other grounds relating to the merits.

3 To-day when this RP came up for hearing, after hearing the counsel on both sides we are satisfied that the applicant should be given further opportunity to argue the case on merits after maintaining our view and final decision on the preliminary issue which was already argued and decided on 21.9.90 because no ground is made out to review our conclusion with regard to the issue regarding the competence of the officer who has initiated the disciplinary proceedings.

4 Accordingly, while upholding our decision in the preliminary issue (~~fresh~~ preliminary and first ground urged by the learned counsel), we vacate our decision in respect of other grounds and post the case for further arguments on merits.

5 List the case on 16.1.1991 for further hearing only to enable the applicant to argue on merits maintaining our decision on the preliminary issue as indicated above. The original application is restored in its old number to the extent ordered above.

6 Post the case for hearing on 16.1.1991.

MOE

5 6.12.90