

CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

O.A. No. 1 of 1995.

Thursday this the 15th day of February, 1996.

CORAM:

HON'BLE MR. JUSTICE CHETTUR SANKARAN NAIR, VICE CHAIRMAN
HON'BLE MR. P.V. VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

T.B. Mustafa,
Thadathikudiyil House,
Vadattupara P.O.,
Edamalayar (Via).

.. Applicant

(By Advocate Shri D.V. Radhakrishnan (represented))

Vs.

1. Postmaster General,
Central Region, Kochi-682 016.
2. Superintendent of Post Offices,
Idukki Division, Thodupuzha.
3. Assistant Superintendent of
Post Offices,
Thodupuzha Sub Division,
Thodupuzha.
4. Kuruville Varghese,
Assistant Superintendent of
Post Offices and Inquiring
Authority, Idukki Division,
Thodupuzha.
5. Union of India, represented by
its Secretary, Ministry of
Communications, New Delhi.

.. Respondents

(By Advocate Shri TPM Ibrahim Khan, SCGSC (represented))

The application having been heard on the 15th February, 1996, the Tribunal on the same day delivered the following:

O R D E R

CHETTUR SANKARAN NAIR(J), VICE CHAIRMAN

Applicant— who has successfully run the second round of litigation, was an Extra Departmental Delivery Agent. He was placed under suspension (Put off duty) on 10.7.86, on two charges. One was found against him. The charge which

was found, is that he entered the Post Office on 23.6.86 while on leave, tampered with the date seal and affixed it on election notices, making it appear that the notices for the election to a Co-operative Society, were posted on a prior date.

2. After challenging the order of the Disciplinary and Appellate Authorities unsuccessfully, he came to this Tribunal with O.A. 382/89 and the Tribunal remanded the matter for fresh consideration, by the Disciplinary Authority. At that stage, the Enquiry Officer surfaced in another garb, as the Disciplinary Authority, and found applicant guilty. Unsuccessful appeals and review followed, and applicant is before us again.

3. Learned counsel for applicant submitted that the Disciplinary Authority Shri Jacob Mamen, had earlier functioned as the Enquiry Officer, and that his functioning as Disciplinary Authority is bad as constructive bias vitiates his order. Mr. Bahuleyan appearing for respondents pointed out that under Rule 14(2) of the Central Civil Services (Classification, Control & Appeal) Rules, the Disciplinary Authority himself may act as Inquiring Authority, and that the erstwhile Inquiring Authority acting as Disciplinary Authority will be saved by Rule 14(2). The Disciplinary Authority who has the power to enter a finding may hold an enquiry himself. But, the Inquiring Authority who has already formed an opinion, cannot in a different context act as a Disciplinary Authority, and endorse his

view, as an Inquiring Authority. The view of the Inquiring Authority is only in the nature of a recommendation. But, the view of the Disciplinary Authority has force in law. At any rate, Rule 6D of the P&T Manual - Volume III, which was brought to our notice by Shri Bahuleyan himself, and very fairly too, shows that the authority holding a preliminary enquiry will not be debarred from acting as a Disciplinary Authority, provided he has not expressed any opinion in the preliminary enquiry. This is indication enough, to show that if the authority had expressed any opinion, he cannot act as the Disciplinary Authority. Bias in the nature, pointed out by the Supreme Court in Baidyanath Mahapatra Vs. State of Orissa and another (1989 4 SCC 664) is attributable to Jacob Mamen, who played a dual role. This vitiates the proceedings. On that short ground the proceedings have to be quashed and we do so.

4. It is a pity that something so obvious did not strike the Disciplinary Authority, the Appellate Authority, and the Revisional Authority. Instead of appreciating the correct position, the Appellate Authority laboured himself to an untenable conclusion, namely, that in denovo proceedings same Inquiring Authority or Disciplinary Authority can function as Inquiring Authority/Disciplinary Authority. He has not stated any good reason to sustain his conclusion. In an obvious attempt to reject the defence of applicant,

the authorities below have proved to be his friends, helping him to demolish their order. This is also a sad reflection on the perceptions of Statutory Authorities in matters of vital importance. Quasi judicial authorities must inform themselves of the position in law, and should not act with a certain zeal as Disciplinary Authority. For the reason aforesaid, and for that reason alone, a simple enquiry enters the second decade of its life. The financial implications of this folly will be considerable. We say no more at this stage.

5. Original Application is allowed with costs, which we fix at Rs.500/- (Rupees five hundred.)

Thursday this the 15th day of February, 1996.



P.V. VENKATAKRISHNAN
ADMINISTRATIVE MEMBER



CHETTUR SANKARAN NAIR (J)
VICE CHAIRMAN