

Central Administrative Tribunal
Mumbai Bench: Mumbai

OA No.698/2000

Mumbai this the 15th day of June, 2001.

Hon'ble Mr. Shanker Raju, Member (J)

Smt. Surekha Govindrao Vispute
Wife of Sh. Govindrao Vispute,
R/o Vispute Nivas, Green Park Colony,
Behind Bytco-College, Post-Nashik Road,
District Nashik-422101.

-Applicant

(By Advocate Shri S.P. Kulkarni)

-Versus-

1. Union of India through the
Supdt. Postal Stores Depot,
Dept. of Posts, Ministry of
Communications, Govt. of India,
at Post Nashik-422 006.
2. The Director of Postal Services,
Aurangabad Region,
Office of the Postmaster General,
Aurangabad Region, Dept. of Posts,
Ministry of Communications,
Govt. of India at Post Aurangabad-431 002.
3. Postmaster General,
Aurangabad Region,
Dept. of Posts, Ministry of Communications,
Govt. of India at P.O. Aurangabad-431002.

-Respondents

O R D E R

The applicant who has been working as Assistant Manager during 1997 has assailed an order passed by the disciplinary authority whereby a minor penalty of withholding of next increment for a period of six months without cumulative effect has been imposed upon her by an order dated 16.3.2000. The applicant has also assailed an order dated 30.6.2000 whereby on appeal the punishment was modified to that of holding of one increment in the pay scale of Rs.5000-150-8000 for a period of three months. The applicant was holding the post of Assistant

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Manager to which the Supdt. is the immediate and direct controlling authority and was assisted by the applicant. ON procurement of single sided utility blue carbon paper by issue of tenders, opening the tenders, grant of contract by accepting lowest tender the Post Master General of the Regional Officer vide his letter dated 31.1.2000 calling the explanation of the applicant (PSD) made certain queries regarding non-matching of tender with the specimen given with the Tender Notice. It was found that the applicant being on leave on the date of the opening of sealed cover notice and was not concerned and the checking was to be done on the date of the opening of the tender. The applicant tendered her explanation and denied the charge to check the actual supply of Carbon paper with specimen given with the Tender Offer. The grievance of the applicant is that as the Supdt. of PSD was involved being the head of the Committee and who had opened the tender is involved in the alleged episode of tender but acted as a disciplinary authority clearly shows his bias and placing reliance on a Constitutional Bench decision of the Apex Court in State of Haryana v. B.R.Chandra. AIR 1986 (L&I) 1417, it is contended that it is a fundamental principle that no man can be a judge of its own cause and if there is a likelihood of bias in accordance with the principles of natural justice the disciplinary authority should refrain from acting as a disciplinary authority. The applicant has further contended that the case of no evidence and as the applicant was not on duty on the date when the tender was opened, she cannot be alleged any misconduct and held guilty of the same. The applicant has drawn my attention to a letter written to the Supdt. on 14.3.2000 whereby the discrepancy in the matter has been highlighted and pointed out to the Supdt.,

i.e., the disciplinary authroity but has further contended that subsequently under force she has to change her statement on 14.3.200. The lapse was allegedly admitted under force and dictate of the Supdt. It is contended that the Supdt., the disciplinary authroity was made aware of the lapse but to save his own skin he has punished the applicant.

On the other hand the respondents rebutted the contentions of the applicant that is is basic principle of law that in the event a malafide or bias is alleged against a person he is to be made a necessary party by name. As the applicant ^has alleged prejudice ^{towards} ~~to~~ ^hher on the part of the disciplinary authority ^hshe should have been impleaded as a necessary party. As the ^hrespondent contended that this question of bias and involvement of the disciplinary authority in the tender has never been brought to the notice of the competent higher authority after receipt of the chargesheet. The objection as to bias should have been taken at the threshold and at a belated state the same would be an after thought. The ^hrespondent has further contended that in the event the same has not been taken before the departmental authorities the same would not be legally tenable and would not establish any prejudice caused to the applicant. To substantiate his plea the applicant has taken resort to the decision of the Apex Court in the case of State Bank of Patiala v. S.K. Sharma, JT 1996 (3) SC 722.

I have carefully considered the rival contentions of the parties and perused the material on record. As regards the plea of the applicant regarding bias and malafide of the disciplinary authority and his being involved in the episode is concerned, I

find that the allegations levelled by the applicant against the disciplinary authority alleging bias and malafide cannot be entertained unless the disciplinary authority has been impleaded as a necessary party in person. The applicant is alleging a general malafide on the part of the disciplinary authority and as such any failure to implead the same as a necessary party would not be legally tenable. The concerned person against whom malafides are alleged is to be afforded an opportunity to rebut the same.

As regards the contention of the applicant that Supdt. being a disciplinary authority has no competence to issue a chargesheet and punish the applicant, as he was himself involved in the episode of tender and opening the same on the date when the applicant was on leave is concerned, I find that the applicant has not taken this objection of bias against the disciplinary authority despite the occasion to do the same at the threshold immediately after the receipt of the chargesheet. The applicant also has not taken this plea in reply to the minor penalty chargesheet and has also not assailed the same in his appellate memorandum. Irregularity of procedure of either mandatory or directory provisions the applicant has to establish her case by taking objection at the threshold to the higher authorities concerned. Having failed to take that object at the appropriate stage the same would be an after thought and shall not be considered, as no prejudice has been caused to the applicant. In this view of mine, I am fortified by the ratio of the Apex Court in S.K. Sharma's case (supra).

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As regards the claim of the applicant regarding no evidence is concerned, the Court is precluded in a judicial review to re-appraise the evidence and come to a conclusion different from that arrived at by the departmental authorities. However, I find that the applicant has been punished with a minor penalty and that too was modified by the appellate authority. There is sufficient material on record to sustain the allegations levelled against her.

In the result and having regard to the reasons recorded, I find no merit in the OA. The same is dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI**

R.P. No.48/2001
in
OA-698/2000

Mumbai this the 19th day of September, 2001.

Shrimati S.G. Vispute -Applicant

vs.

Union of India & Ors. - Respondents

ORDER (BY CIRCULATION)

By way of this review petition the applicant seeks to review of order dated 15.6.2001. I have perused the grounds taken by the applicant in the RP. I do not find any error apparent on the face of the record or discovery of new material which was not available to the applicant even after exercise of due diligence. By this petition the applicant is trying to re-argue the matter, which is not permissible as held by the Apex court in K.Ajit Babu & ors. v. Union of India & Ors., JT 1997 (7) SC 24. The R.P. is, therefore, rejected, by circulation.

S. Rejmán

(SHANKER RAJU)
MEMBER(J)