CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
* * * * * * * *

Commercial Complex (BDA)
Indiranagar
Bangalore - 560 038

Dated : 8 DEC 1988

APPLICATION NO. 640 / 87(F)

W.P. NO. /

Applicant(s) Respondent(s)

Shri N.S. Manjunath V/s The Superintendent of Post Offices, Tumkur & 3 Ors

To

1. Shri N.S. Manjunath
C/o Dr M.S. Nagaraja,
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009

2. Dr M.S. Nagaraja
Advocate
35 (Above Hotel Swagath)
Ist Main, Gandhinagar
Bangalore - 560 009

3. The Superintendent of Post Offices
Tumkur Division
Tumkur - 572 102

4. The Director of Postal Services (S.K.)
Office of the Post Master General
Karnataka Circle
Bangalore - 560 001

5. The Post Master General
Karnataka Circle
Bangalore - 560 001

6. The Member (Personnel)
Postal Services Board
Dak Tar Bhavan
New Delhi - 110 001

7. Shri M.S. Padmarajaiah
Central Govt. Stng Counsel
High Court Building
Bangalore - 560 001

Subject : SENDING COPIES OF ORDER PASSED BY THE BENCH

Please find enclosed herewith the copy of ORDER/~~STAY/INTERIM ORDER~~ passed by this Tribunal in the above said application(s) on 22-11-88.

Issued
K. Nair
9.12.88

Encl : As above

SECTION OFFICER
~~DEPUTY REGISTRAR~~
(JUDICIAL)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BANGALORE BENCH: BANGALORE

Dated the 22nd day of November, 1 9 8 8.

Present

THE HON'BLE MR. JUSTICE K.S.PUTTASWAMY VICE CHAIRMAN

THE HON'BLE MR. L.H.A. REGO .. MEMBER(A).

APPLICATION NO.640 OF 1987.

N.S.Manjunath
S/o N.Subba Rao,
Ex-Postal Assistant(LSG)
Head Post Office,
Tumkur. .. Applicant

(By Dr. M.S.Nagaraja,Adv.for the applicant)

-vs.-

1. The Superintendent of
Post Offices,
Tumkur Division,
Tumkur.

2. Director of Postal Services(SK)
Karnataka Circle, Bangalore.

3. Post Master General,
Karnataka Circle,
Bangalore.

4. The Member(Personnel)
Postal Services Board,
NEW DELHI. .. Respondents.

(By Shri M.S.Padmarajaiah, Sr.Standing Counsel for Central Government for respondents)

Application coming on for hearing this day,

Hon'ble Mr.L.H.A.Rego, Member(A), made the following:

Order

ORDER

The applicant assails herein, the orders passed on 17-7-1986(Ann.G), by Respondent(R) 2, as the Disciplinary Authority('DA-R2' for short), removing him from service, with immediate effect, affirmed by R3, as the Appellate Authority('AA' for short) on 7-10-1986 (Ann.H, which seems to have been mistyped as Ann.'N' in the application) and upheld by R3, on 9-4-1987(Ann.J), in his capacity as the Revision Authority (RA, for short), and prays that these orders be set aside, granting him consequential benefit.

2. The following salient features delineate the vista of the case, in its desired perspective. The applicant entered service in the Postal Department as Clerk on 15-8-1955 and was promoted to the Lower Selection Grade in 1979.

3. While he was working as Sub-Postmaster (SPM, for short), Kyathasandra, between 29-7-1983 to 14-11-1983, a departmental enquiry (DE) was initiated against him and a charge-sheet was served on him on 10-1-1984, under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 (1965 Rules, for short), by R-1, in respect of the following 3 articles of charges, supported

by

by a statement of imputations of misconduct:

"Article I

That the said Sri N.S.Manjunath while functioning as Sub-Postmaster, Kyathasandra during the period from 29-7-1983 to 14-11-1983:

i) furnished liabilities in respect of Money Orders in the S.O.Daily accounts which do not agree with the liability as noted in the S.O. Account and MO register to retain excess cash in his Office cash and Stamp balances on several dates (detailed in the annexure II of this memo) during the period from August, 1983 to 14-10-1983.

ii) retained cash in his office cash and stamp balances in excess of the authorised maximum cash balance of his office without justified liabilities on several dates (detailed in the annexure II of the memo) during the period from September,1983 to 19-10-1983.

Thus, Sri N.S.Manjunath violated the requirement of rule 677(B) read with explanation under it and note below Rule 676 of the P & T Manual, Volume VI, Part-III.

Article II

That the said Sri N.S.Manjunath while functioning as Sub-Postmaster, Kyathasandra SO during the period from 29-7-1983 to 14-11-1983, failed to write the sub office account of Kyathasandra SO for the period from 17-9-1983 to 19-10-1983 and thus violated the requirement of rule 658 A and C read with rule 673 of the P&T Manual, Vol.VI Part III.

Article III

That the said Sri N.S.Manjunath while functioningin the aforesaid capacity during the aforesaid period kept a sum of Rs.5289-98 (Rupees Five thousand two hundred eighty nine/ 98 paise only) short in the cash and stamp balance

balance of Kyathasandra SO on 20-10-1983 and thereby violated the requirement of rule 103 of P & T FHB Volume I read with rule 658(A) of the P&T Manual, Vol.VI, Part III."

4. The above charge-sheet was served on 10-1-1984, on the applicant, by Shri H.V.Sreenivasamurthy, Superintendent of Post Offices, Tumkur Division, Tumkur, in his role as DA. In the list of 5 Prosecution Witnesses (PWs), furnished at Ann.IV to the charge-sheet, he had shown his name, at S.No.(5), therein.

5. In his Letter dated 18-1-1984, addressed to the Vigilance Officer, in the Office of R-3, Shri Sreenivasamurthy had suggested, that an experienced officer either from the Circle Office or from any neighbouring Division, be appointed as the Inquiry Officer ('IO' for short), in the DE, to be held against the applicant, as the only trained official available in his Division, who could be appointed as I.O., happened to be a witness in this case. Thereon, R-3 directed on 1-2-1984, that he may appoint one Shri K.N.Murthy Rao, Assistant Superintendent of Post Offices(Comp) ['ASPO' for short] in the office of R-3 as I.O. Pursuant thereto, R-1 appointed on 23-2-1984, the said Shri K.N.Murthy Rao as the I.O. Also on the same date, he appointed one Shri S.Shankaranarayanarao, ASPO, Tumkur Division, as the Presenting Officer ('PO' for short).

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6. The applicant did not submit any written statement of defence, in reply to the charge sheet served on him, on 10-1-1984.

7. This case seems to have had a chequered history since then, the relevant details of which are as follows. Shri K.N. Murthy Rao, the I.O., on completion of the DE, submitted his report to R-1 on 26-5-1984, holding, that all the 3 articles of charges, stood proved against the applicant.

8. The applicant submitted a written "brief" to the I.O. on 20-5-1984, as a supplement to his written statement of defence, stating inter alia, that Shri Srinivasamurthy, SPO, Tumkur, in his capacity as DA, appointed the I.O. as well as the P.O. of his own choice and that he was examined as a PW on 21-4-1984, in the course of the oral enquiry, having been listed as such, in Ann.IV to the charge-sheet. He alleged therein, that the statutary provisions of Rule 14(17) of the 1965 Rules, were given a go-by, in the course of the DE. Besides, he complained, that the DA had acted as a witness against him. Thereby, he pointed out, that the principles of natural justice were violated and he was denied reasonable opportunity, to substantiate his defence.

9. Shri Sreenivasamurthy, in his capacity as DA, is seen to have taken cognisance of the above,

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by stating in his Order dated 12/13-6-1984(Ann.B), that he was not accepting the Inquiry Report dated 26-5-1984, as the applicant was denied the opportunity under Rule 14 ofthe 1965 Rules, to examine himself and therefore under the powers vested in him under Rule 15(1) ibid, he was remitting the case back to the I.O. to hold enquiry further, from the stage of allowing the applicant, to examine himself and to submit his Inquiry Report thereafter.

10. Pursuant to the above order dated 12/13-6-1984 the I.O. submitted his report to the DA, on 7-7-1984, enumerating the objections raised by the applicant (which among other things, were against both the I.O. and the DA) when the DE was resumed and sought further instructions from the DA, in regard to continuance of the DE.

11. In the meanwhile, on a reference dated 8/13-8-1984, received from R-3 in this regard, R-1 in his role as DA, is seen to have sent the Inquiry Report to him along with the pertinent documents cited therein, soliciting instructions, as to the further course of action, to be taken in the matter.

12. Thereon, R-2 by her letter dated 2-4-1985(Ann. B-1) informed the DA, that compliance with the provisions of Rule 14(17) of the 1965 Rules, was mandatory

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and failure to do so, would result in denial of reasonable opportunity to the applicant, to defend his case. She therefore remitted the case to the I.O., with a direction, to conduct the DE de novo, from the stage of compliance, with the provisions of Rule 14(17) ibid and to submit the Inquiry Report afresh thereafter, expeditiously.

13. In compliance with the above direction of R-2, the I.O. submitted a report to the former, stating inter alia, that the applicant did not participate in the DE, proposed to be held de novo as above on 11-4-1985, on the plea, that it was not in accordance with the prescribed procedure and that in these circumstances, he had no other alternative as I.O., than to treat the proceedings as closed and conclude the DE. A copy of the Daily Order Sheet No.7 dated 11-4-1985, was sent to R-2, along with this report, for perusal and further necessary action.

14. Thereon, R-2 is seen to have assumed the role of DA and issued a show cause notice to the applicant, on 17-6-1985(Ann.C). For clarity of reference, we have designated her as 'DA-R2'. In the said show-cause notice, she furnished the applicant with a copy of the Inquiry Report dated 26-5-1984, along with the de novo proceedings referred to above. She stated therein, that on careful consideration, she had accepted the said Inquiry Report and was in agreement

with

with the findings therein. Through the above show cause notice, she provided an opportunity to the applicant, to represent against the said Inquiry Report, if he so desired, within the period stipulated therein.

15. The applicant submitted a reply thereto, to DA-R2, on 18-9-1985, alleging the following defects in the DE and therefore praying, that the disciplinary action proposed against him as a result, be dropped.

(i) That Shri H.V.Sreenivasamurthy could not act as DA, as he had made certain allegations against him, in his Memo dated 10-1-1984 and had cited himself as a prosecution witness on behalf of the DA.

(ii) That he nominated persons of his choice, as I.O. and P.O. and thus arrogated to himself, the role of both a Judge, as well as Prosecutor, which was impermissible in law.

(iii) That both the DA and the I.O. ignored the provisions of Rule 14(17) of the 1965 Rules, and thereby, denied him, his legitimate right of defence.

(iv) That the above defects were pointed out to the I.O. in his written 'brief' dated 20-5-1984 but no heed was given to the same.

(v)

(v) That the DA, did not accept the Inquiry Report dated 26-5-1984 of the I.O. on account of non-compliance with the provisions of Rule 14(17) ibid and had remitted the case back to the I.O. for further inquiry.

(vi) That there was no provision in the 1965 Rules, in regard to para 14(v) supra and therefore, the directions given by the DA, for a further inquiry, was ultra vires of the 1965 Rules.

(vii) That on conclusion of the DE, by the I.O., when he submitted his report to the DA, on 26-5-1984, he had closed his mind, on the issues referred to him for inquiry and consequently, conduct of any further inquiry by him and submission of a report thereafter, would not constitute a judicious function but would only be an empty formality.

(viii) R2 had thereon, on 2-4-1985, ordered a de novo inquiry, for which there was no provision in the 1965 Rules.

(ix) The earlier DA had not accepted the Inquiry Report dated 26-5-1984, while the subsequent DA-R2, had accepted the same, which was violative of the principles of natural justice.

(x) The I.O. had not functioned independently and judiciously, but was tutored by the DA and other superior authorities.

16. Thereon,

16. Thereon, R-2 by her Memo dated 6-11-1985 (Ann.D), is seen to have cancelled the show cause notice served on the applicant by her, on 17-6-1985, and remitted the case back again to the I.O. to continue to its logical end, the de novo inquiry, ordered by her earlier Letter dated 2-4-1985.

17. On the same date viz., 6-11-1985(Ann.E), she informed the I.O. that he had not submitted a fresh Inquiry Report, as directed by her on 2-4-1985 and therefore instructed him, to comply with the provisions of Rule 14 of the 1965 Rules, meticulously, and in particular, Rule 14(17) ibid, so as to provide an opportunity to the applicant, to present his case and thereafter, submit his "updated"(!) Inquiry Report, within the period specified. She reiterated in this communication, that in this background, the show cause notice issued by her on 17-6-1985, to the applicant, was being treated as cancelled separately.

18. In compliance with the above, the I.O. submitted a terse report to DA-R2, on 26-11-1985, stating that the applicant declined to examine himself as a witness, as also to answer the questions put to him by the former, for reasons best known to him, when the DE was commenced de novo again on 26-11-1985, as scheduled and therefore he had concluded the inquiry apparently ex parte. He submitted

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the formal Inquiry Report, on 1-1-1986, to DA-R2, along with the pertinent documents, holding that all the 3 articles of charges, stood proved against the applicant.

19. Thereupon, DA-R2 served a show cause notice on 25-2-1986(Ann.F), on the applicant, narrating the background to holding the DE, de novo, and furnishing a copy of the fresh Inquiry Report dated1-1-1986 and called for his representation if any, to the show cause notice, within the period specified.

20. The applicant submitted a reply to the above show cause notice on 22-4-1986, to DA-R2, stating, that the reply sent by him with reference to her earlier show cause notice, dated 17-6-1985, as also the submissions made by him to the I.O. on 26-11-1985, be treated as a part and parcel of his reply, to the second show cause notice served on him, by DA-R2, on 22-4-1986. The applicant more or less reiterated the points urged by him earlier and pleaded, that the disciplinary proceedings initiated against him be dropped.

21. Thereon, by her Memo dated 17-7-1986 (Ann.G), DA-R2 imposed on the applicant, the punishment of removal from service, with immediate effect.

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22. The applicant preferred an appeal thereon, on 10-8-1986, to R3, who by his Memo dated 7-10-1986(Ann.H), affirmed as AA, the punishment imposed by the DA, but taking into account the long length of service rendered by the applicant, sanctioned on humanitarian grounds, Compassionate Allowance to him, only to the extent of 2/3rd of his pension deeming that he had retired from service. The following excerpt of the above Memo of the AA, is relevant to the questions urged in this application:

> "... The long period that has taken for the finalisation of the disciplinary case against the appellant clearly proves the fact that the disciplinary authority was particular about giving more than reasonable opportunity to the appellant at every stage to disprove the charges levelled against him. Instead of trying to argue his case on the substantive issues the appellant has been concerned more about the supposed technical irregularities committed and wants to get the advantage on the basis of presumed technical irregularities.
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> 5. The appellant further pleaded that he had put in more than 31 years of service and that the orders removing him from service were issued when he was hospitalised. In the end, he made a prayer that he should be allowed to complete the remaining 4½ years of service for superannuation. From the record of service of the appellant it is seen that he had come up for adverse notice on a number of occasions, particularly in regard to the integrity and it cannot be said any means that the appellant had been put in sincere

service

service on prima facie. There is no reason for modifying the punishment given by the Director of Postal Services, South Karnataka Region.

6. However, keeping in view that the appellant had put in more than 30 years of service and also the fact that he would not be able to get any other job at this stage, I, B.Parabrahmam, Postmaster General, Karnataka Circle, Bangalore-560 001 hereby ORDER that compassionate allowance only in respect of pension not exceeding 2/3rd of the pension had he been retired from service be granted to the appellant purely on humanitarian grounds. Compassionate allowance may not be given for the gratuity."

23. The applicant pursued the matter by way of a revision petition to R-4, who rejected the same, by his Order dated 9-4-1987(Ann.J), under Rule 29 of the 1985 Rules.

24. Aggrieved, the applicant has come before us, through his present application.

25. The respondents have filed their reply, resisting the application.

26. Opening his attack, Mr.M.S.Nagaraja, learned Counsel for the applicant, submitted that the respondents had not made out a cast-iron case against his client, as there were many chinks in the evidence adduced against him in the DE. Besides, he submitted, the DE was beset with many an infirmity, which had resulted in travesty of justice to the applicant.

27.He

27. He alleged, that the I.O. Shri K.N. Murthy Rao, was biased against his client, on account of which, he had requested the competent authority, to appoint another officer in his place, but this was not given heed to. Consequently, he submitted, that the inquiry conducted by Shri Murthy Rao against his client, was fatal to him and therefore, illegal.

28. In order to fortify this contention, he relied on the ruling of the Supreme Court in AIR 1976 S.C. 2701 (S.PARTHASARTHY v. STATE OF ANDHRA PRADESH), that the inquiry conducted by a biased officer vitiates the order passed therein and that the order of punishment, on the basis of such inquiry was illegal, invalid and inoperative.

29. He also sought to derive support from the observation of the Supreme Court, in AIR 1986 S.C. 2045 (R.S.NAYAK -vs.- A.R. ANTULAY & ANOTHER), that a Judge who is biased against a litigant, cannot render justice to him.

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30. Shri M.S.Padmarajaiah, learned Central Government Senior Standing Counsel appearing for the respondents, countered the allegation of bias, on the score, that at no time, the applicant had made a complaint to the competent authority, against the I.O., by way of bias petition, in the course of the DE and therefore, the question of bias now urged by Dr.Nagaraja, was clearly an afterthought.

31. We have examined the submission of either sides, on the question of alleged bias of the I.O. against the applicant. Dr. Nagaraja could not adduce any supporting evidence, to show, that the I.O. bore animus towards his client or was prejudicial towards him, so as to render the disciplinary proceedings, detrimental to his interest. We notice, that the DA (Sri Sreenivasa Murthy), had not on his own, appointed Sri K.M.Murthy Rao, as I.O. in this case, but on the contrary, by his letter dated 18-1-1984, addressed to the Vigilance Officer, in the office of R-3, had requested, that an experienced officer, either from the Circle Office or from any of the neighbouring Postal - Divisions, be appointed as the I.O., as the only trained official who was available in his Division for this purpose, could not perform this role being a "material witness" in this case. Thereon, R-3 had advised DA, on 1-2-1984, that he may appoint

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one Sri K.M.Murthy Rao, ASPO (Comp), from his office, as I.O. The DA appointed Sri K.M. Murthy Rao as I.O. accordingly, on the instructions of R-3. It is thus apparent, that the I.O. was from a Postal Division, other than in which, the applicant was serving and was not appointed by the DA on his own, but on the advice of R-3. There is thus no proof whatsoever to show, that the I.O. had either "personal" or "official" bias, against the applicant.

32. Even if "official" bias is imputed to the I.O. merely because he happened to be subordinate to the DA, it would not ipso facto, lead to presumption of bias and vitiate the disciplinary proceedings, as laid down in SLR 1966 Delhi, 196 (BHAGAT RAM v. UNION OF INDIA).

33. Likewise, in AIR 1967 Allahabad 384 (RAM NARESH v. STATE OF UP), it was held, that the mere fact, that the status of the I.O. was inferior to that of the DA, would not constitute "official" bias and thereby, render the disciplinary proceedings illegal.

34. We are in respectful agreement with the above decisions of the High Courts of Judicature, Delhi and Allahabad. In the instant case, the applicant was not directly subordinate to the I.O.

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as he was from a Postal Division, other than where, the applicant was serving at the relevant time.

35. In the light of the above facts and reasoning, the contention of bias, against the I.O., urged by Dr.Nagaraja, holds no water and the two rulings invoked by him in the above cases, do not come to his aid. We therefore reject this contention of Dr. Nagaraja.

36. The next ground of attack by Dr.Nagaraja was, that Sri Sreenivasamurthy, SPO, Tumkur Division, could not have acted as DE, since he was a material prosecution-witness and was cited as such, as P.W.5 in Ann.IV to the charge-sheet. In this connection, he invited our attention to Rules 12(1) and (2) of the 1965 Rules, which read as under:

> "12(1) The President may impose any of the penalties specified in Rule 11 on any Government servant.
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> (2) Without prejudice to the provisions of sub-rule(1), but subject to the provisions of sub-rule(4), any of the penalties specified in Rule 11 may be imposed on —
>
> (a) a member of a Central Civil Service other than the General Central Service, by the appointing authority or the authority specified in the schedule in this behalf or by any other authority empowered in this behalf by a general or special order of the President;
>
> (b) a

(b) a person appointed to a Central Civil Post included in the General Central Service, by the authority specified in this behalf by a general or special order of the President or, where no such order has been made, by the appointing authority or the authority specified in the Schedule in this behalf."

37. He then referred to the instructions issued by the Director General, Posts and Telegraphs in his Memo dated 27-1-1965, in regard to the appointment of an ad hoc DA, by a Presidential Order, under the provisions of Rule 12(2) ibid, where the competent authority, was disabled from functioning as DA. These instructions are reproduced below:

"(ii) When the competent authority is unable to function as the disciplinary authority.— 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 ad hoc disciplinary authority by a Presidential Order under the provisions of Rule 12(2) of C.C.S.(C.C.A.)Rules, 1965."

38. In the above context, Dr.Nagaraja sedulously argued, that as Sri Sreenivasamurthy was "personally concerned" with the charges framed

against

against his client, he was a "material witness" in respect of all the charges framed against the applicant, as was evident from the fact, that he was cited as P.W.5 in Ann.IV, to the charge-sheet, and therefore, there was a serious impediment to his role as D.A. The right course in these circumstances, for the competent authority, he urged, was to refer the matter to Government for nomination of an ad hoc DA, by a Presidential Order, under the provisions of Rule 12(2) ibid. This not having been done, Dr.Nagaraja asserted, that the disciplinary proceedings held against his client, were vitiated and therefore illegal. In this connection, he referred to the dicta of the Supreme Court in AIR 1986 SC 180(OLGA TELLIS -vs.- BOMBAY MUNICIPAL CORPORATION & ORS.) that appearance of injustice, was as good as denial of justice and that justice should not only be done, but also be seen to be done.

39. Relying on the decision of the Supreme Court in AIR 1958 S.C.86 (STATE OF UTTAR PRADESH vs. MOHAMMAD NOOH), Dr.Nagaraja submitted, that in that case, the Deputy Superintendent of Police, who had conducted the Departmental Enquiry, against a Police Constable, had himself given testimony in that case and that the Supreme Court had ruled, that this was grievous violation of natural justice.

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The Supreme Court further observed, that the act of the Deputy Superintendent of Police in having his own testimony recorded in the case, indubitably evidenced a state of mind which clearly disclosed, considerable bias against the constable, which was against judicial propriety and fair play.

40. Dr.Nagaraja also relied on the decision of the Supreme Court in AIR 1984 S.C. 1356 (ARJUN CHAUBEY vs. UNION OF INDIA AND OTHERS), where it observed, that the principles of natural justice were violated in that case, where an employee was dismissed by his superior, on charge of mis-conduct in relation to him, after considering himself, the explanation tendered by the employee and therefore the order passed in that enquiry, was illegal.

41. Countering the above argument of Dr.Nagaraja, Shri Padmarajaiah stressed, that the aforesaid Memo dated 27-1-1985 from the Director General of Posts and Telegraph, was at best, a guideline and could not nullify the statutory effect of Rule 12(2) ibid. Besides, he asserted, the said Rule would apply to circumstances, where only one official was aveilable to act as DA and not otherwise.

42.Sri

42. Sri Padmarajaiah refuted the contention of Dr.Nagaraja, that Shri Sreenivasamurthy was a "material witness" in this case and therefore, disabled from acting as DA in that case. He explained, that it was the ASPO in charge of Kyathasandra Sub-Post Office, who had actually investigated into the matter, particularly that relating to substantial shortage of cash and stamp balance on 20-10-1983, in the said Sub-Post Office. Shri Sreenivasamurthy had visited the Sub-Post Office at Kyathasandra, only thereafter and verified the facts. In these circumstances, Sri Padmarajaiah stressed, that by no means could it be inferred, that Sri Sreenivasamurthy, who acted as DA initially in this case, was a "material witness", to the charges framed against the applicant and therefore prejudiced the case of the applicant in the DE. At best, he said, he was only a "formal witness" and merely discharged his legitimate function, as supervising authority in this case. Besides, he submitted, that Sri Sreenivasamurthy was not "personally concerned" with the charges framed against the applicant, but these charges were framed on the basis of the report of the ASPO I/c of Tumkur Postal Sub-Division, cited as PW-1 in the case.

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43. The moot question therefore, Sri Padmarajaiah submitted, was as to who actually was the "material witness" in this episode. According to him, Sri Seshappa(PW-1), ASPO I/c, Tumkur Sub-Division, who had first detected the shortage of cash and other irregularities in Kyathasandra Sub-Post Office and carried out the investigation, was the principal "material witness". This was also evident from the fact, he argued, that a decision could have been arrived at in the DE in question, without solely relying on the evidence of P.W.5 i.e., Sri Sreenivasamurthy. The other "material witnesses" he said, were PWs 2 and 3, who were Postal Assistants in Kyathasandra Sub-Post Office. Thus, Sri Sreenivasamurthy not being a "material witness", there was no legal bar on him, Sri Padmarajaiah maintained, to issue a charge-sheet against the applicant and act as DA.

44. Nevertheless, he argued, that, infirmity if any, in this regard, vanished, when R-2 herself took over the role of Disciplinary Authority, when certain other defects ~~were~~ in the DE, came to her notice, on account of which, she remitted the case to the I.O. on 2-4-1985(Ann.B-1), for de novo enquiry, from the stage of compliance, as required under the provisions of Rule 14(1) of the 1965 Rules.

45.We

45. Dr.Nagaraja endeavoured to counter the above contention of Shri Padmarajaiah, relying on the dicta of the Supreme Court in AIR 1976 S.C. 1899 (R.MISRA vs. UNION OF INDIA), that an order which was once void cannot be validated.

46. We have carefully examined the rival contentions on the question of Sri Sreenivasamurthy, the initial DA, being a "material witness" in this case and its concomitant effect, on the legality of the disciplinary proceedings. The evidence on record and the pleadings by both sides before us, do not disclose, that Sri Sreenivasamurthy was "personally interested" in this case, so as to taint the disciplinary proceedings with any illegality as alleged.

47. The facts reveal, that the irregularity and mis-conduct on the part of the applicant which assume particular gravity, on account of malversation of public funds, was first detected by Sri K.Seshappa, ASPO I/c, Tumkur Sub-Division, PW-1 in this case, and that it was his report, which was the foundation for initiation of the DE, against the applicant.

48. As to the reliance placed by Dr.Nagaraja, on the instructions issued by the Director General,

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Posts and Telegraphs, New Delhi, in his Memo dated 27-1-1965 (vide para 37 above) for appointment of an ad hoc DA, on the premise, that Shri Sreenivasamurthy, who had acted as DA initially, was disabled, to perform this role, being involved as a "material witness" in this case, the recent decision in (1988)4 SCC /J.R.RAGHUPATHY & ORS. vs. STATE OF ANDHRA - PRADESH & ORS/, is apposite, which sets the controversy at rest. The Supreme Court, categorically observed therein, that the guidelines issued by the State Government, in regard to formation of Revenue Mandals and location of their headquarters, had no statutory force and were merely in the nature of executive instructions, for the guidance of Collectors and they could not override the provisions of the Andhra Pradesh Districts(Formation) Act, 1974.

49. It is thus clear, that where statutory rules cover the field, administrative instructions cannot vary or transcend them. The rebuttal of Dr.Nagaraja's contention by Shri Padmarajaiah on this score, is in keeping with the dicta of the Supreme Court in the above case, (where in fact the guidelines were issued at a higher level i.e., by the State Government as compared to those issued by the Director General, Posts and Telegraphs, New Delhi in the case before us), and we therefore uphold the same.

50.Dr.

50.Dr.Nageraja next contended,that R2 having directed the I.O., by her Letter dated 2-4-1985 (Ann.B-1) to hold the DE de novo, she should have ensured,that the disciplinery proceedings held until then,were all annulled and that the DE was initiated wholly ab initio,as if the earlier proceedings did not exist. But, this was not done, he complained, but the DE was continued mid-stream,as a hybrid proceeding, which detracted from coherence and cogency and thus resulted in serious injustice to his client. He also stressed,that R-2 should have issued the order of appointment of the I.O. and DA anew(after she took over the role as DA-R2),annulling the earlier orders of appointment of I.O. passed by Shri Sreenivasamurthy as the initial DA, but this was not done. He also urged,that the P.O. too,should have been likewise changed. Disciplinary proceedings carried out in this manner, he contended, were unfair and illegal and therefore, he urged that it would be travesty of justice,to hold his client guilty,on the basis of these illegal proceedings.

51. Shri Padmarajaiah countered the above pleading on the score,that R-2 had explicitly directed the I.O. by her aforesaid Letter dated 2-4-1985 (Ann.B-1),to continue the DE from the stage the applicant was denied the opportunity to substantiate his

his defence, in accordance with the provisions of Rule 14(17) of the 1965 Rules, which read thus:

> "Rule 14(17). The evidence on behalf of the Government servant shall then be produced. The Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the Inquiring Authority according to the provisions applicable to the witnesses for the disciplinary authority".

52. Shri Padmarajaiah averred, that the I.O. gave this opportunity to the applicant, to vindicate his innocence, but he failed to avail of the same, by adopting a recusant attitude, on account of which, the I.O. had no other alternative, than to conclude the DE, ex parte. There was nothing illegal on the part of the I.O., he emphasised, in continuing the DE from the stage of vitiation, as directed by R-2 and there was no requirement in law for R-2, to cancel the initial appointment of Shri K.N.Murthy Rao as I.O. and issue a fresh order of appointment of I.O. and to ~~unduly~~ invalidate that part of the disciplinary proceedings, wherein there was no infirmity.

53. We have given due thought to the pleadings on the above question, by both sides. The following

rulings

rulings seem appropriate in this regard:

54. In AIR 1962 Assam 17 (K.C.SHARMA vs. STATE OF ASSAM), the High Court observed that the DA who is not the I.O., while considering the report of the latter, may for the reasons to be recorded in writing, ~~may~~ remit the case to the I.O. for further inquiry. This is precisely what DA-R2 did in this case, by her Letter dated 2-4-1985(Ann.B-1).

55. The dicta of the Court in AIR 1963 Manipur, 28(L.I. SINGH v. L.G.SINGH) lends support to this view, when it observed, that such further inquiry may be ordered, where the DA is of the opinion, that there has been some error or irregularity in the course of the DE or the inquiry report suffers from the lacuna of not probing adequately into certain aspects.

56. We deferentially concur with the dicta in the above two cases, which clearly bear on the case before us, as DA-R2 precisely complied with the requirement, according to the above dicta, by her Letter dated 2-4-1985(Ann.B-1).

57. The Supreme Court in AIR 1971 SC 2213/K.R. DEB v. COLLECTOR/ ruled, that the DA may ask the I.O. to record further evidence, if some serious

defect

defect had crept into the DE or some important witnesses were not examined or for some other reason. This decision of the Supreme Court fortifies the action taken by DA-R2, in her aforesaid Letter dated 2-4-1985, to initiate the DE, de novo, from the stage of its vitiation. We therefore find no merit in the contention of Dr.Nagaraja, that the DE ought to have been held de novo, right from the very beginning, by nullifying the earlier disciplinary proceedings, in toto. The contention of Dr.Nagaraja, that both the I.O. and P.O. should have been changed by R-2, while directing initiation of the DE, de novo, has also no merit in this context, apart from the fact, that there was no evidence to show, that they nurtured bias against the applicant. We have earlier dwelt at length, on the question of alleged bias (para 35 above.) urged by Dr.Nagaraja against the I.O.

58. Dr.Nagaraja also strenuously argued, that once the I.O. had concluded the DE and submitted his inquiry report, his role as I.O. ended and virtually he became functus officio and therefore, DA-R2 could not have directed him to enquire further into the matter. He also alleged, that the DE was held de novo twice, to rectify the defects, which he said

said, was contrary to the provisions of Rule 15 of the 1965 Rules. The respondents thereby, had played a fraud on the rules, he submitted. We find this argument, tortuous and inane, in the context of what we have explained in the foregoing, in the light of the three rulings cited in support (paras 54 to 57 above).

59. Dr. Nagaraja next assayed, to highlight the other infirmities and defects, in regard to the procedure of conducting the DE. He alleged, that the I.O. acted both as a Judge as well as a Prosecutor, in conducting the DE, by putting leading questions to his client. The facts speak for themselves-res ipsa loquitur, he asserted. In particular, he referred to Questions 3 to 11 put to him, by the I.O. on 21-4-1984, which he said, were revealing, as to the dual role played by him as Judge and Prosecutor, which was violative of the statutory rules and therefore, rendered the disciplinary proceedings illegal. In order to buttress this contention, he relied on the ruling of the High Court of Judicature, Karnataka, in LJR (1987) 9 REPORTS(KAR) [C.NAGARAJA BHAT v. CANARA BANK & ORS.]. The learned Judges remarked in that case, that the manner in which the I.O. conducted the DE, by cross-examining defence witnesses

and

and putting leading questions to PWs, established, that the I.O. was biased, as he acted both as prosecutor and judge, in recording evidence and founding his conclusion on such evidence, which they said, vitiated the DE.

60. We have examined the relevant proceedings referred to by Dr. Nagaraja. The I.O. might have elicited certain details from the applicant, in his earnestness, to help unravel the truth. It is striking, that the applicant who was otherwise captious, & seizing on minor points, in regard to procedural matters, did not cavil at the above manner of questioning by the I.O. but on the other hand, is seen to have been easily amenable to such questions put up to him. We have to see the conduct of the DE in its totality, to find out whether the applicant was coerced in his deposition to his disadvantage, in the course of the DE and whether he was denied reasonable opportunity to substantiate his defence. In this background, we have gone through the entire disciplinary proceedings. Nowhere have we noticed, that the tenor of these proceedings was such, as to make the applicant depose under compulsion, with a view to implicate himself unfairly in the guilt imputed to him.

61. Dr. Nagaraja vehemently urged, that on account of the various infirmities that had crept in, in the

conduct

conduct of the DE as pointed out by him, the respondents had no legal authority to punish his client, in an invalid DE. In this context, it is appropriate to refer to the following ratio of the Supreme Court in AIR 1957 SC 882 (UNION OF INDIA v. T.R.VARMA):

> "The Evidence Act has no application to enquiries conducted by tribunals, even though they may be judicial in character. The law requires that such Tribunals should observe rules of natural justice in the conduct of the enquiry and if they do so, their decision is not liable to be impeached on the ground that the procedure followed was not in accordance that, which obtains in a Court of Law. Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. If these rules are satisfied, the enquiry is not open to attack on the groundthat the procedure laid down in the Evidence Act for taking evidence was not strictly followed."

Viewed as a whole, in the light of the dicta of the Supreme Court in T.R.VARMA's case, we notice, that Dr.Nagaraja is merely drawing a long bow, in his contention, that the I.O. acted

both

both as a prosecutor as well as a judge, by putting leading questions to him. We notice, that in the disciplinary proceedings held against the applicant, the rules of natural justice were duly observed, in that the applicant was afforded reasonable opportunity, of adducing all relevant evidence, on which he relied, that the evidence of the prosecution witnesses was recorded in his presence and he was allowed to cross-examine these witnesses and that no material was relied on against him, without giving him an opportunity to rebut the same. We are thus satisfied, that substantial justice has been rendered in the DE held against him. However, it needs to be realised, that to expect a perfect system of justice (emphasis added), based on rules of law, is no more rational than to hope to balance soap-bubbles on hat-pins! We, therefore, for the reasons aforestated, do not find any substance in the contention of Dr. Nagaraja, that the disciplinary proceedings held against his client, were vitiated, because the I.O. acted both as a prosecutor as well as a judge and therefore reject the same.

62. We notice, that both in the written pleadings as well as in the course of hearing, the main thrust of the applicant has been on the alleged procedural irregularities

irregularities in holding the DE, and the attempt if any,to say the least, has been feeble and lukewarm,of vindicating his innocence on the basis of concrete evidence,against the three charges framed against him.

63.Earlier, we have dwelt with at length, on the various contentions urged by Dr.Nagaraja, in regard to the alleged procedural infirmities in holding the DE and have given cogent reasons rejecting the same.

64.We now turn to the question of guilt of the applicant,in regard to the charges framed against him. We do so, bearing in mind the jurisdiction, power and authority of this Tribunal, which is primarily concerned with judicial review of the decisions of Government and other authorities, While examining the various contentions urged, specially,in the sphere of appreciation of evidence. A finding based on 'no evidence', which is regarded as an error of law, envisages in itself, a conclusion, which would not have ever been reached, by a person of sanity and reason, on the basis of the evidence on record. It needs to be clearly borne in mind, that this Tribunal, cannot reappreciate evidence, if any,

as

as a Court of Appeal and arrive at a conclusion, different from that of the ultimate, competent, fact-finding authority, under the Rules. It is also not supposed to supplant its views, on those of the said authority, as being more reasonable. The distinction between judicial review and appeal, have been dwelt upon at length, in S.K.SRINIVASAN v. THE DIRECTOR GENERAL Esk & OTHERS (Application No.1653 of 1986) decided by this Tribunal on 30-1-1987.

65.We notice, that the three charges framed against the applicant are based predominantly on documentary evidence. The gravamen of the charges is, that the applicant did not make entries in the pertinent S.O. Account and MO Register, as Sub-Post Master, Kyathasandra, regularly, correctly and faithfully, that he retained cash in his office, as also stamp balance, in excess of the maximum authorised, on several dates, with no relation whatsoever to the liabilities, and that there was a shortfall in cash and stamp balance, in the Sub-Post Office of Kyathasandra on 20-10-1983, to the tune of Rs.5,289-98p.

66. The pertinent documents of the DE, particularly Exhibits P-2, P-3 and P-4, have been examined by us in regard to Charge-I. We also notice, that

the

the applicant has himself, in his defence statement recorded on 21-4-1984, admitted, that cash balance was retained by him, on many occasions in excess of the maximum limit authorised, on the pretext of meeting liabilities, on account of M.O. amounts required to be disbursed. This has been negatived by Shri K.S.Subbarao, Postal Assistant, Kyathasandra (P.W.2), as he has deposed, that all MOs received for payment on the date in question, were cleared on that very day, leading to infer, that entries in the MO register, were not faithfully made by the applicant. The applicant has not rebutted this deposition of PW-2, on account of which, and in the face of his own admission, he accepts the guilt.

67. The applicant has squarely admitted Charge-II, in his aforesaid defence statement dated 21-4-1984. The pertinent Sub-Office Accounts Register (Ex.P-22) itself reveals, that the applicant had failed to make entries in this register daily, from 17-9-1983 to 19-10-1983 i.e., for as long a period as over a month. The above register speaks for itself and cannot come to the rescue of the applicant, in respect of this charge.

68. Lastly, we come to Charge-III, which in fact, is the gravest of all the three charges, framed against the applicant, as it relates to a substantial shortfall

to

to the tune of Rs.5289-58, in respect of cash and stamp balance, on 20-10-1983. The applicant is seen to have admitted in his aforesaid defence statement, dated 21-4-1984, that this shortage was detected on 17-10-1983. If that be the case, the applicant has not explained, as to why he could not report promptly to his immediate superior, about this shortage, to facilitate speedy remedial action. Between 17-10-1983 and 20-10-1983, there was a yet a working day on 19-10-1983. Yet the applicant mysteriously chose to conceal this substantial shortage, in public funds, from his immediate superior. His explanation that he did so, in order to avoid unpleasantness in his office and that he was trying to make good the loss in the meanwhile, to say the least, is puerile, specially in the context of the fact, that the applicant grossly failed to display the utmost integrity, in his quotidian statutory duty, of maintaining the pertinent registers and accounts, faithfully and meticulously and of retaining at the end of the day, amounts, both in cash and also in the shape of stamp balance, within the authorised limits, in relation to the liabilities required to be discharged and in checking this balance amount scrupulously, every day. We have been

informed

informed that the applicant has even made good the loss partly, to the extent of Rs.2700/-.

69. It is a well-known maxim, that what is proved by record, ought not to be denied - quod per recordum probatum, non debit esse negatum. Also the well-known maxim, that gross negligence particularly, in matters relating to public funds, is a fraud - magna culpa dolus est, magna negligentia culpa est, tends to lend the character of malversation of public funds, by the applicat, in the circumstances aforementioned, in respect of the charges framed against him. If there was any genuine impediment to the applicant, in exercising the desired vigilance and control over public funds entrusted to his care, such as trespass by the neighbours through the premises of his Sub-Post Office as alleged, nothing prevented him from getting it removed firmly, at once, failing which, to report the matter promptly, to his immediate superior, for appropriate action. The fact that the applicant failed to do so, only leads to show, that the explanation proferred by him, is make-believe and fatuous.

70. Though R-2 could have with due care and prudence, ensured, that the DE proceeded smoothly and on right lines, by guarding against inconstency

and

and indecisiveness, as are apparent in this case, We cannot conclude therefrom, that the DE held against the applicant, was not veracious, specially, when the guilt of the applicant is writ large, primarily on documentary evidence, which is irrefragable. In this context, we find no substance in the contention of Dr.Nagaraja, that DA-R2, accepted the Inquiry Report dated 1-1-1986 blindly, even though it was virtually a replica of the earlier Inquiry Report, submitted by the I.O. on 26-5-1984, which was not agreed to, by her. We have examined the Inquiry Report submitted by the I.O. on 1-1-1986. We find, that it is not a mere copy of the earlier report as alleged, by Dr.Nagaraja.

71. In referring to Memo dated 7-10-1986 (Ann.H) of R-3, affirming as AA, the punishment of removal from service imposed by R-2 as DA-R2, on 17-7-1986(Ann.G), Dr.Nagaraja submitted, that the AA had taken extraneous factors into account namely, the alleged past adverse service record of the applicant, without however placing the relevant material, before his client, to enable him to counter the same. This omission he contended, was violative of the principles of natural justice. He relied on the ruling of the Supreme Court in AIR 1964 SC 506(THE STATE OF MYSORE v. K.MANCHE GOWDA)

to

to bolster this contention. The Supreme Court held in that case, that if the punishment proposed to be imposed on the delinquent - Government servant is mainly based(emphasis added), on his previous service record, the second notice to be issued to him, must disclose the same and that if this is done, the punishing authority can take that second notice, into account, though the same was not the subject matter of the charge at the first stage.

72. Shri Padmarajaiah, countered the above contention of Dr. Nagaraja, on the score, that in the case before us, the punishment was not enhanced but on the contrary, its severity was minimised by the AA, by granting the applicant compassionate allowance, not exceeding 2/3rds of his pension, under Rule 41 of the Central Civil Services(Pension) Rules, 1972, taking into account, his length of service of over 30 years. MANCHE GOWDA's case, relied upon by Dr. Nagaraja, he said, did not apply to the present case, as it related to a circumstance, where the punishment imposed by the DA, came to be enhanced by the higher authority.

73. We have carefully perused the Order dated 7-10-1986(Ann.H) passed by R3, as AA. The dicta

of

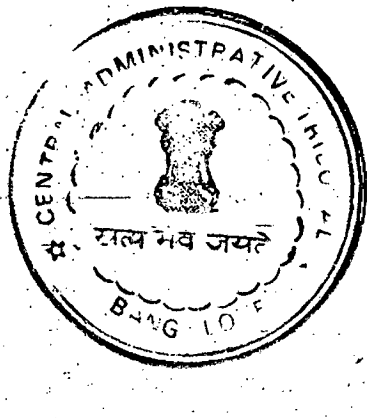
of the Supreme Court in MANCHE GOWDA's case essentially governs a case, where the punishment imposed is based mainly (emphasis added) on the previous service record of the applicant, disclosed to the applicant. In the instant case, that the past adverse service record was not the sole and the whole criterion, on which, the AA affirmed the punishment on the applicant, as imposed by DA-R2. But, this punishment was based on a wider gamut of other evidence, adduced in the DE. Besides, the AA alleviated the punishment, in granting him compassionate allowance, as aforementioned. Furthermore, Article 311(2) of the Constitution, came to be amended by Parliament on 3-1-1977, as under, which dispensed with the requirement of a notice, to be given to the delinquent Government servant, as an opportunity to represent against the penalty proposed:

> "No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges:
>
> Provided that where it is proposed after such enquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed."

Taking

74. Taking all the above factors into account, we are of the view, that the dicta in MANCHE GOWDA's case is not on all fours applicable to the case before us and therefore, we negative the above contention of Dr.Nagaraja.

75. Finally, Dr.Nagaraja appealed for sympathy in imposing punishment on his client, in case he did not succeed on merit, in getting him wholly exonerated of the charges framed against him. He asserted, that the punishment of removal from service with immediate effect, imposed on his client, was far too disproportionate, to the gravity of his guilt, if any. He alleged, that the respondents had not examined the provisions of Rules 27(2)(3) of the 1965 Rules, dispassionately and with realism, before imposing the extreme punishment, of removing from service with immediate effect. He earnestly pleaded, that the Tribunal consider the matter, by tempering justice with mercy.



76. We have given our most anxious consideration to this last submission of Dr.Nagaraja. We are of the considered view, that R-3 as AA, has been more than sympathetic, in imposing the punishment on the applicant, despite his past service record, which is none too satisfactory. We notice that

that the applicant has a series of adverse entries in his past service record, some of which, pertaining to the years 1970 and 1975, are of a grave nature. He was held guilty of peculating funds of a Society in 1970 and the present instance of malversation of public funds appears to be a recrudescence of that syndrome. Nevertheless, we find, that the AA has been gracious enough, in moderating the punishment, though grant of compassionate allowance as above. We find no merit, therefore, in the contention of Dr.Nagaraja, that the respondents have imposed the punishment, without due consideration of the provisions of Rules 27(2) and (3) ibid, and are satisfied, that in the circumstances, the punishment meted is condign.

77. We have heard this case at length on two days, namely, on 10 and 11-11-1988, and have duly noticed all the contentions urged before us by both sides.

78. In the result, we find, that the application is bereft of merit and we dismiss the same accordingly, with no order however, as to costs.

Sd/-
(K.S.PUTTASWAMY)
VICE CHAIRMAN

Sd/-
22.12.1988
(L.H.A. REGO)
MEMBER(A).

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