

(9)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
(CAMP: NAGPUR)

Original Application No: 427/91

Transfer Application No:

DATE OF DECISION: 21-9-94

P.K.Wahane

Petitioner

Mr.S.P.Kulkarni

Advocate for the Petitioners

Versus

Union of India & Ofs.

Respondent

Mrs.S.S.Wandile

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman

The Hon'ble Shri K.D.Saha, Member(A)

1. To be referred to the Reporter or not ? *NO*
2. Whether it needs to be circulated to other Benches of the Tribunal ? *NO*

[Signature]
(M.S.DESHPANDE)
VC

M

89/10
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH
CAMP AT NAGPUR

O.A.427/91

P.K.Wahane .. Applicant

-versus-

Union of India & Ors. .. Respondents

Coram: Hon'ble Shri Justice M.S.Deshpande
Vice-Chairman

Hon'ble Shri K.D.Saha, Member (A)

Appearances:

1. Mr.S.P.Kulkarni
Counsel for the
Applicant.

2. Mrs.S.S.Wandile
Counsel for the
Respondents.

ORAL JUDGMENT: Date: 21-9-94
(Per M.S.Deshpande, V.C.)

By this application the applicant
seeks a direction for quashing and setting
aside the order dated 10-1-1991 removing him
from employment, and treating him as having
continued in service together with conse-
quential benefits.

2. The applicant was appointed as a
Khalasi on 12-5-1970 and came to be promoted
as Junior Clerk in 1976. In 1982 he was promoted
as Senior Clerk. He came to be suspended on
18-12-1988 with a view to hold an enquiry
into certain charges which came to be framed
against him on 13/19-12-89. In substance the
charges were that during the period from
January '82 to July '88 the applicant committed
gross misconduct in causing excess payment of
overtime allowance to certain Loco Running
staff in the Bill Unit to the extent of Rs.58,340.62

and to certain others to the extent of Rs.4,797.85 by fraudulently altering the overtime figures in overtime statement and ~~inflating the overtime amount~~. The applicant denied the charges and one Shri V.D.

Mudaliar, Asstt. Personnel Officer came to be appointed as Inquiry Officer. The grievance of the applicant is that he asked for certain documents on which the prosecution had relied but those documents were not furnished to him. He also sought inspection that of the documents but was also denied and when he made a request on 23-3-90 for getting zerox copies of the documents which were sought to be used against him be delivered to him at his own cost, that request was also turned down. The applicant's contention is that the Inquiry Officer Shri Mudaliar was scrutinising supervisor of the section in which he has worked between 1-4-88 and 1-1-89. This covers a period of four months during ^{which} the applicant ^{had} sought to have committed the misconduct.

3. In para 4.4 of the application the applicant stated that Shri V.D. Mudaliar was responsible for signing and certifying the overtime bills pertaining to Mech/20 and Mech/15 during the period between 1-4-88 to 1-1-89 and this was stated in his appeal dated 6-1-91 submitted to the ADRM, SE Rly. Nagpur. He was also responsible for scrutiny and causing alleged excess payment of overtime bills but he put the responsibility entirely on the applicant in order to save his own skin



and placed the applicant under suspension.

It is also urged that Shri Mudaliar had carried out the necessary checks before giving certificates. By issuing such certificates Shri Mudaliar had certified that the drawal of overtime bill and claims in respect of the employees was correct and so he had a greater share in the responsibility. Such a person could not have ^{been} appointed as an Inquiry Officer as he would have been a Judge in his own case.

The respondents reply is that no Gazetted Officer was found responsible for the manipulation/alteration in the overtime figures and the overtime statements were signed by the APO concerned. The fraud had been committed by the applicant clandestinely by suffixing and prefixing the OT figures in the overtime statement and thereby inflating the amount of overtime payable to a select ~~of~~ 45 members of the staff and this had been ~~thoroughly gone~~ ~~into~~ by the Appellate authority. It was urged that the appellate authority's view that if the ~~officers~~ who dealt with the case once cannot take part in the D&A proceedings in view of their frequent transfers, the enquiry proceedings could not have been conducted at all and the enquiry therefore was properly conducted, was unsustainable.

4. With regard to supply of documents it was urged that the applicant ^{was} allowed to inspect the documents and he was given such access to the documents as was permissible

but photostat of the copies which the applicant had sought could not be given to him.

5. The learned counsel for the respondents Mrs. Wandile contended that the allegations regarding the bias of the Inquiry Officer had not been made during the enquiry and came to be made for the first time when the appellate authority was seized of the matter and the allegations regarding bias should not now be entertained.

6. We have already referred to the contentions of the rival parties. There is no dispute about the fact that the charge related to the transactions from January '82 to July '88 and out of this period Shri Mudaliar had worked for four months as APO. and had the responsibility of supervising over the work of the applicant and scrutinising the accounts and the payments which were made by the applicant. The contention in the reply is that alterations and additions came to be made by the applicant fraudulently after Shri Mudaliar had issued the certificate and there was no reason why Shri Mudaliar could not be appointed as Inquiry Officer.

7. It must be noted that the charges ^{were} against the applicant ~~is~~ very serious. They were about making alterations and additions in the accounts register and other related documents. The Inquiry Officer Shri Mudaliar had the responsibility of scrutinising the work of the applicant in this respect. This position has not been disputed.

118

What is being said is that after Shri Mudaliar had effected the necessary checks and concluded his ~~xx~~ scrutiny the alterations came to be made. If this was so then Shri Mudaliar would have been a witness who could have said that after he had scrutinised the documents and satisfied himself about the correctness the alterations came to be made by the applicant. It is difficult to see how a person who could have been a witness ~~at~~ the enquiry to establish the misconduct of the applicant could have acted as an Inquiry Officer. Shri Mudaliar could not have ~~occupied~~ the position ~~of a~~ Judge in the present circumstance and he could not have ~~hopped~~ from the seat ^a of Judge to ~~that of a~~ witness and back while conducting the enquiry. The applicant had the right to challenge the version of Shri Mudaliar at the enquiry and this could have ^{been} done only if Shri Mudaliar ~~were to be put as~~ witness and allowed to be crossexamined by the applicant. It is obvious that the departmental authorities were not ~~un-~~ aware of this position. Atleast ^{at} the appellate stage the position ~~could~~ ^{should have been} considered properly by the appellate authority. Instead of doing that the appellate authority gave unsustainable reasons which ~~may~~ be reproduced as below :

"With regard to his second objection, if the theory "that officers", who dealt with case once cannot take ~~any~~ part in D&A proceedings" is applied no D&A proceedings can be conducted as due to frequent transfer, the same

post is held by different officers. Further in the instant case, the charge against the employee is specific in that he made inflated calculations.

The role of officer was only to do test-check and affix his signature which has been done in this case and thus it does not result in there being any bias."

It is obvious that the Appellate Authority was ~~ignorant~~ about the requirements of principle of natural justice. In this case the allegations against the Inquiry Officer clearly show that he had ^a pecuniary interest in the transaction^s because if the applicant's allegations were true he was the person who ^{had} would ~~have~~ be involved in allowing excess payment to be made to the ~~staff~~. There is no other proof required in the present case to establish bias, but it is apparent from the stand taken by the respondents ~~also~~ that Shri Mudaliar was in the position of a witness though he may not have ^{been} cited at the enquiry and it would have been open to the applicant to cite Shri Mudaliar as one of his witness^s in view of the stand that he had taken.

In Ashok Kumar Yadav v. State of Haryana, AIR 1987 SC 454, it was observed as follows:

"It is one of the fundamental principles of jurisprudence that no man can be a judge in his own cause and that if there is a reasonable likelihood of bias it is in accordance with natural justice and commonsense that the justice likely to be so biased should be incapacitated from sitting. The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likelihood of bias. What is

objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is a likelihood of bias affecting the decision.

The basic principle underlying this rule is that justice must not only be done but must also appear to be done. It is also important to note that this rule is not confined to cases where judicial power *stricto sensu* is exercised. It is appropriately extended to all cases where an independent mind has to be applied to arrive at a fair and just decision between the rival claims of parties. Justice is not the function of the courts alone; it is also the duty of all those who are expected to decide fairly between contending parties. The strict standards applied to authorities exercising judicial power are being increasingly applied to administrative bodies for it is vital to the maintenance of the rule of law in a welfare State where the jurisdiction of administrative bodies is increasing at a rapid pace that the instrumentalities of the State should discharge their functions in a fair and just manner. "

It is therefore clear that Shri Mudaliar could not have sat ~~as~~ for conducting the enquiry against the applicant. In the circumstances it was not necessary that the objection should have ^{been} raised at the earliest possible stage. It could be raised even later as was contended by the applicant ~~at the appellate stage~~ that Shri Mudaliar could ^{not} have figured as an Inquiry Officer. We, therefore, find that the present enquiry cannot stand and ~~has~~ to be quashed.

11

8. The next ground raised by the applicant is that zerox copies of the documents were not allowed to be taken. The applicant had made an application on 23-3-90 after he was granted inspection of certain documents stating that it was not possible for him to copy out the relevant documents by hand and therefore he may be provided the zerox copies of the same. Since that request was turned down he may be permitted to make the zerox copies of the relevant documents from outside. Mr.S.P. Kulkarni learned counsel for the applicant urged that the applicant was willing to have copies made at his own expense and this was not prohibited by the rule. Our attention was drawn to G.I., M.H.A., O.M.No.F.30/5/61-AVD dated 25-8-1961. Para 9. refers to the supply of copies of the documents at the enquiry. Ordinarily it is not necessary to supply copies of the various documents and it would be sufficient if the Government servant is given such access as is permitted under the rules. If permission is sought to photostat copies it should not normally be given if the Government servant asked for photostat copies through a private photographer because third parties would be allowed to have access to official records which is not desirable. If, however, the documents of which photostat copies are sought for are so vitally relevant to the case (e.g., where the proof of the charge depends upon the proof of the handwriting or a document the authenticity of which is disputed) the Government should itself make photostat

(P.S.)

copies and supply the same to the Government servant.

9. It is therefore clear that there is no ban on furnishing photostat copies. In the present case when the allegations were that certain entries had been altered ~~while~~ ^{by} making certain additions and when that act was attributed to the applicant it was necessary to show that he was the author of the fabrication and for this purpose the applicant should have been provided with the photostat copies. The decision, having regard to the circumstance of the case, refusing ~~him~~ to furnish photostat copies at the cost of the applicant appears to us to be arbitrary.

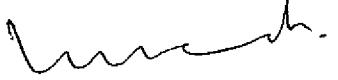
10. In result we quash the order of removal passed by the disciplinary authority and the order of the appellate authority upholding that order. The respondents are at liberty to proceed afresh against the applicant ^{by} appointing another Inquiry Officer un-connected with the present case. The Inquiry Officer so appointed shall furnish to the applicant at his cost photostat copies of such of the documents which are relevant to the enquiry on which the department has placed reliance together with any other documents which the applicant may require subject to the Inquiry Officer satisfying himself about the relevance thereof. Since the applicant was under suspension during the pendency of the enquiry until the order of

(A)

removal the order of suspension ^{would be} deemed to have been revived and the applicant will be entitled to the arrears of subsistence allowance as well as the subsistence allowance as per rules until the conclusion of the enquiry against him. The arrears should be paid within three months from the date of communication of this order. The enquiry shall proceed from the stage following the framing of the charges as the charges have already ^{been} framed against the applicant. The enquiry shall be in respect of those charges.

11. The application is disposed of accordingly; No order as to costs.


(K.D.SAHA)
Member(A)


(M.S.DESHPANDE)
Vice-Chairman

M