

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

REVIEW PETITION NO. 72/96 IN O.A. 279/92

T.M.Farkaday

.. Review Petitioner

-vs-

H.G.Lokhande & Ors.

.. Respondents.

Coram: Hon'ble Shri B.S.Hegde, Member(J)

Hon'ble Shri M.R.Kolhatkar, Member(A)

Tribunal's order on Review Petition
by circulation

Date: 19-7-96

(Per M.R.Kolhatkar, Member(A))

This Review Petition has an interesting history. The O.A. 279/92 came before a division bench for decision consisting of Hon'ble Shri B.S. Hegde, Member(J) and Hon'ble Shri M.R.Kolhatkar, Member(A). The issue pertains to legality of the departmental proceedings against the applicant who was working as Asstt.Postmaster as well as being office bearer of the Union. The charge against the applicant was use of derogatory language in a letter addressed to superiors which was unbecoming of a Govt.servant violating provisions of Rule 3(1)(iii) of C.C.S.(Conduct)Rules,1964. There was difference of opinion between Members of the Bench. Member(J) held firstly that ^{the} subject matter pertained to Union affairs and therefore disciplinary proceedings were not warranted and respondents have no power to interfere (paras 4 and 6) and secondly that there is nothing derogatory in the reply given by the applicant (para-7) ^{he therefore allowed the O.A.} Member(A), however, differed and held that the charge did not pertain to union affairs but pertained to use of derogatory language ^{a.} by subordinate official, that the charge ^{has been} brought home

to the applicant and that if the departmental officers in the original proceedings as well as in the appellate^{& revisional} proceedings found as a matter of fact that the charge is established then the Tribunal has no jurisdiction to^{go} into the same unless malafides or perversity^{are} proved which is not the case in this proceedings. He, therefore, dismissed the O.A.

2. Because of the difference of opinion the Hon'ble Acting Chairman vide his letter dt. 20-11-1995 nominated Hon'ble Shri P.P.Srivastava Member(A) as a third Member to decide the matter by majority. Hon'ble Shri P.P.Srivastava agreed with Hon'ble Shri M.R.Kolhatkar and in the result the O.A. stood dismissed.

3. In the review petition which has been filed by the original applicant it is contended that the main ground of relief in the O.A. incorporated in page 10 para 5.2(c) is a legal point regarding violation of principles of natural justice viz. the respondent No.1 has become Judge of his own cause. The use of derogatory language was in respect of disciplinary authority and the disciplinary authority ought to have requested the appellate authority to refer the matter to the head of the department to constitute someone else as disciplinary authority. According to the review petitioner this ground was not at all considered in the original differing judgments and when the same was brought to the notice of the third Member he took the view that since this point has not been touched upon in the judgment and since there is no difference of opinion on this point, the applicant would be at liberty to take up this issue in an appropriate forum available.

4. It is true that the ground 5(2)(c) in the O.A. reads as below :

"It is a well known principle of natural justice that no person can be a judge in his own cause. This principle is always observed and upheld by all the courts. In the case of Brij Mohansingh vs. State of Punjab published in AIR 1987 SC 948 in respect of using derogatory language the Supreme Court has upheld this principle and stated that so called derogatory language was used against a person and he himself is taking disciplinary action. On the course of action which ought to have been adopted by the Disc. Authority the Tribunal had to say that the Disc. Authority was aware of the allegations made against him by the applicant in the representations forming subject matter of the chargesheet. He should have therefore requested the Appellate Authority or refer the matter to the Head of the Department to constitute someone else as Disc. Authority. It is a well known principle that the justice should not only be done but must appear to have been done. The D.G. P&T had also issued orders on the same lines under his No.6/64/64-Disc dt. 27-1-65. Thus irrespective of the fact whether it was a Union matter or not the Respondent No.1 ought to have requested the higher authorities for decision in taking disciplinary action but he had violated this well known principle of natural justice in order to cause injustice to the applicant."

5. We are constrained to observe that the reference in the OA as well as in the R.P. to the case of Brij Mohan Singh Chopra vs. State of Punjab AIR 1987 SC 948, is entirely misplaced because this

judgment relates to Punjab Civil Services (Premature Retirement) Rules and its ratio is that in relation to compulsory retirement, public interest means retention of honest and efficient employees and weeding out of inefficient and dishonest. We also note that this particular ground was not apparently pressed at the time of final hearing on 28-8-95 as is evident from the fact that it did not find a mention in the order passed either by Hon'ble Shri B.S.Hegde, Member(J) or Hon'ble Shri M.R.Kolhatkar, Member(A) nor is it clear that the applicant had pressed this ground before the appellate or revisional authorities. These are, however, technical difficulties and we are prepared to ignore the same because the principle that a man should not be a Judge in his own cause (Nemo debet esse Judex in propria causa) is a very important principle of natural justice and if it is established that the Sr. Superintendent of Postoffice did act as a Judge in his own cause, then the matter certainly requires a review. We are, however, not satisfied that this is so. The charge was not that of use of derogatory language against a particular superior officer but the charge was of a general nature viz. using derogatory language against superior officers. All the correspondence in this regard from the applicant was by designation to the SSPO. Nowhere is the SSPO has been named personally nor does the chargesheet allege that the applicant had caused offence personally to the disciplinary authority. In our view, therefore, the maxim or the principle quoted by the applicant though deserving of the highest weight in an abstracting sense, is not applicable to the facts of the instant case. We must also observe that the scope of the review jurisdiction is limited.

According to rules relating to Review contained in Order 47 of the CPC a review is permissible when there is a discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the order was passed or on account of mistake apparent on the face of the record or for any other sufficient reason.

6. We are of the view that no grounds have been made out otherwise for review of our order dismissing the O.A. . We, therefore, find that the RP is liable to be dismissed and the same is dismissed by circulation as provided under rules.

7. There will be no order as to costs.

M.R. Kolhatkar

(M.R. KOLHATKAR)
Member(A)

B.S. Hegde

(B.S. HEGDE)
Member(J)

M

dt 19/7/96
Order/Judgement despatched
to Appellant/Respondent(s)
on 5/8/96
7/8/96