

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 279/92

Shri T.M.Farkaday

... Applicant

V/S

Department of Posts, Nagpur

... Respondents

CORAM: Hon'ble Member (A) Shri P.P.Srivastava

Appearance

Shri C.B.Kale
Advocate
for the Applicant

Shri S.S.Karkera
for Shri P.M.Pradhan
Advocate
for the Respondents

Tribunal's Order

Dated: 1.3.96

(PER: P.P.Srivastava, Member (A))

The Hon'ble Acting Chairman vide his letter dated 20.11.1995 nominated the undersigned as a Third Member in this OA, which came for decision before a Division Bench consisting of Hon'ble Mr.B.S.Hegde, Member (J) and Hon'ble Mr.M.R.Kolhatkar, Member (A). The judgement dated 15.9.1995 is written by Hon'ble Mr.B.S.Hegde, Member (J) allowing the relief to the applicant. The Hon'ble Mr.Kolhatkar, Member (A) wrote a note disagreeing with the judgement and mentioned that the OA. has no merit and the same be dismissed.

.. 2/-



2. The points of difference are as under :-

Member (J) has brought out in Para 6 of the judgement that the very initiation of the disciplinary proceedings by the authority is unwarranted and without jurisdiction. He has also opined that close scrutiny of the reply given by the applicant no way amounts to derogatory language, while Member (A) has opined that the charges relate to the use of derogatory language and the enquiry was not against the applicant as office bearer of the union and the basic charge is not withdrawal of Rs.700/- by the applicant. Therefore, in his (Member (A)) opinion the question to be decided is whether the respondents are entitled to proceed against the applicant on the count of use of derogatory language under CCS(CCA) Rules.

3. A perusal of Charge-sheet at Annexure-'A-10' at page 35 shows that the charges are for use of derogatory language and tone unbecoming of a Government servant thus violating provisions of Rule 3(1)(iii) of C.C.S.(Conduct) Rules, 1964. The factual position is that the charges are not concerning the withdrawal of Rs.700/- but concerning of use of derogatory language in a letter written by the applicant to his superiors. The letter written by the Superintendent Amravati Division to the applicant is at page . The letter was addressed to the applicant in his capacity as Branch Post Master. Therefore, the correspondence



would come within the frame work of officer who is superior to a sub-ordinate officer. Therefore, the type of language used in reply to letter written by Sr. Superintendent to him would come within the purview of official correspondence and would attract the provisions of CCS(CCA) Rules. Therefore, I am of the view that the administration was within their rights in initiating disciplinary action against the applicant under CCS(CCA) Rules.

4. The next difference of opinion between the two Members of the Division Bench is that the Member (J) has opined in Para 6 of the judgement that on close scrutiny of the applicant's reply to show cause notice in no way amounts to derogatory language, whereas Member (A) has mentioned in Para 13 of the judgement that this is a subjective opinion and the Tribunal in its jurisprudence does not have the competence to sit in judgement over the findings of the fact by the disciplinary authority unless they are actuated by malafides or the findings can be said to be perverse. It is a fact that different persons reading the letter will form different opinion concerning whether the letter writer has used derogatory language or not and it is in my opinion subjective judgement. In the present case the superior authority, i.e. Sr. Supdt. of Post Office has formed opinion that the letter contains derogatory language and has initiated disciplinary proceedings on



the basis of the same. I am, therefore, in agreement with Member (A) that it cannot be on the part of the Tribunal to sit at as an appellate body over the findings of disciplinary authority unless they are actuated by malafides or are perverse.

5. The counsel for the applicant has also brought to my notice that the disciplinary proceedings are vitiated because the complainant and the disciplinary authority are the same. He has drawn my attention to his pleadings at Para 5 (2) (c) at page 10 of the OA. wherein he has brought out the plea that "The Respondent No.1 has become the Judge of his own cause". He has submitted that the letter was addressed to the Sr. Superintendent of Post Offices who has himself initiated disciplinary action, therefore, the first principle of natural justice that no person can be a judge in his own cause has been violated in this case.

6. The counsel for the applicant has further brought out that while replying to the charge-sheet the applicant has specifically brought out this point in his letter dated 13.10.1989 placed at Annexure-'A-13'. In this letter the applicant has submitted that this should be judged by the higher authority than the disciplinary authority whether the language used is derogatory one or not. However, this point has not been touched upon in the judgement and since there is no difference of opinion on this point,



I am refraining from giving any opinion on this point. The applicant would be at liberty to take up this issue in an appropriate forum available.

7. In the result, I agree with the opinion of Member (A) that the subject matter of disciplinary action was use of derogatory language and that the disciplinary authority had the competence to issue charge-sheet. I also agree with Member (A) that it will not be for the Tribunal to sit in judgement over the decision of the disciplinary authority on facts in as much as whether the language used is derogatory or not unless the decision is vitiated by malafide or is against the Law. In the result, the OA is dismissed.



(P.P. SRIVASTAVA)
MEMBER (A)

mrj.

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 G.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 M 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 has the SSPO 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