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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 529/92

Transfer Application No:

DATE OF DECISION: 24/2/95

S.S.Dhoble Petitioner

Shri S.P. Kulkarni Advocate for the Petitioners

Versus

Union of India and others Respondent

Shri S.S.Karkera for Advocate for the Respondent(s)
Shri P.M.Pradhan

CORAM :

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

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

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

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

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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 529/92

S.S. Dhoble

... Applicant.

V/s.

Union of India through
Ministry of Communication
Department of Post
Dak Bhavan, Sansad Bhavan,
New Delhi.

The Chief Post Master General
Maharashtra Circle
Bombay.

The Director of Postal Services
Pune, O/O Post Master General
Pune Region, Pune.

The Sr. Supdt. of POs
Kolhapur Division
Kolhapur.

Shri B.B. Dave
Ex. SS POs Kolhapur
Circle Complaints Officer
O/O Chief Postmaster General
Maharashtra Circle, Bombay.

... Respondents.

CORAM: Hon'ble Shri Justice M.S. Deshpande, Vice Chairman.

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

Appearance:

Shri S.P. Kulkarni, counsel
for the applicant.

Shri S.S. Karkera for Shri
P.M. Pradhan, counsel for
the respondents.

JUDGEMENT

Dated: 24/2/95

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

In this O.A. the applicant has challenged the penalty of withholding of increment for two years without cumulative effect imposed on him by the order dated 7.6.89 passed by Shri B.B. Dave, Sr. Supdt. of Post Offices, Kolhapur Division, who is respondent No.5 (Private respondent) in this case. The charge against the applicant was that because of his failure to take timely action, the Post Office at Jaysingpur

had to suffer a disgraceful incident of eviction on 12.1.89 pursuant to the order of the District Judge Kolhapur dated 23.9.88 rejecting the appeal of the department. Another charge levelled against the applicant was that he kept several letters pending and thus betrayed dereliction of duties.

2. The applicant has exhausted all departmental remedies. The Appellate order of the Director, Post Office dated 28.9.89 (Page 32), the Revisionary order of the Member, Postal Services Board dated 7.6.1989, and the reply to revision petition issued on 5.6.91 (page 38) have all gone against him. The relief claimed by the applicant is to set aside the impugned order of penalty and also to set aside consequent withholding of promotion of the applicant and to give the consequential benefits.

3. According to the applicant the proceedings against him are vitiated because of failure by disciplinary authority to observe the Principles of Natural Justice which envisage that no person should serve as a judge in his own cause. He contends as below:

" The respondent No.5 Shri B.B. Dave who is himself responsible for the bad state of affairs. As he himself failed to act as per Rule 191 of P & T Man. Vol. VIII. Even though he has carried out inspection of building branch of his office, and inspite of having definite information did not care to take any action to avoid the eviction of the Jaysingpur P.O. building on 12.1.89. He was well equipped with the phone connection at his chamber and residence and also in office. He could have called steno or head clerk and dictated the letter or D.O. letter to press the urgency and move the matter till

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his desired goal achieved. But in order to shirk his responsibility and to hide his lapses he made the applicant as scape Goat. He issued the chargesheet and punished the applicant. His action is arbitrary with mala-fide intention."

The applicant relies on the judgements of the Supreme Court in the case of Arjun Chaubey V/s. Union of India AIR 1984 SC 1356 and Ashok Kumar Yadav V/s. State of Haryana AIR 1987 SC 454 and non-reported judgement of this Tribunal in O.A. 427/91 decided on 21.9.94 (P.K. Wahane V/s. Union of India and others). In all of the judgements referred to above, the principle that no man should be a judge in his own cause has been upheld. In Arjun Chaubey's case the Hon'ble Supreme Court observed that the main thrust of the charges against the appellant related to his conduct qua respondent 3. Therefore, it was not open to the latter to sit in judgement over the explanation offered by the appellant and decide that the explanation was untrue. No person can be a judge in his own cause and no witness can certify that his own testimony is true. Any one who has a personal stake in an inquiry must keep himself aloof from the conduct of the inquiry. It would thus be seen that the facts of Arjun Chaubey case are entirely different from the facts of the present case. The counsel for applicant argues that respondent No.5, as head of department ~~was~~ ultimately responsible for the incident of eviction but it cannot be contented that respondent No.5 had any direct and personal stake in the matter as he was concerned with the issue only in his capacity as head of office. He was required to co-ordinate and supervise the work

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of ASPO's working under him. Nor was he a necessary witness in the proceedings when he performed the role of Disciplinary authority in his capacity as Head of department. In our view therefore Arjun Chaubey's case does not apply.

4. In the case of Ashok Kumar Yadav it was laid down in para 16 that it is one of the fundamental principles of our 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. The issue of bias does not arise in the present case. Ashok Kumar Yadav's case related to process of selection by PSC.

5. The applicant then relies on the case of Wahane. In that case, the delinquent officer was Senior Clerk and he was alleged to have committed gross mis-conduct by causing excess payment of overtime allowance to certain loco running staff during the period from January 1982 to July 1988. Shri V.D. Mudaliar, who was appointed as inquiry officer was at the relevant time scrutinising supervisor of the section in which the applicant had worked between 1.4.88 and 1.1.89. This covers the period of four months during which the applicant was alleged to have committed the misconduct. The basic case of the applicant was that 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

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have ~~been~~ worked as Inquiry Officer who could have ^{been} ~~not~~ ^{supposed} to suffer from bias. This plea of bias was ^{not} taken/during the inquiry but came to be made for the first time when the appellate authority was seized of the matter. The Tribunal observed that Shri Mudaliar would have been a witness and it is difficult to see how a person who could have been a witness at the inquiry to establish the misconduct of the applicant, could have acted as Inquiry Officer.

6. It is however clear that the facts of Wahane's case do not apply in this case because the question of disqualification as Inquiry Officer or as witness does not arise. The applicant further relied on Wahane's case for the proposition that the point about the disqualification of a particular person to act as Disciplinary authority can be raised at any stage. The reply filed by the applicant to memo dated 31.12.89 has been shown to us by the counsel for the applicant at argument stage but we do not find any such plea taken. In any case in our view this particular point ^{about} ~~about~~ disqualification does not arise in this case.

7. According to us, the various case law cited by the applicant establishes that when a Disciplinary authority is directly and personally involved in the proceedings either as a witness or as Inquiry Officer then he should be disqualified from acting as a Disciplinary authority. It does not lay down that a Head of Department who is not directly and personally involved in the proceeding except as an overall coordinating Officer is disqualified from acting as Disciplinary authority in respect of his subordinates.

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8. The applicant further urged that he was not at all dealing with the particular subject matter. The learned counsel for the respondents however pointed out to us that this plea has been taken as an after thought. It is clear from the note dated 21.1.89 (page 23) that he was supervising (D) branch of D.O. including work relates to post office at Jaysingpur. He cannot therefore escape his responsibility.

9. In view of the discussion above we find no merit in the O.A. We, accordingly dismiss the O.A. with no order as to costs.

M.R. Kolhatkar

(M.R. Kolhatkar)
Member (A)

M.S. Deshpande

(M.S. Deshpande)
Vice Chairman

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