

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

Second Floor,
Commercial Complex,
Indiranagar,
BANGALORE- 560 038.

Dated: 3 FEB 1995

Review APPLICATION NO: 29 of 1994 in OA.No.125 of 1993.

APPLICANTS:- The Sub-Divisional Inspector (Postal), Shimoga
East Postal Sub-Dvn, Shimoga, and three others.
V/S.

RESPONDENTS:- Sri.V.Onkerappa, Arahatholalu village & Post,
Shimoga Dist .

T.

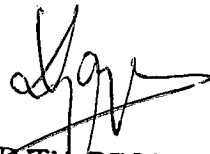
1. Sri.G.Shanthappa, Additional Central Government
Standing Counsel, High Court Building, Bangalore.
2. B/a. Shetty & Hegde Associates,
No.11, Jeevan Building,
Kumara Park East, Bangalore-1.

Subject:- Forwarding of copies of the Order passed by the
Central Administrative Tribunal, Bangalore.
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Please find enclosed herewith a copy of the ORDER/
STAY ORDER/INTERIM ORDER/ passed by this Tribunal in the above
mentioned application(s) on 20-01-1995.

Issued on
21/2/95

9/c


for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH: :BANGALORE

REVIEW APPLICATION NO. 29/1994

IN

ORIGINAL APPLICATION NO. 125/93.

FRIDAY, THE TWENTIETH DAY OF JANUARY, 1995

SHRI V.RAMAKRISHNAN.

...MEMBER (A)

SHRI A.N.VUJJANARADHYA.

...MEMBER (J)

1. Sub-Divisional Inspector (Postal),
Shimoga East Postal Sub Division,
Department of Post,
Shimoga-577 202.
2. The Post Master,
(CHS.G-1) and Disciplinary
Authority, Shimoga-1.
3. Assistant Supreintendent of
Post Office,
Shimoga Division,
Shimoga-1.
4. Senior Superintendent of Post,
Shimoga Division,
Shimoga-2.

...Applicants

By Advocate Shri G.Shantappa, A.C.G.S.C.

Versus

V.Onkarappa,
S/o Venkataramanappa,
Aged 40 years,
Ex-Extra D.D.Agent,
Arahatholalu Village & Post,
Anveri S.O.
Bhadravathi Taluk,
Shimoga District.

...Respondent

By Advocate: Shetty & Hegde Associates.



O R D E R S

Shri V. Ramakrishnan, Member (A)

The Postal Department, applicants in this review application and respondents in OA 125/93 seek for a review of our order dated 20th May, 1994.

2. In OA 125/93, the applicant, who was EDDA had challenged the penalty of dismissal imposed on him on various grounds. We had noticed that in that case, the Disciplinary Authority happened to be a witness for establishing the charges levelled against the applicant. The Disciplinary Authority proceeded to issue the article of charge and statement of imputations of misconduct and also appointed the Presenting Officer and Enquiry Officer and got himself examined as a material witness. After the enquiry proceedings were completed, but before issue of report by the Enquiry Officer, the Disciplinary Authority was replaced by an adhoc Disciplinary Authority. This was done on 22.11.91 and the adhoc Disciplinary Authority after considering the report of the Enquiry Officer, which was submitted by Enquiry Officer on 16.12.91 passed orders imposing penalty of dismissal from service on the applicant. The applicant had challenged the continuance of the Disciplinary Authority for a long time after enquiry was initiated and also had taken a number of other contentions. After careful consideration of the matter and following the decision of this Tribunal rendered in Basavaraju Vs. Assistant Supreintendent of Post Offices and others in OA 423/91,

we had held that the enquiry was vitiated because of the involvement of the Disciplinary Authority in the proceedings till almost ^{the} end of the proceedings in that case. This decision was rendered after taking into consideration the facts of the case which was on all fours as the facts in Basavaraj case. We had not gone into the other contentions raised by the applicant as we had taken the view that the orders passed by the Disciplinary Authority cannot be sustained for the reasons already referred to supra. We however, gave liberty to the department to initiate fresh enquiry in accordance with law.

3. Shri Shantappa for the Review Applicants has sought for a review of the judgement primarily on the ground that the Tribunal had taken ^a different view in OA 375/92 disposed of on 30.7.93. He refers to para 5 of the judgement in OA 375/92, which interalia stated that no rule had been shown to the Tribunal which prohibited the issue of charge sheet by a Disciplinary Authority, who was also one of the witnesses in the enquiry. There was also a reference to the judgement of Supreme Court in the case of Arjun Chaubey (1984 SCC 290). Shri Shantappa submits that we should also hold the same view in the present case and the fact that the Disciplinary Authority, who happened to be a witness, issued the article of charge would not vitiate the enquiry.

We had gone through the judgement of the Tribunal in the case of Marutigowda Vs. SDI in OA 375/92 referred



to by Shri Shantappa. There is no reference in the judgement to the decision of the Tribunal in Basavaraj case in OA 423/91 disposed of on 6th March, 92. We had also gone through the decision of the Supreme Court in Arjun Chaubey Vs. UOI (1984 SCC (L&S) 290), where the head note read as follows:-

"Labour and Services - Departmental inquiry - Natural justice - employee alleged to have committed acts of misconduct himself calling for explanation and taking decision thereon - Order of dismissal passed by that officer rejecting the explanation offered by the employee, held, illegal and invalid, being violative of principle of natural justice - That basic illegality in the order cannot be cured even accepting that the charged employee was habitually guilty of acts subversive of discipline - Reliefs ordered - Railway Servants (Discipline and Appeal) Rules 1968, Rule 14(ii) - Constitution of India, Article 311(2)"

We notice that in OA 375/92, the Disciplinary Authority, who was a witness has no doubt had issued the articles of charge, but an adhoc Disciplinary Authority was appointed without undue delay. The Postmaster General had appointed an adhoc Disciplinary Authority in November 1990 on the ground that the prescribed Disciplinary Authority was likely to be a material witness. The proceeding in that case went on for quite some time subsequent to the appointing of the adhoc Disciplinary Authority and the official had submitted his written brief about six months subsequently in March, 91 and the adhoc Disciplinary Authority inflicted the penalty on 29.5.91, which order was delivered to the applicant on 3.6.91. In the present case, however, the Disciplinary Authority, who was a witness in the enquiry proceedings continued as such till 22.11.91, a few days before the Enquiry Officer submitted his report. We, therefore,

hold that the decision in OA 375/92, which had not noticed the decision of Basavaraj's case and where the facts were somewhat different is not of assistance to the review applicants in the present case. It has also not been brought out that there has been any error apparent on the face of the record.

5. Shri Shantappa refers to the DG's instructions No.6 dated 16th December, 1981, which stipulates that there may not be any objection for the prescribed Disciplinary Authority to issue charge sheet and also order an enquiry but he should not issue an order inflicting the penalty. This instruction further goes on to say that it would, however, be desirable to appoint an adhoc Disciplinary Authority even before the issue of charge sheet. From this, it is clear that the adhoc Disciplinary Authority should be appointed well before the conclusion of the enquiry proceedings and not postponed till the far end as in this case. This instruction also is not of much help to the review applicants.

6. In the circumstances, we dismiss the review application as devoid of merit.

Sd/-
(A.N.VUJJANARADHYA)
MEMBER (J)

Sd/-
(V.RAMAKRISHNAN)
MEMBER (A)



TRUE COPY

[Signature]
Section Officer
Central Administrative Tribunal
Bangalore Bench
Bangalore