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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,
JAIPUR.

O.A.No.597/92

Date of order 25.11.92

Mahesh Chandra : Applicant

Vs.

Union of India & Ors. : Respondents

Mr.S.K.Jain : Counsel for applicant

Mr.Manish Bhandari : Counsel for respondents.

CORAM

Hon'ble Mr.Justice D.L.Mehta, Vice Chairman.

Hon'ble Mr.B.B.Mahajan, Member (Adm.).

PER HON'BLE MR.B.B.MAHAJAN, MEMBER(ADM.):

Mahesh Chandra had filed this application for quashing the order of punishment of removal from service imposed upon him alongwith inquiry and charge-sheet and that the applicant be declared to be in service for all purposes.

2. The applicant was issued a charge sheet on 20.11.91 (Annex.A/2) by which he was charged for sleeping in the night during the duty on 14th/15th Sept.1991. On receipt of his reply the Inquiry Officer was appointed and after considering the report of the Inquiry Officer the impugned order of removal from service was passed by the Divisional Electric Engineer, Western Railway, Jaipur Division, Jaipur.

3. We have heard the counsel for the parties.

4. The main ground advanced by the applicant is that as per the charge sheet served upon him the Divisional Elect. Engineer who had issued the charge-sheet appointed the Inquiry Officer and imposed the punishment had himself witnessed the alleged misconduct of the applicant. He could not, therefore, function as disciplinary authority in this case. The learned counsel for the applicant has referred to the judgment of the Calcutta Bench of the Tribunal in Chandra Deo Singh Vs. Union of India and Ors. 1988(7) SLR 245.

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He has referred to para 4 of the judgment in which in a similar case the Calcutta Bench had held that the authority who issued the charge sheet was not legally competent to do so. An opinion was, therefore, expressed that he was not legally competent to issue it and when he was personally involved in the matter he should not have issued the charge sheet and, therefore, it was held that the charge sheet is ex facie invalid. He has also referred to the judgment of the Hon'ble M.P. High Court in Balkishan Vs. Chief Secretary, AIR 1963 M.P. 216. In para 7 of that judgment it has been held that an objection on the ground of prejudice to hold the departmental inquiry by an official who first context the alleged misconduct or irregularity must be raised as soon as public servant receives the notice about inquiry. Where the public sector actually acquires and assess in the inquiry and raised the objection for the first time after the report of inquiry tresses to be adverse the objection cannot be taken into consideration. It was also held that as long as the officer who actually punished is another, and he applies his own personal judgment to the results of the inquiry there may be little or no prejudice even if an officer who detected the alleged misconduct or irregularity himself opposes the departmental inquiry.

5. We have carefully considered the matter. So far as the question of holding of departmental inquiry by respondent No.2 is concerned we find that the applicant in his reply to the charge sheet dated 3.1.92 (Annex.A/5) raised the objection that the respondent No.2 had himself been mentioned as witness in the charge sheet could not be a judge in this case and the officials working under him could not legally be authorised to enquire in the alleged misconduct as it was bound to be partial.

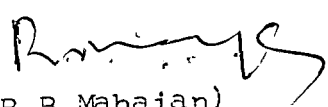
6. So far as the judgment of the Calcutta Bench of the Tribunal in Chandra Deo Singh's case (supra) is concerned a perusal of para 4 shows that a charge sheet had been declared to be invalid mainly on the ground that the officer who had issued the charge sheet was not competent under the Rules to issue it. The fact that the officer was personally involved in the matter was

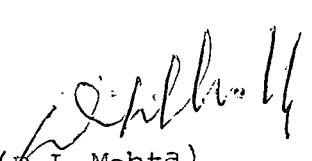
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mentioned as an additional ground. There is also considerable difference in the nature of involvement in this case and the present one. In the case of Chandra Deo Singh (supra) the Disciplinary Authority had himself been gheraoed and confined for more than an hour by a group of staff led by the delinquent official. In this case no misconduct towards the disciplinary authority has been alleged. The present is only a case in which the disciplinary authority had himself witnessed the alleged misconduct while performing his duties. In view of this it cannot be applied to the facts of the present case.

7. In view of the above, we are of the opinion that the charge sheet which was issued to the delinquent official was not legally invalid merely because it has been issued by an officer who had himself witnessed the alleged misconduct. This is particularly so because a charge sheet only provides an opportunity to the delinquent officer to explain his position in regard to the alleged misconduct. However, since the respondent No.2 had himself witnessed the occurrence, it was not proper on his part to have taken further action of appointment of the Inquiry Officer and subsequently take decision on the report of the Inquiry Officer. The appropriate course for him was to refer reply of the delinquent official alongwith the charge sheet to his superior officer for appropriate orders, particularly, when an objection had already been taken by the applicant while replying to the charge sheet. We accordingly, allow the present application to the extent that the orders of the disciplinary authority for appointing the inquiry officer and for imposing the punishment as well as the proceedings of the inquiry are hereby quashed. The competent authority will be at liberty to take a fresh decision on the charge sheet after considering the reply furnished by the applicant and thereafter to make a fresh order regarding appointment of an Inquiry Officer, if it is not satisfied with the reply and considers that the charges need to be enquired into. The applicant is entitled to all consequential benefits which arise because of quashing the impugned order of punishment. Parties to bear their own costs.


(B.B. Mahajan)
Member(Adm.).


(D.L. Mehta)
Vice Chairman.