

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO.2299 OF 2016

New Delhi, this the 7th day of February, 2018

CORAM:

**HON'BLE SHRI RAJ VIR SHARMA, JUDICIAL MEMBER
AND
HON'BLE MS. PRAVEEN MAHAJAN, ADMINISTRATIVE MEMBER**

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Km. Khushboo Kumari, aged 24 years,
D/o Sh.Nagendra Prasad Singh,
R/o C/o Joginder Kumar,
At B-56, Block-B, Veena Enclave,
Nangloi, Delhi 110041

Applicant

(By Advocate: Mr.R.K.Shukla)

Vs.

1. Union of India, through the General Manager,
Northern Railway Headquarter,
Baroda House,
New Delhi.

2. The F.A. & CAO/F&G,
Northern Railway,Headquarter,
Baroda House,
New Delhi 110001

3. Ms.Samidha Singh,
Deputy F.A. & C.A.O./Finance,
Northern Railway Headquarter,
Baroda House,
New Delhi

Respondents

(By Advocate: Mr.Shailendra Tiwary)

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ORDER

Per RAJ VIR SHARMA, MEMBER(J):

In this Original Application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

- “(a) to quash and set aside the enquiry proceedings related to charge sheet dated 30.04.2014 and simultaneously the order of penalty dated 07.05.2015 (Annexure A-1) may be declared null and void *ab inito* and same may be quashed accordingly and the order of appellate authority dated 17.03.2016 (Annexure A-2) and the order of revisional authority dated 17.05.2016 (Annexure A-3) may be quashed and set aside; thereafter
- (b) to direct the respondents to reinstatement of the applicant with all consequential benefits along with arrear of pay etc.
- (c) to allow the original application with all consequential benefits.
- (d) Award the cost of the litigation.
- (e) Any other relief which this Hon’ble Tribunal deem fit and proper may also be passed in the facts and circumstances of the case in favour of the applicant.”

2. We have carefully perused the records and have heard Mr.R.K.Shukla, learned counsel appearing for the applicant, and Mr.Shailendra Tiwary, learned counsel appearing for the respondents.

3. Brief facts of the case, which are relevant for the purpose of deciding the issue involved in the O.A. and are not disputed by either side, are as follows:

3.1 The applicant was temporarily appointed as a Substitute Telephone Attendant-cum-Dak Khalasi (hereinafter referred to as 'Substitute TADK') in PB-1 Rs.5200-20200+GP Rs.1800/- with effect from 12.3.2013 to work with Ms. Samidha Singh, Sr.EDPM, Northern Railway Headquarters, Baroda House, New Delhi, vide order dated 12.3.2013 (Annexure 4) issued by the Sr.A.F.A., Administration, Northern Railway, Baroda House, New Delhi.

3.2 The said Ms.Samidha Singh, while serving as Sr.EDPM, Northern Railway Headquarters, New Delhi, acted as Disciplinary Authority and issued charge memo dated 30.4.2014 (Annexure 5), proposing to hold an inquiry against the applicant under Rule 9 of the Railway Servants (Discipline & Appeal) Rules, 1968 in respect of the following statement of articles of charge:

“Article I:

Ms.Khushbu Kumari, Substitute TADK went missing on 02.02.2014 at 07.45 P.M. from my residence where she was residing earlier and did not report for duty on 03.03.2014. A missing persons report vide report No.DD No.12A dt.03.02.14 was got filed vide my letter dated 03.02.2014 addressed to SHO Paharganj. Ms.Khushbu Kumari remained absent from her duty in an unauthorized manner and this affected the official working of the undersigned.

Ms.Khushbu Kumari, Substitute TADK after appearing at my residence at 11.30 hours on 03.02.2014 requested for leave from 04.02.2014 to 12.02.14 which was granted by the

undersigned but she did not report to duty before 02.03.2014. She remained absent in an unauthorized manner for the period after the expiry of leave.

After having a sympathetic view, Ms.Khusbu Kumari Substitute TADK was given a chance and was permitted to join duty on 03.03.2014 onwards after having receiving her application dated 03.03.2014. However, her work did not improve and she failed to attend to several official telephone calls at the residence and carry official papers on several occasions.

Despite repeatedly advising Ms.Khushbu Kumari, Substitute TADK, verbally and vide warning letters/show cause notices dated 11.03.2014 and 28.03.2014 to improve her working and show punishment, she failed to perform her official work as arising out of Railway operation.

That Ms.Khushbu Kumari, Substitute TADK, has not only displayed lack of devotion to duty and also not complying with the show cause notices and verbal reminders has failed to:

- (i) Maintain absolute integrity
- (ii) Maintain devotion to duty and
- (iii) Acted in a manner unbecoming of a Railway government servant.

Therefore, she has violated the provisions of Rule 3(1)(i)(ii)(iii) of the Railway Service Conduct Rules.”

3.3 The said Ms.Samidha Singh, then serving as Dy.F.A.& CAO/Fin., Northern Railway Headquarters, Baroda House, New Delhi, again acted as Disciplinary Authority and appointed the Inquiring Authority (IA) and Presenting Officer (PO) in the aforesaid departmental proceeding, vide order dated 17.6.2014 (Annexure 7).

3.4 In the enquiry, only one witness was examined on behalf of the prosecution, and the applicant also cross-examined the said witness. No witness was examined by the applicant in support of her defence. The IA also examined the applicant. Being called upon by the IA, the applicant submitted her defence note on 10.10.2014.

3.5 The IA submitted its report dated 5.12.2014 (Annexure 11) holding the charges as proved against the applicant. The applicant also submitted her representation on 2.2.2015 (Annexure 12) against the inquiry report.

3.6 The said Ms.Samidha Singh, then serving as Dy.F.A.& CAO/Fin, Northern Railway Headquarters, Baroda House, New Delhi, acted as the Disciplinary Authority, and after considering the materials available on the record of inquiry as well as the applicant's representation against the inquiry report, accepted the inquiry report and issued notice dated 28.4.2015/7.5.2015 (Annexure 1) for imposition of penalty of "Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration" on the applicant.

3.7 Being aggrieved by the said order/notice for imposition of penalty issued by Ms.Samidha Singh as Disciplinary Authority, the applicant made an appeal dated 4.6.2015 (Annexure 14). The Appellate Authority (AA), vide order dated 17.3.2016 (Annexure 2), upheld the penalty imposed by the DA and rejected the applicant's appeal dated 4.6.2005. The applicant's revision petition dated 5.3.2016 (Annexure 15) against the orders passed by the DA and AA was also rejected by the Revisionary Authority (RA), vide order dated 19.5.2016 (Annexure 3).

4. In the above context, the main contention of Mr.R.K.Shukla, learned counsel appearing for the applicant is that Ms.Samidha Singh

(respondent no.3) being the accuser and personally concerned with the purported charges has acted mala fide and arbitrarily in initiating the departmental proceeding and in imposing upon applicant the penalty of removal from service. Ms.Samidha Singh (respondent no.3) has acted as a judge in her own cause and has certified her own allegation/statement as true. Thus, the entire departmental proceedings as well as the orders passed therein stand vitiated. Both the AA and RA have also failed to consider in proper perspective the applicant's plea of Ms.Samidha Singh being biased against her, and of the entire gamut of departmental proceeding being the outcome of such bias. Therefore, the impugned charge memo and orders are liable to be quashed.

5. *Per contra*, it has been contended by Mr.Shailendra Tiwary, learned counsel appearing for the respondents, that Ms.Samidha Singh, who was serving as Sr.EDPM and also as Dy.FA & CAO/Finance was the DA in respect of the applicant at the relevant points of time. As per rules and instructions issued by the Railway Board, DA can be none other than the one under whose administrative control the delinquent employee works. The applicant was working under the administrative control of Sr.EDPM and Dy.FA & CAO/Finance. Therefore, the initiation of departmental proceedings and passing of the penalty order by Ms.Samidha Singh as DA, while serving as Sr.EDPM and also as Dy.F.A. & CAO/Finance cannot be said to have suffered from any legal infirmity.

6. After having given our thoughtful consideration to the rival contentions, we have found considerable merit in the contention of Mr.R.K.Shukla, learned counsel appearing for the applicant.

7. To adjudicate an issue in which an authority has any act or part, the principles of fairplay and good governance would require his/her exclusion. Such an exclusion should start at the time of initiation of a proceeding till the conclusion. The concept of a person having a dual role is abhorrent to the concept of justice. Therefore, it is not necessary that an authority has to be biased in a proceeding in which he has got some personal interest. But when there is a substantial possibility of bias, then fairness would compel him to be away from it. Therefore, the basic principle underlines the rule of likelihood of bias, which is, "justice must not only be done but appears to be done". This principle has been enunciated in consonance with Article 21 of the Constitution of India which provides for fairness in action. Therefore, the real question is not whether a person is biased, as it is difficult to prove the state of mind of such a person. This concept has been evolved in order to sustain and uphold the public confidence in the impartiality of a system, either administrative or quasi judicial.

8. In **State of U.P. Vs. Mohammad Nooh, AIR 1958 SC 86**, AIR 1958 SC 86, the Hon'ble Apex Court dealt with the case involving a departmental trial in which the Presiding Officer himself gave a testimony. Considering

the above said facts, the Hon'ble Apex Court held that such an action is shocking to the notice of judicial propriety and fairplay. The illegality is so patent and loudly obtrusive that it leaves an indelible stamp of infirmity. It was further held by the Hon'ble Apex Court that a person who has got personal stake in the enquiry must have kept himself aloof from it.

9. In **A.K.Kraipak and others vs. Union of India and others**, AIR 1970 SC 150, the Hon'ble Apex Court has held that the rule regarding the likelihood of bias will be observed more in administrative enquiry in order to prevent miscarriage of justice. It was further held that whenever a complaint is made regarding the contravention of principles of natural justice, it is incumbent on the Court to decide the said issue as to whether the non-compliance would vitiate the proceedings. The following paragraph of the judgment of the Hon'ble Apex Court is apposite:

"20. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly made. In other words, they do not supplant the law of the land but supplement it. The concept of natural justice has undergone a great deal of change in recent years. In the past it was thought that it included just two rules namely: (1) no one shall be a judge in his own case (*Nemo debet esse iudex propria causa*) and (2) no decision shall be given against a party without affording him a reasonable hearing (*audi alteram partem*). Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonably. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the

application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry. As observed by this Court in *Suresh Koshy George v. University of Kerala*, Civil Appeal No.890 of 1968, D/-15-7-1968 = (AIR 1969 SC 198) the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the enquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. Whenever a complaint is made before a court that some principle of natural justice had been contravened the court has to decide whether the observance of that rule was necessary for a just decision on the facts of that case."

10. In **Ranjit Thakur vs. Union of India**, AIR 1987 SC 2386, it has been observed by the Hon'ble Apex Court that a judgment which is the result of bias or want of impartiality is a nullity and the trial would become "*coram non judge*". Accordingly, it was held that such a proceeding would become a nullity and the order passed therein cannot be sustained.

11. In **A.U. Kureshi v. High Court of Gujarat & Anr.**, (2009) 11 SCC 84, the Hon'ble Supreme Court has held that no person should adjudicate a dispute which he or she has dealt with in any capacity. The failure to observe this principle creates an apprehension of bias on the part of

the said person. Therefore, law requires that a person should not decide a case wherein he is interested. The question is not whether the person is actually biased, but whether the circumstances are such as to create a reasonable apprehension in the minds of others that there is a likelihood of bias affecting the decision.

12. In **Arjun Chaubey v. Union of India & Ors.**, AIR 1984 SC 1356, a Constitution Bench of the Hon'ble Supreme Court dealt with an identical case wherein an employee serving in the Northern Railway had been dismissed by the Deputy Chief Commercial Superintendent on a charge of misconduct which concerned himself, after considering by himself the explanation given by the employee against the charge and after thinking that the employee was not fit to be retained in service. The Hon'ble Supreme Court held that the order of dismissal passed against the employee stood vitiated as it was in utter disregard of the principles of natural justice. The main thrust of the charges against the employee related to his conduct qua the disciplinary authority itself, and, therefore, it was not open to the disciplinary authority to sit in judgment over the explanation furnished by the employee and decide against the delinquent. No person could be a judge in his own cause and no witness could certify that his own testimony was true. Anyone who had a personal stake in an enquiry must have kept himself aloof from the enquiry.

13. Thus, the legal position emerges that anyone who has personal interest in the disciplinary proceedings must keep himself/herself away from such proceedings, otherwise the disciplinary proceedings initiated and orders passed by such person against the delinquent employee are unsustainable as being tainted with bias and/or likelihood of bias.

14. The facts of the case on hand would demonstrate that Ms. Samidha Singh (respondent no.3) was the accuser and personally concerned with the charges and had a personal stake in the enquiry initiated against the applicant. Thus, it was not open to Ms.Samidha Singh, who was Sr.EDPM and Dy.FA & CAO/Finance at the relevant points of time to initiate the departmental proceedings or thereafter to pass the impugned order of penalty against the applicant. The involvement of Ms.Samidha Singh (respondent no.3) has vitiated the departmental proceedings as well as the penalty order passed by her. In all fairness, Ms.Samidha Singh ought to have refrained herself from taking any role in the proposed action against the applicant. There is absolutely no explanation as to why she herself did not give any complaint to her authority over the conduct of the applicant. Ms.Samidha Singh ought to have asked his higher authorities to initiate proceedings by bringing to their notice about the alleged misconduct on the part of the applicant.

15. Applying the ratio laid down by the Hon'ble Apex Court to the facts and circumstances of the present case, we are of the considered view that the impugned departmental proceedings being tainted with bias and/or likelihood of bias, any continuance thereafter would be of no legal consequence, and when the violation goes to the very root of the issue, then the continuation would become a farce. Therefore, the impugned charge memo and orders passed in the departmental proceedings are unsustainable and liable to be quashed.

16. In the light of our above discussions, we quash the impugned charge sheet dated 30.4.2014 and the orders dated 7.5.2015, 17.3.2016 and 17.6.2016 (Annexure 1, Annexure 2 and Annexure 3) and direct the respondents to reinstate the applicant in service as Substitute TADK with all consequential service benefits, except back wages, within a period of three months from today.

17. Resultantly, the O.A. is partly allowed to the extent indicated above.
No costs.

(PRAVEEN MAHAJAN)
ADMINISTRATIVE MEMBER

(RAJ VIR SHARMA)
JUDICIAL MEMBER

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