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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 363/97

New Delhi this the 4th Day of December 1998

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri M.S. Sokhi,
Son of S. Gian Singh Sokhi,
Resident of 134 Mandakini Enclave,
New Delhi-110 019.
Ex. Superintendent of Central Excise,
Customs & Central Excise Collectorate,
New Delhi.

Applicant

(By Advocate: Shri R.K. Handoo)

-Versus-

1. Union of India through the
Secretary to the Govt. of India,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. Collector of Customs & Central Excise,
New Delhi.
3. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

Respondents

(By Advocate: Shri R.R. Bharti)

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Hon'ble Shri R.K. Ahooja, Member (A)

The applicant while working as Superintendent in the Custom and Central Excise Collectorate, New Delhi was chargesheeted for a major penalty on the following two Articles of Charge:

Article-I

Shri M.S. Sokhi while functioning as Inspector and Supdt. in the Customs & Central Excise Collectorate, New Delhi during the period 1.6.68 (as Inspector from 1.6.68 to Oct. 1983) and as Supdt. from Nov. 1983 to 30.6.87) failed to maintain absolute

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integrity, devotion to duty and acted in a manner unbecoming of a Govt. Servant inasmuch as he by corrupt practices acquired assets and was found in possession of property worth Rs. 92,942.79 which was disproportionate to his known sources of Income.

Article-II

Shri M.S. Sokhi, while posted and functioning as Supdt. Customs & Central Excise, Air Cargo Palam Airport, New Delhi during the year 1984 failed to maintain devotion to duty and acted in a manner unbecoming of Govt. Servant inasmuch as he purchased a DDA Flat No. 134 Mandakini Enclave, New Delhi for Rs. 1,67,000/- in his name and failed to intimate the transaction to his department as required in CCS (Conduct) Rules, 1964.

2. The Commissioner for Departmental Inquiries in his inquiry report held that while charge 1 was not proved, charge 2 was proved. The disciplinary authority, however, did not accept the conclusion of the Inquiry Officer in regard to Charge 1 and recorded its reasons for disagreement. These were communicated to the charged officer and after considering his reply and consulting the Union Public Service Commission both the charges were held to be established and on that basis the Disciplinary Authority imposed the penalty of dismissal from service vide impugned order, Annexure A-1. The appeal filed by the applicant against the impugned order was also rejected vide order dated 31.10.1996, Annexure A-2. Aggrieved by the orders of the disciplinary and the appellate authority, the applicant has approached the

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Tribunal with the prayer that both the orders be quashed and he may be directed to be restored to service with all consequential benefits.

3. We have heard the counsel on both sides and have gone through the pleadings as well as the records produced by the respondents. Shri Handoo, learned counsel for the applicant, laid stress on the point that the conclusion of the disciplinary authority are totally unwarranted as there is no evidence whatsoever on the basis of which the finding of misconduct could be justified. According to Article 1 of the Charges, the applicant was alleged to be in possession of property worth Rs. 92,942.79 which was not accounted for by his own known sources of income. Shri Handoo submitted that the Inquiry Officer had held that this Article of Charge was not proved. He pointed out that the unaccounted amount of Rs. 92,942.79 was related to the allegation that it was the applicant who had purchased the DDA Flat No. 134 Mandakini Enclave, New Delhi for the sum of Rs. 1,67,000/-. The Inquiry Officer had found that payment amounting to Rs. 92 thousand towards the purchase of the flat had been made by the wife of the applicant and by her two mothers and brother. It was the case of the applicant that his wife had her own independent income and that the aforesaid DDA Flat had been purchased by his wife from her own savings as well as the money received through her relatives. Once the Inquiry Officer had concluded that there was no disproportionate income of Rs. 92 thousand under Article 1 of the Charge, the contention of the applicant that the purchase of the flat had been done by his wife was also established.

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Consequently, Article II of the automatically became redundant as the applicant was not required under the Conduct Rule to report a transaction made by his wife who had her own independent source of income.

4. Shri Handoo also argued that the prosecution failed miserably to substantiate its charge and material documents and material witnesses were not produced in the inquiry. Thus, the four bank drafts by which the payment for the DDA Flat was alleged to have been made were not produced by the prosecution and ultimately it was the applicant himself who had produced the photostat copies of these bank drafts. The learned counsel pointed out that the bank drafts do not bear any description of the person who gets the bank drafts issued and it was a failure on the part of the investigating agency not to have looked into the sources of the bank drafts. If that had been done, it would have been clear that the bank drafts had their source in the gifts made by the mother and step-mother of the applicant's wife as well as her brother. He submitted that there was no ground for inference that money in question was provided for by the applicant. He also contended that the disciplinary authority virtually amended Article II of the Charge against the applicant in that he mixed up the amount of three drafts out of four with the question of intimation regarding the purchase of the flat by the applicant.

5. Shri Bharti, learned counsel for the respondents, on the other hand, argued that the disciplinary authority had given cogent and plausible reasons for its disagreement and given a reasoned

findings on the charges against the applicant. He pointed out that the applicant was found to be residing in DDA Flat No. 134 Mandakini Enclave and that the Power of Attorney document executed by the original allottee of the DDA, Shri Pawan Chaudhry, in the name of the applicant had been found on the premises during the CBI raid. It was thus not a case of "no evidence" as contended by Shri Handoo.

6. We have carefully considered the contention on both sides. As there was some doubt as to whether the Power of Attorney recovered from the premises during the raid had been relied upon by the respondents in the disciplinary inquiry, we asked to see the record. We find that this document was introduced as Exh.23 and was part of 44 Exh. introduced in evidence on 4.5.1992 with the consent of both the parties. The applicant was also questioned by the Inquiry Officer in his general examination as regards this document. The relevant questions and answers are reproduced hereunder:

Q. It is alleged that you had purchased a flat no.134 Mandakani Enclave N. Delhi for Rs.1 lack 67 thousand as given in the statement of imputation in Annexure C. What you have to say on this?

A. It was purchased by my wife and no amount has been spent by me. This purchase was on power of Attorney.

Q. Under Article of II it has been mentioned that the purchase of the house No.134 Mandankani Enclave, N.Delhi has not been intimated to the Competant Authority by you as required by CCS rule 1964 Conduct rules. What you have to say on this?

A. It was purchased by my wife and no regular transfer has yet taken place as such no intimation has to be made. The transaction was done by my wife as such no intimation was required by me.

Q. Pl. see P.98 and 99 of Ex.S-23 and offer your comments.

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A. I have not signed on the said document.

Q. In this case can I take it for granted that this papers were found in your house without your knowledge.

A. These were fond in my house. It is a proposal and not yet finalised. I was aware of it.

7. The learned counsel for the applicant argued that the document which was at best a photostat copy of the Draft Agreement could not relied upon since Shri Pawan Chaudhry, the origianl allottee of the DDA Flat was not produced as a witness by the prosecution. He vehemently argued that an inference has to be drawn against the assertions of the respondents since they had deliberately not produced Shri Pawan Chaudhry for his statement. On the other hand, Shri Pawan Chaudhry had made a statement before the Investigating Officer, Shri S.S. Sharma, that he had sold the Flat in question to Mrs. Kirpal Kaur wife of the applicant for the amount of Rs. 1,67,000/- received through four bank drafts on 18.1.1994 and 20.2.1994. He pointed out that a copy of this statement recorded on 14.12.1987 has also been filed by the applicant as an additional document on 10.4.1987.

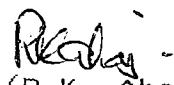
8. In a disciplinary case the scope of judicial review is limited to ensure that the charged employee receives fair treatment or in other words fair hearing and the decision of the disciplinary authority is not perverse or tainted with malafide. The learned counsel has strenuously endeavored to point out the shortcomings in the evidence produced against the applicant and has sought to establish that there was in fact no evidence against the applicant and in any case the conclusion reached by the disciplinary authority was not such as can be considered reasonable in the facts and circumstances

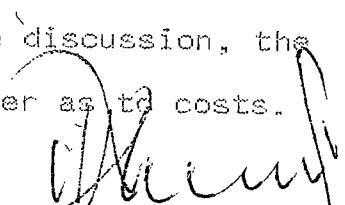
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of the case. Despite the valiant efforts of the learned counsel of the learned counsel we are not persuaded. As has already been pointed out the applicant was found to be living in the DDA Flat at 137 Mandakani Enclave when the premises were raided by the CBI. A document purported to be the Power of Attorney in favour of the applicant was admittedly recovered from the premises. The two facts taken together permit an inference that the flat in question ~~had~~ been purchased by the applicant. As the transaction had not been reported to the competent authority Article II of the Charge would be substantiated. It is not the applicant's case that the Bank drafts had been given by way of gifts to him by his mother-in-law, etc. nor is there any claim that such transactions was also reported to the competent authority. The source of the money for the purchase of the flat by the applicant thus remains unexplained. Article I of the Charge regarding disproportionate assets thus is also supported. In any case this is not a case of "no evidence" nor it can be said that it is not possible to arrive at the conclusion which the disciplinary authority did in the facts and circumstances of the case. Since the findings of the disciplinary authority cannot be held to be arbitrary or utterly perverse, we find no scope for interference.

In the light of the above discussion, the O.A. is dismissed. There will be no order as to costs.


(R.K. Ahoejä)
Member (A)


(A.V. Haridasan)
Vice Chairman (J)