

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 952 OF 1997

NEW DELHI THIS THE 20TH DAY OF AUGUST, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE-CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

(5)

Shri N.K. Aggarwal
S/o Shri O.P. Aggarwal,
R/o 101, Bahubali Enclave,
I.P. Extension,
Delhi-110 092.

....Applicant

By Advocate Shri S.K. Gupta

Versus

1. Union of India through
Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001.
2. Member (Personnel & Vigilance),
Central Board of Excise and Customs,
North Block,
New Delhi.
3. Commissioner,
Customs and Central Excise,
Central Revenue Building,
Chandigarh.
4. Additional Commissioner (P&V)
Customs & Central Excise Collector,
Central Revenue Building,
Chandigarh.
5. Shri Sanjay Pant
I.R.S.,
Assistant Commissioner,
C/o Commissioner,
Customs and Central Excise Collector,
Central Revenue Building,
Chandigarh. ...Respondents

By Advocate Shri R.R. Bharti

ORDER (ORAL)

Hon'ble Dr. Jose P. Verghese, Vice-Chairman

The applicant in this case is
challenging the order of punishment passed by the
respondents by awarding a penalty of stoppage of 2
increments without cumulative effect accruing to him
from the issuance of the said order dated 14.6.1995.

The appeal filed against this order was also disposed of by an order dated 29.3.1996. Thereafter, the revision application was also filed. After the revision application was disposed of, the present O.A. was filed by the applicant. Notices were issued on this O.A. The reply and the rejoinder are also filed and since the matter being a short one, we decided to dispose of this case at the admission stage itself.

2. The learned counsel for the applicant stated that the charge against the applicant was a general alleged misconduct under Rule 3(i) of the CCS (Conduct) Rules, 1964. The Articles of Charge and the imputations of misconduct clearly showed that it was mainly referring to the question of integrity and the resultant negligence in duty. The Enquiry Officer concluded his enquiry stating that on the perusal of the facts and circumstances and on the basis of the evidence on record, the charge alleged could not be proved in the enquiry proceedings, hence are not sustainable and may be dropped. While returning the said finding, the Enquiry Officer made an observation to the following effect:-

"The charged officer is, however, found negligent in performance of his duties as JCP to the extent that he left the JCP unattended for furtherance of his relieving formalities in the office with Shri Harpal Singh, Inspector, without due intimation to his superiors for his such absence, which resulted in such system failure".

3. Based on this observation and at the same time agreeing with the findings of the Enquiry officer, the impugned order was passed by the

disciplinary authority only on the basis of this observation and the punishment of withholding of 2 increments without cumulative effect was passed. The contention raised by the counsel for the applicant is that the order of disciplinary authority is illegal since the foundation of the order passed by the disciplinary authority awarding the penalty was only an observation by the Enquiry Officer, who has, in fact, returned the report saying that the charge, as stated, is not proved. According to the counsel, the observation even if it amounts to a fresh charge, the disciplinary authority could not have proceeded to pass the punishment order without giving him an opportunity to explain the circumstances and show that he has not committed the said charge of negligence being absent from duty. In the file it is also seen that the applicant has stated this ground in appeal and the appellate order does not cover this aspect either. The disciplinary authority has stated in the penalty order that the Enquiry Officer had not exceeded his jurisdiction when he has observed negligence. The counsel for the applicant stressed that a punishment based on an observation without framing a charge and giving adequate opportunity to explain the charge is illegal and the same is contrary to the rules, and principles of natural justice.

4. The counsel for the respondents on the other hand stated that this case could be covered under Explanation to clause 14 of Rule 23 of the CCS (CCA) Rules, 1965, which states as follows:-

"If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge. (8)

Provided that the findings on such charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or, has had a reasonable opportunity of defending himself against such article of charge".

On the basis of the said explanation, the counsel for the respondents stated that the order passed by the disciplinary authority based on the observation of the Enquiring Officer is correct since the petitioner has admitted the facts that he was absent and was negligent of duty and these facts came to light during the enquiry.

6. We have perused the enquiry report as well and we fail to see that there was any admission as suggested or submitted by the counsel for the respondents said to have been made at the instance of the applicant. At the most, it was only a defence offered by the applicant after the Enquiry Officer has submitted his report. Regarding the main allegations of the doubtful integrity, nothing could be alleged against him since he was absent from the scene. The defence of absence of this nature, cannot be construed to be admission of the facts amounting to misconduct that he has been absent or being negligent while on duty.

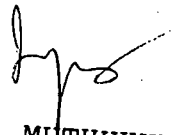
These facts need to be specifically to be recorded as a part of the findings on the basis of the facts and circumstances of the case. We are unable to agree with the contention of the counsel for the respondents that the defence taken by the applicant after the Enquiry Officer has recorded the finding, cannot by any stretch of imagination, be taken as an admission of misconduct now being alleged based on the observation of the Enquiry Officer.


7. In the circumstances, however, a lenient view being taken by the disciplinary authority as well as the appellate authority, the penalty now imposed on the applicant being the penalty after the disciplinary proceedings, it would amount to stigma and since no effective proof under the rules has been given to the applicant, we are of the view that this is a fit case where both the orders of the disciplinary authority dated 14.6.1995 as well as the appellate order dated 29.3.1996 required to be quashed on the ground that these orders were passed contrary to the rules and principles of natural justice to the extent that no opportunity has been given to the applicant to explain the additional subsequent charge, now alleged to be the foundation of the

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order passed by the disciplinary authority.

8. We order accordingly. O.A. is allowed to the extent mentioned above. The applicant is entitled to all consequential benefits.


(K. MUTHUKUMAR)
MEMBER (A)


(DR. JOSE, P. VERGHESE)
VICE CHAIRMAN(J)

Rakesh