

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1017/97

New Delhi this the 10th Day of September 1998

Hon'ble Mr. Justice K.M. Agarwal, Chairman
Hon'ble Mr. R.K. Ahooja, Member (A)

Shri S.C. Jain,
Son of Shri R.D. Jain,
R/o H.No.61, Block No. 5G,
NIT, Faridabad (Haryana) ... Applicant

(By Advocate: Shri Gurmeet Singh)

-Versus-

1. Union of India,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi
2. The Deputy Commissioner (P&V),
Customs and Central Excise Commissionerate,
C.R. Building, IP Estate,
New Delhi.
3. The Commissioner of Customs,
New Customs House,
Near Air Cargo Terminal II,
IGI Airport, New Delhi. ... Respondents

(By Advocate: Shri R.R. Bhargava)

ORDER

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

The applicant impugnes the order of penalty of removal from service and rejection of appeal against the said order. These orders were passed on the basis of an enquiry conducted on the following two charges:

ARTICLE-I

Shri S.C. Jain, Inspector, Customs & Central Excise while functioning as Air customs Officer at IGI Airport, New Delhi during the month of June 1986 intentionally excluded one VCR from the list of items prepared by him on a rough sheet of paper on the basis

of oral declaration given by a passenger Sh. Nasser Ahmed who had arrived from Dharan by Saudi Airways Flight No. SV 348 and had reported for his Customs clearance on red channel Counter on which he was on duty, with a view to favour Sh. Naseer Ahmed in the matter of levy of Customs duty on his baggage in consideration of Saudi Riyals 3000/- which he had demanded and taken from Shri Naseer Ahmed.

ARTICLE II

That on examination of the baggage of Sh. Naseer Ahmed above said, after he had paid Customs duty and was about to leave the Hall, the Air Customs Preventive Staff recovered and seized 4 gold biscuits weighing in all 80 gms. and other excess goods valued at Rs. 12,700/- including one VCR make Mitsubishi. On coming to know about this, Shri S.C. Jain above said, returned Saudi Riyals 1,000/- to Shri Naseer Ahmed. On being called by the Asstt. Collector of Customs on duty, on complaint made by Shri Naseer Ahmed, Shri S.C. Jain admitted having received from Shri Naseer Ahmed Saudi Riyals 1000 only and also having returned the same to him but refused to admit the same thing in his written statement recorded before the Asstt. Collector.

2. The case of the applicant is that as an Inspector working under a Superintendent at the custom counter it was not his duty to record the Oral Declaration (OD Card) of the passengers and the same was to be done by his Superintendent Shri Varshney.

Secondly, the passenger who was caught by the Preventive Staff had gone through the customs but was allowed to re-enter on some pretext. It was only thereafter that a bag was recovered from him containing a VCR and 4 biscuits of gold which clearly shows that the said bag had been concealed by him and not shown at the counter. Thirdly, the applicant states that it is wrongly recorded by the Asstt. Collector that at the time of the incident the applicant had admitted receiving 1000 Saudi Riyals from the passenger as he had clearly denied any such imputation. Learned counsel for the applicant also submits that the crucial witnesses such as the passenger involved, Shri Varshney who was the Superintendent Incharge at the time and who was under the Rule to prepare the OD Card were not produced in the enquiry. It is also submitted that the Enquiry Officer had found that the charges against the applicant were not proved and in these circumstances the disciplinary authority wrongly came to the conclusion that the applicant was guilty and on that basis imposed the penalty of removal from service. The applicant had thereafter filed an O.A. No. 1743/89 which was allowed by the Tribunal vide its order dated 6.11.1992 on the ground that it was obligatory for the respondents to give a show cause notice to the applicant when it was proposed to disagree with the report of enquiry officer. The respondents thereafter filed a SLP before the Hon'ble Supreme Court and Hon'ble Supreme Court was pleased to modify the order of the Tribunal to the extent that respondents were given liberty to proceed in the matter further by giving a show cause notice and thereafter consider the matter afresh. The applicant submits that notice issued thereafter was

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very sketchy but in any case the disciplinary authority could not take a decision from more than two years before finally passing the final order dated 9.10.1986 which has been impugned herein. (12)

3. The respondents in their reply stated that the applicant had admitted having received from the passenger 1000 Saudi Riyals. It was found according to the respondents during the enquiry that the oral declaration of the passenger was not directly recorded by the Superintendent but was first recorded by the applicant in a rough sheet of paper on the basis of which the Superintendent accepted the oral declaration and recorded the same in the OD card. They denied the contention of the applicant that the passenger had asked the applicant about the amount of duty in Saudi Riyals and that the passenger thereafter had placed the amount at the counter but the applicant had directed him to deposit the same in the bank. The respondents also say that the passenger could not be produced as a witness as he had been working abroad. The respondents, therefore, submit that the charges against the applicant have been proved and he has rightly been awarded the penalty from removal from service.

4. We have heard the counsel and have gone through the relevant record. It is open to the disciplinary authority to disagree with the enquiry officer and as held by Supreme Court in State of Rajasthan Vs. M.C. Saxena, 1998 SCC L&S, the only requirement is that the disciplinary authority should record its reasons for such a disagreement. It is also

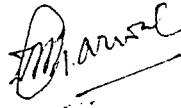
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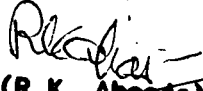
well settled that the Tribunal cannot interfere with the findings of the competent officer where they are not arbitrary or perverse (See Union of India Vs. AIR 1989 SC 11 85; B.C. Chaturvedi Vs. Union of India 1996(42) ATC 44; Union of India Vs. Bhupinder Singh, JT 1994(1) SC 658). It would be a rare case therefore where the interference by the Tribunal would be justified. On perusal of the record however we find that this is one of these rare cases.

5. The disciplinary authority in its order posed a question as to whether the applicant received an Oral Declaration from the passenger but left out one VCR intentionally on consideration of 3000 Saudi Riyals which were demanded from the passenger. The disciplinary authority noted that there was no eye witness as to taking of money or return ^{of} whether 1000 Saudi Riyals. In answering the question however the disciplinary authority has relied entirely on the statements given by the Asstt. Collector and Superintendent that firstly the passenger had made a statement that he had paid 3000 Saudi Riyals to the applicant who returned 1000 Saudi Riyals and secondly that the applicant made an Oral statement to the Assistant Collector that he had taken 1000 Saudi Riyals which he returned to the passenger. As we have seen there is no direct evidence in either case; in the first case the passenger was not produced as a witness, and in the second case even the written statement of the Assistant Collector and Superintendent (Preventive) noted that the applicant refused to having made any such admission. More significantly, it has been accepted that 3000 Saudi Riyals could not have been

paid to the applicant as the duty leviable^{on} a VCR was much less than this amount. The disciplinary authority then concluded that only 1000 Saudi Riyals were demanded and paid ~~him~~ in consideration. This is however not the charge which specifically speaks of 3000 Saudi Riyals have been asked for and paid out of which 1000 Saudi Riyals were returned. Of this there is no evidence. It is clear that the disciplinary authority came to its conclusion entirely on the ^{evidence} basis of the Asstt. Collector (Incharge) and the Superintendent (Preventive) that the applicant had made an admission before them at some stage. No reliance could be placed on it when no corroboration from any other source was forthcoming.

6. We thus find that it is a case of 'no evidence' and the 5. conclusion of the disciplinary authority disagreeing with the enquiry officer is without any basis. We have, therefore, no hesitation in allowing this ^{application} appeal and quashing the impugned order of the disciplinary authority. Consequently the order of the appellate authority also goes. The applicant will be restored to service and would be entitled to his back wages, seniority and other service benefits. This order will be complied with within three months from the date of receipt of a certified copy of this order.


(K.M. Agarwal)
Chairman


(R.K. Aheer)
Member(A)