CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1765 of 2000

New Delhi, this the 5th day of December, 2001

HON'BLE MR.V.K. MAJOTRA, MEMBER (A)
HON'BLE MR.KULDIP SINGH, MEMBER(JUDL)

Shri K.K. Arya (IPP)
Under Secretary,
Ministry of External Affairs,
South Block,
New Delhi. ....Applicant

By Advocate Shri V.S.R. Krishna, proxy counsel
for M/s S.K. Sahijpal, Counsel.

Versus

1. Union of India
Through Foreign Secretary,
Government of India,
Ministry of External Affairs,
South Block,
New Delhi.

2. Shri Jayant Prasad
Joint Secretary (CNV)
and Chief Vigilance Officer,
Government of India,
Ministry of External Affairs,
Vigilance Unit. ...Respondents

By Advocate Shri N.S. Mehta

ORDER(ORAL)

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant who is presently working as an ~~Inspector~~ Under Secy had been working as Protocol Officer (Special) in the Ministry of External Affairs during November, 1986 to August, 1988. A departmental enquiry was initiated against the applicant vide a memo dated 24.4.1992 on the allegations that the applicant while functioning as a Protocol Officer (Special) in the Ministry of External Affairs had in the year 1988 issued a custom Duty Exemption Certificate (CDEC) bearing No.P/5/88 dated 24.2.88 in favour of Uganda High Commission under his signature for importing items worth US$ 28351.35 which included 37 air conditioners and other electronic items.

It was alleged that this CDEC was issued in an irregular manner as the applicant had not taken the prior approval of the then Deputy Chief of Protocol (P) for issuing the said CDEC and the import involved was in far excess of the prescribed norms. With the help of these CDEC the Uganda High Commission cleared the items including 37 air conditioners duty free resulting in heavy loss to Government of India in terms of custom duty.

2. An FIR was also lodged into this incident without naming own accused, but since no criminal charge could be proved against the applicant but still the respondents with a malice towards the applicant initiated this enquiry after 4 years from the date of lodging of the FIR and the same CBI Inspector who had been investigating the criminal case was appointed as Presenting Officer.

3. It is further submitted that the Inquiry Officer concluded his enquiry report and upheld the charge against the applicant vide memo dated 5.6.1996 and copy of the enquiry report is at Annexure P-3. The applicant made a representation against the enquiry vide Annexure P-4. The disciplinary authority also received recommendations from UPSC on the enquiry report and then passed the impugned order dated 6.6.2000 and imposed a major penalty upon the applicant vide Annexure P-7.

4. It is this impugned order which is being assailed by the applicant. The applicant has taken various grounds including that the report of the enquiry officer is based on no evidence rather it is submitted that the findings recorded by the Inquiry Officer which perverse in nature and are liable to be quashed.

5. The applicant has also pleaded that the main charge against the applicant was that he had issued CDSE without obtaining prior approval but the respondents have withheld the process sheet which bore the approval of the DCP (P) for issue of CDEC. Had it been produced during the enquiry proceedings it would have been proved that the prior approval of the DCP(P) was obtained and charge made against the applicant was false.

6. The applicant also pleaded that the alleged CDEC was issued by the applicant as per the then prevalent procedure because all the CDEC's were signed by the Protocol Officer irrespective of whether prior approval of DCP(P) was required or not, so merely on that basis the Inquiry Officer could not have held that no prior approval was obtained. Had the process sheet been produced then it would have also been held proved that the deployment of proposed air conditioners which were annexed with the process sheet was approved by the DCP(P) Merely issue of CDEC on the same day when the request was received cannot be a ground for upholding the charges framed against the applicant as the Inquiry Officer failed to consider the urgency for the immediate grant of CDEC.

7. The applicant further submitted that had the DCP (P) not given the prior approval then at least the then DCP(P) would have taken an objection for such an act of omission on the part of the applicant when a letter was received from the custom department for verifying CDEC and since the reply to the said letter was approved by the DCP (P) so this act was confirmed that he had granted prior approval to the CDEC.

8. The applicant also pleaded that the Inquiry Officer has traversed from the requirement of the Uganda High Commission when he clearly stated that the ACs were required by the High Commission only for residential premises of the High Commissioner and other officers. The Inquiry Officer brought in the fancy imagination that the AC's were required by the Uganda High Commission for replacement purposes and for such large quantities, the same could not be required for residential purposes.

9. The applicant also pleaded that the department has conducted two separate departmental enquiries and the same enquiry officer was appointed for the same incident against two charged officers, i.e, applicant and one Shri R.N. Jayant UDC which itself is against the principles of natural justice and fair play and the applicant s request for a copy of the charge-sheet and inquiry report's against Shri Jayant was turned down by respondent vide their letter dated 15.10.1996 which is also in violation of principles of natural justice.

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10. It is further submitted that under the Vienna Convention diplomatic missions are entitled as per their requirement subject to "reasonable quantities", but this term "reasonable quantities" have been interpreted by the Inquiry Officer in his own manner, that is to hold the applicant guilty which is unwarranted.

11. The applicant further submitted that though the other charged officer against whom the enquiry pertaining to same transaction was held by same Inquiry Officer, that officer was permitted to engage an advocate as a Defence Assistant in the enquiry, whereas the applicant has been denied the right to engage an advocate as a Defence Assistant, so on that score also the principles of natural justice has been violated. As such it was submitted that OA deserves to be allowed and impugned orders are liable to be quashed.

12. The OA is being contested by the respondents. The respondents in their reply submitted that the entire departmental proceedings have been conducted in accordance with the rules. The applicant had, in fact, issued a CDEC to the Uganda High Commission without obtaining prior approval when there was a circular issued by the department that in case of import of certain electronic items there is a requirement that prior approval of the DCP (P) was required and Protocol Officer could not issue the CDEC without obtaining the prior approval of DCP (P). The said circular was also received by the applicant. He had initialled the same in token of the acknowledgement and as such he had issued the CDEC without obtaining prior approval of his superiors. While

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issuing the CDEC, the applicant had allowed the Uganda High Commission to import large number of electronics items including 37 air conditioners which have failed the test of reasonableness, as prescribed in the Vienna Convention.

13. As regards the findings recorded by the Inquiry Officer are concerned, it is denied that the same are perverse rather it is submitted that the same are based on evidence and the Inquiry officer has rightly held that the charge against the applicant is proved and thereafter the department has also consulted the UPSC before awarding punishment to the applicant, hence no interference is called for.

14. We have heard the learned counsel for the parties and gone through the records of the case.

15. The first contention raised by the applicant is that he has been denied the assistance of a legal practitioner to defend his case when the presenting officer was a CBI Inspector who was well versed in law so the applicant should also have been permitted to engage a legal practitioner to defend his case. The counsel for the applicant submitted that in the other enquiry over the same transactions the other delinquent official had been permitted by the same Inquiry Officer to engage a legal practitioner thus in a manner he has also been discriminated and it is in violation of principles of natural justice.

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16. In reply to this, the counsel for the respondents submitted that it is totally the discretion of the Inquiry Officer keeping in view the circumstances of a particular case even the status of the Presenting Officer and only then the Inquiry Officer has come to the conclusion whether the assistance of a legal practitioner is justified or not. The counsel for the respondents also submitted that there is nothing on record to show that under what circumstances other person has been allowed assistance of a legal practitioner so there is no material available on record to compare the reasons allowing the other delinquent officer permission of assistance of legal practitioner and refusing the same to the applicant.

17. As far rule position is concerned, it is only Rule 14(8) which provides that the Government servant may take assistant of any other Government servant as a defence assistance to defend him and it specifically says that the Government servant may not engage a legal practitioner for the purpose, unless the presenting officer appointed by the disciplinary authority is a legal practitioner or in the alternative the disciplinary authority having regard to the circumstances of the case so permits. Thus the perusal of this rule shows that the applicant had a right to engage a legal practitioner only if the presenting officer was appointed was also a legal practitioners. Since the presenting officer was only an Inspector of CBI that does not mean that he is a legal practitioner and his status remains to be that of a Government employee of any other department.

18. The Government of India had also issued an OM dated 23.7.84 on the subject which also provides for permission to engage legal practitioner for defence if the presenting officer is a 'legal practitioner' or the case is being presented by a 'prosecuting officer' of the CBI or a 'Government Law Officer' such as 'Legal Adviser', 'Junior Legal Adviser' etc. Admittedly in this case the presenting officer was not a 'prosecuting officer' of the CBI. He was merely an Inspector of the CBI nor he was a Law Officer of the CBI such as Legal Adviser, Junior Legal Adviser so now it was left with the discretion of the disciplinary authority to allow the applicant to be represented by a legal practitioner or not and there is nothing on record to show that this discretion as exercised by the disciplinary authority in refusing the permission to the applicant to be represented by a legal practitioner has been exercised in any arbitrary manner or illegally. The mere fact that other delinquent official against whom a separate enquiry has been conducted was allowed to be represented by a legal practitioner that also does not go to show that there was a discrimination exercised against the applicant since there is no material on record to prove the same so on this score we find that this contention of the applicant has no merits.

19. The next contention of the counsel for the applicant is that the charges, as framed against the applicant, can be bifurcated as under:-

(i) That the applicant has issued a CDEC in favour of the Uganda High Commission under his signature for importing items worth US$ 28,351.35 including 37 air conditioners in an irregular manner.

(ii) That the applicant did not take the prior approval of then Deputy Chief of Protocol (P) for issuing the said CDEC.

(iii) The import involved was far in excess of the prescribed norms of CDEC should not have been issued without obtaining the prior approval of the DCP(P).

(iv) Because of this CDEC the party concerned cleared the items duty free resulting in heavy loss to the Government in custom revenue thus the applicant has displayed lack of integrity and lack of devotion to duty and exhibited conduct unbecoming of a Government servant.

20. The counsel for the applicant then submitted that the findings recorded by the Inquiry officer are so perverse that it does not specify as to how much loss has been caused to the Government of India, charges are vague in itself as no quantum of loss has been mentioned either in the charge-sheet or in the findings recorded by the Inquiry Officer. Shri Krishna appearing for the applicant submitted that as per Vienna Agreement, Diplomatic Missions are entitled to import goods for their use and the CDEC is normally issued by Protocol Officer and Protocol Officer is not supposed to make

assessment of the requirement of the items by the particular diplomatic mission. He is just to process and issue the CDEC.

21. As far the prior approval of the DCP (P) is concerned, the applicant's counsel submitted that the process sheet along with annexures prepared by the applicant for issuing of CDEC had not been produced during the enquiry on the plea that the same has been lost. Had the same been produced it would have shown that the applicant had obtained prior permission of the DCP (P).

22. Besides that the applicant has also stated that when the custom authorities had sent a letter to the Protocol office for verifying CDEC the applicant had prepared a draft reply and had put up before the DCP (P) and DCP(P) made corrections thereon itself shows that the DCP (P) had given prior approval otherwise he would have taken immediate action then and there and raised an objection that CDEC have been issued without his approval. Since no action has been taken at that time so it should be presumed that prior approval of the DCP (p) was there. The applicant's counsel, however, did not challenge that the CDEC was issued under his signature.

23. Counsel for the applicant then referred to various observations made by the Inquiry Officer while returning the findings and submitted that while returning the finding the Inquiry officer has been making comments over the then economic conditions of Uganda. He had also made certain comments about democracy and other issues as

if the Inquiry officer was not holding a quasi judicial proceedings rather he was writing a speech over the politics and foreign policy of the country. Learned counsel further submitted that the whole thing has been managed by the DCP (P) who had also been Director in the Vigilance Section to show to the Government of India that they had conducted an enquiry and held the applicant guilty who had issued a CDEC.

24. We have also gone through the enquiry report and the observations pointed out by the learned counsel for the applicant which do reflect about economic conditions of Uganda and about reciprocal relations between Uganda and India even in terms of imports of items for our missions there. Though these comments are unwarranted but the fact still remains whether the CDEC was issued under the signature of the applicant to that aspect there is no denial.

25. As regards the prior approval of the DCP (P) is concerned, the applicant wanted to draw an inference from the letter of the custom authorities seeking the verification of the CDEC and the draft reply prepared by the applicant himself and on which some endorsement has been made by the DCP (P) itself. In this regard we may mention that the contention raised by the applicant has no merits because first of all the applicant is supposed to prove that he had prior approval of the DCP (P) before issue of CDEC. It is also on record that the department had issued a letter giving instructions to Protocol Officers with regard to issue of CDEC and in respect of 8 countries including Uganda, the department had

specifically mentioned that prior approval of DCP (P) was required before issue of CDEC. The draft reply to the custom enquiries prepared by the applicant which bears endorsement of DCP (P) which has been heavily relied upon by the applicant to show that DCP had given prior approval we may mention that the reliance is misplaced because when the draft reply to the custom authorities was prepared before that CDEC had already been issued by the applicant it was a subsequent stage when the custom authorities wanted to verify the CDEC. Probably they were also alarmed because of huge import of 37 air conditioners by one diplomatic mission and the endorsement made by the DCP (P) also shows that he had scored/cleared his name as signatory to the reply and had mentioned therein that it is the applicant who had forwarded CDEC and should have written the letter. This draft reply nowhere shows that the DCP (P) had given any prior approval.

26. The next contention raised by the applicant was that the loss caused to the Government in terms of custom revenue has not ben quantified and it cannot be said that the charge is proved about causing loss of revenue on account of import of such like items during the diplomatic missions is not allowed duty free. In our view this contention again is of no merits because under the Vienna agreement the import of items to the diplomatic missions are allowed in a 'reasonable quantity'. Whether the import of 37 air conditioners was a reasonable or unreasonable for that the Inquiry Officer has taken a view that it was unreasonable and it may be so that some other Inquiry Officer might have taken

different view but the fact remains that the view taken by the Inquiry Officer is based on evidence before him and the interpretation of word "reasonable" as used in Vienna Agreement by him and to that extent it may be that the import of 37 air conditioners was far in excess of the prescribed norms and it is so then the import of excess air conditioners must have caused loss to the Government of India in terms of custom revenue though it is not quantified, it may be negligible but the loss to the Government of India in terms of custom revenue is there.

27. The counsel for the applicant has also submitted that the findings arrived by the Inquiry Officer are perverse in nature as no reasonable man could have taken this view. However, in reply to this the learned counsel for the respondents submitted that the court while exercising the power of judicial review is not required to reappreciate the evidence and even if the court comes to a different conclusion than what had been arrived at by the Inquiry Officer the court cannot susbstitute its own view. The court while exercising the power of judicial review has to examine the decision making process and not the decision and in this case there is no complaint about the decision making process. The applicant has not raised any issue with regard to violation of any rule in conduct of the enquiry nor the applicant had taken up any plea with regard to violation of any principles of natural justice. The learned counsel for the applicant has also referred to a judgment reported in 1994 (1) SLR page 516 entitled as State Bank of India and Others Vs. Samarendra Kishore Endow and

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Another. In this case the Hon'ble Supreme Court while relying upon its earlier decision in the case of U.O.I. Vs. Perma Nanda and also in the case of State of Orissa Vs. Vidya Bhusan Mohapatra where the court had observed as under:-

> "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority".

28. In our view the findings can be said to be perverse if there is no evidence at all or if the inference drawn by the Inquiry Officer is of such that no prudent man could arrive at such findings. In this case we find that there is no sufficient material available on record to show that the CDEC in question has not been issued by the applicant under his own signatures and the Inquiry Officer has also arrived at a findings based on evidence that imports of 37 air conditioners was far in excess of the prescribed norms and no prior approval of DCP (p) was taken as it was required under the letter issued by the Ministry particularly in regard to the request of Uganda High Commission for CDEC it has been made mandatory for the Protocol Officers to obtain prior approval of DCP (P) and it has been proved during enquiry that no prior approval has been taken. Thus we are of the considered opinion that the findings arrived at by

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the Inquiry cannot be said to be perverse and issuing of a CDEC without obtaining prior approval it amounts to misconduct on the part of the applicant.

29. So we are of the considered opinion that no ter- inference is called for and as such the OA is dismissed. No costs.

(KULDIP SINGH)
MEMBER(JUDL)

(V.K. MAJOTRA)
MEMBER (A)

/Rakesh