

9

New Delhi, this the 17th day of April, 2001

Shri M.I. Khan,
S/o Late Shri Md. Mustafa Khan,
Ex. Superintendent, Customs
Under Commissioner of Customs,
New Delhi
R/o 43 Park End,
Vikas Marg,
Delhi : 110 092
(By Advocate: Shri B.S. Mainee)

..... Applicant

1. Union of India : Through
The Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi
2. The Commissioner of Central Excise
and Customs,
New Custom House,
I.G.I. Airport,
New Delhi

..... Respondents
(By Advocate: Shri R.R. Bharti)

By S.A.T. Rizvi, Member (A):

2

9

2. We have heard the learned counsel on either side and have perused the material placed on record.

3. After submitting that while the enquiry officer had exonerated the applicant in respect of one of the two articles of charges and had found the other article of charge as only partly proved, the disciplinary authority has proceeded to inflict a punishment out of proportion to the guilt proved, the learned counsel appearing for the applicant has argued that the note of dissent to EO's findings issued by the disciplinary authority after the retirement of the applicant, having been issued without Presidential mandate, is bad. In support of this contention, he places reliance on Rule 15 (2) of the CCS (CCA) Rules which provides that in the event of disagreement with the findings of the enquiry authority on any article of charge, the disciplinary authority shall record its reason for such disagreement and record its own findings on such charge. In the present case, according to him, it is the Commissioner (Customs) who has issued the Office Memorandum dated 14.5.1997 conveying his dissent. The aforesaid action has not been taken by the Commissioner (Customs) on behalf of or in the name of the President. There is nothing in the aforesaid Office Memorandum to show that he has acted for and on behalf of the President or in the name of the President. Further, the Commissioner (Customs) has called upon the applicant by the aforesaid OM to make his submissions/representations to himself (Commissioner - Customs). We have perused the

Dr

10

aforesaid Office Memorandum and find that the Commissioner (Customs) does appear to have acted on his own and not in the capacity of disciplinary authority as provided under rule 15(2). The Disciplinary Authority in the present case is admittedly the President and hence we are inclined to accept the argument advanced by the learned counsel.

4. Insofar as the supply of a copy of the UPSC's advice is concerned, we cannot do better than rely on the same set of Judgements rendered by the Hon'ble Supreme Court/CAT on which reliance was placed by us in the aforementioned other OA, being OA No.2232/1999 earlier decided today itself. In that OA we have placed reliance on the following extracts of the judgements rendered by the Supreme Court/CAT -

(1993) 1 SCC 13 - State Bank of India and Others Vs. D.C. Aggarwal and Others :

"4. Although correctness of the order passed by the High Court was assailed from various aspects, including the power of the High Court to interfere on quantum of punishment in writ jurisdiction, but we propose to confine ourselves only to the question of effect of non-supply of CVC recommendations and if the order was invalid and void on this score only it is not necessary to decide any other issue. Law on natural justice is so well settled from a series of decisions of this Court that it leaves one bewildered at times, that such bodies like State Bank of India, who are assisted by a hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural fairness is as much essence of right and liberty as the substantive law itself."

1994 (2) S.L.J. 360 - Shri Charanjit Singh Khurana Vs. Union of India :

"17. The reasonings given by their lordship of

2


(4)

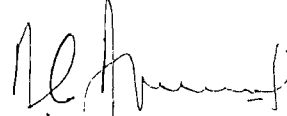
the Supreme Court in the case of Managing Director, ECIL, Hyderabad (supra) for the supply of a copy of a report of the inquiry officer to a delinquent also apply to the advice given by the Commission. The reasonings given by the Commission in support of its advice are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving at its conclusion. The advice of the Commission constitutes an important material before the disciplinary authority, which is likely to influence its conclusion. We, therefore, take the view that the right to receive a copy of the advice of the Commission is an essential part of the reasonable opportunity at the first stage, as envisaged in Article 311 (2) of the Constitution and also a requirement of the principles of natural justice.

5. It is clear from what the Supreme Court/CAT have up-held in the aforesaid Judgements that a serious prejudice has been caused to the defence of the applicant in the present OA also due to non-supply of a copy of the UPSC's advice to him before passing of the final order of punishment dated 18.9.1998. The said prejudice, needless to add, arises from non-observance of the principles of natural justice clearly envisaged in Article 311 (2) of the Constitution.

6. For the reasons mentioned in the preceding paragraphs, the OA succeeds and is allowed. The impugned order dated 18.9.1998 is quashed and set aside. The applicant will be entitled to all consequential benefits.

7. No costs.


(S.A.T. RIZVI)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

(pkr)