

In the Central Administrative Tribunal
Principal Bench, New Delhi.

Regn. No. DA-1743/89

Date of decision: 6.11.92

Shri S.C. Jain Applicant

Versus

Union of India and Respondents
Another

For the Applicant Shri Madhav Panikar, Advocate
with M. Chandrasekharan,
Senior Counsel.

For the Respondents Shri P.P. Khurana, Counsel

CORAM: Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Mr. B.N. Dhoundiyal, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the judgement? *yes*
2. To be referred to the Reporter or not? *no*

(Judgement of the Bench delivered by Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, while working as Air Customs Officer at the Indira Gandhi International Airport, New Delhi, was charge-sheeted for major penalty under Rule 14 of the C.C.S. (CCA) Rules, 1965 by Memorandum dated 7.7.1987 which reads as under:-

"ARTICLE - I

Shri S.C. Jain, Inspector, Customs & Central Excise, while functioning as Air Customs Officer at I.G.I. 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, Shri Naseer Ahmed, who had arrived from DHAMRAN by Saudi Airways Flight No. SV 348 and

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had reported for his customs clearance on Red Channel Counter on which he was on duty, with a view to favour Shri 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 Shri 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 1000 to Shri Naseer Ahmed. On being called by the Assistant 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 Assistant Collector."

2. The Assistant Collector, who was appointed as the Inquiring Authority, submitted a detailed report on 5.5.1988 in which he concluded that both the Articles of Charges framed against the applicant as not proved beyond doubt.

3. The Deputy Collector, who functioned as the disciplinary authority, has stated in his order dated 16.11.1988 that he differed with the conclusions reached by the Inquiring Authority on the basis of the records of the inquiry and has given his reasons for the same. He concluded that the charges were proved and, accordingly, imposed on the applicant the penalty of removal from service. On 15.5.1989, the Collector of Customs rejected the appeal preferred by the applicant. The applicant has

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challenged the aforesaid orders passed by the disciplinary authority and the Appellate authority.

4. We have gone through the records of the case and have heard the learned counsel for both the parties. In the instant case, the disciplinary authority has given reasons for disagreeing with the findings of the Inquiring Authority. It is, however, well settled that before the disciplinary authority disagrees with the findings and records its own finding based on reasons, the delinquent officer should be given an opportunity of representation to show cause as to why the finding in his favour should not be disturbed for the reasons given in the show-cause notice. In *Narayan Mishra Vs. State of Orissa*, 1969 SLR 659, the Supreme Court has held that in a case where the delinquent official has been acquitted of some charges and the punishing authority differs from the findings of the enquiry officer and holds him guilty of the charges, notice or opportunity should be given to the delinquent official by the punishing authority in order to conform to the principles of natural justice. In the instant case, no such show-cause notice was given to the applicant and on this short ground, the impugned order of removal from service dated 16.11.1988 and the impugned appellate order dated 15.5.1989 are not legally sustainable.

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5. Accordingly, we set aside and quash the impugned order of removal from service. The respondents are directed to reinstate the applicant expeditiously, and preferably within three months from the date of receipt of this order. The applicant would also be entitled to back wages from the date of removal from service to the date of his reinstatement. The application is disposed of on the above lines. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal) 6/11/92
Administrative Member

am
6/11/92
(P.K. Kartha)
Vice-Chairman (Judl.)