

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA-1933/89

Date of decision: 22.5.1992

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Shri D.K. Sharma Applicant

Versus

Union of India through Respondents
the Secy., Miny. of
Finance & Others

For the Applicant Shri N.D. Batra, Advocate

For the Respondents Shri J.C. Madan, Advocate,
Proxy Counsel for Shri P.P.
Khurana, Advocate.

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. I.K. Rasgotra, Administrative Member.

1. Whether Reporters of local papers may be allowed
to see the Judgment? *Yes*

2. To be referred to the Reporters or not? *No*

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

The applicant, who has worked as an Inspector in the
Collectorate of Customs & Central Excise, Delhi, filed this
application under Section 19 of the Administrative Tribunals
Act, 1985, praying for the following reliefs:-

(i) To set aside and quash the impugned order
dated 3.1.1989 passed by the disciplinary
authority, whereby the penalty of removal
from service was imposed on him;

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(ii) to set aside and quash the impugned order dated 5.7.1989 passed by the Appellate Authority whereby the appeal filed by him was rejected;

(iii) to direct the respondents to reinstate him as Inspector with all consequential benefits, including arrears of salary which he would have drawn while on duty; and

(iv) to treat the period of suspension from 28.11.86 to 3.1.1989 as duty for all purposes and that he be allowed full pay and allowances for that period.

2. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. According to the version of the respondents, the applicant was working as Inspector in the Unaccompanied Baggage Unit at the Cargo Terminal in I.G.I. Airport, New Delhi, during the month of October, 1986. One passenger, namely, Shri Jagir, who had returned from Dubai after working there as a labourer, had cleared his unaccompanied baggage on 20.10.1986. On suspicion, the Assistant Collector (Preventive), Airport, questioned Shri Jagir and another person, Shri Raj Kumar. Shri Jagir showed his Customs papers indicating that unaccompanied baggage had been cleared under Transfer of Residence Rules though he never wanted to avail concession under T.R. Rules.

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Shri Jagir alleged that Shri Subhash Gupta(a clearing agent) and his Assistant, Shri Raj Kumar, in connivance with the applicant, had obtained Rs.30,000/- from him for paying Customs Duty for his unaccompanied baggage. Investigations made by the Assistant Collector (Customs) revealed that out of Rs.30,000/-, only Rs.5750/- had been deposited in the State Bank of India, Airport Branch as Customs Duty and Rs.750/- had been returned to Shri Jagir, and the remaining amount of Rs.23,500/- with Shri Raj Kumar was to be shared by Shri Subhash Gupta, the applicant and the Superintendent (Customs), according to the statement of Shri Raj Kumar. Shri Jagir had also visited Unaccompanied Baggage Unit on 14.10.1986 and his baggage was examined on that day also by the applicant. Shri Jagir was told to come again with Rs.30,000/- as Customs Duty which he brought on 20.10.1986. He had put his thumb impression on the T.R. Form as he was totally illiterate. He alleged that he had never told the applicant to grant him T.R. as he was to go back to Dubai after some days and had protested when entry of T.R. was made in his Passport. Shri Jagir had two passports (one valid and the other, used and cancelled one). The T.R. entry was required to be endorsed in the valid passport, but it was entered in the cancelled passport. An amount of Rs.23,500/- was recovered from Shri Raj Kumar and it was restored to Shri Jagir on 23.10.1986, when he confirmed that he had changed his mind for not going abroad

and his goods were allowed under T.R.

3. The applicant has stated in his rejoinder affidavit that the respondents have given a misleading version of the events with a view to prejudice his case. According to him, the allegations made in the ^{above &} statement of facts by the respondents in their counter-affidavit are the subject matter of the disciplinary proceedings initiated against him.

4. The applicant was placed under suspension w.e.f. 28.11.1986 and his headquarters during suspension was fixed at Ambala Divisional Office. He filed OA-1572/89 in the Tribunal praying, inter alia, for staying the impugned order dated 28.11.1986 whereby his headquarters during suspension was fixed at Ambala and for a direction to the respondents to expedite the disciplinary proceedings against him. On 23.11.1987, the Tribunal directed the respondents to complete the disciplinary proceedings expeditiously. The Tribunal also granted a stay as regards the headquarters of the applicant being fixed at Ambala. On 13.7.1988, the Tribunal passed an order directing the respondents to complete the disciplinary proceedings within a period of three months from the date of receipt of the order.

5. The respondents changed the headquarters of the applicant to Delhi vide their order dated 28.12.1987.

6. On 22.9.1987, the respondents issued to the applicant a memorandum proposing to hold an inquiry against him, together with Articles of Charge, statement of imputations of misconduct or misbehaviour on the basis of which the Articles of Charge framed against him were proposed to be sustained, the list of documents, and the list of witnesses in connection with those charges. After holding an inquiry, the Inquiry Officer submitted his report on 31.10.1988 and the impugned order of removal from service was passed by the disciplinary authority on 3.1.1989.

7. The following five Articles of Charge were framed against the applicant:-

"Article-I"

Shri D.K. Sharma, Inspector of Customs and Central Excise while functioning as such in U.A.B. Unit at Import Cargo, during the month of October, 1986 examined the U.A.B. for which B.D. No.5397 dated 14.10.86 had been filed on 14.10.86 but did not put up his examination report to the Supdt. on the same day with ulterior motive. He thus acted dishonestly and exhibited lack of devotion to duty.

Article-II

The above said Shri D.K. Sharma, in his aforesaid capacity failed to examine the goods sought to be cleared under B.D. No.5397 properly on 14.10.86. The re-examination of the baggage on 21.10.86 showed that he had under-valued textiles to the tune of Rs.1080/- and omitted to include 8 pant pieces, valued for Rs.240/- in his examination report, thereby causing loss

of Customs duty revenue @ 240% on the value of Rs.1320/- to the Government. He had thus acted dishonestly and exhibited lack of devotion to duty.

Article-III

The above said Shri D.K. Sharma in his aforesaid capacity extended T.R. facility to Shri Jagir passenger in respect of articles in his U.A. Baggage knowing that the passenger was not entitled to it. He made the entry of T.R. concession in the cancelled passport of the passenger Shri Jagir with a fraudulent intention and in violation of the existing instructions. He acted in a dishonest manner and exhibited lack of devotion to duty.

Article-IV

The above said Shri D.K. Sharma in his aforesaid capacity in connivance with other persons made Shri Jagir passenger to part with Rs.30,000/- on the pretext of paying Customs duty. Deposited Rs.5750/- only as Customs duty, returned Rs.750/- to him and got balance of Rs.23,500/- unauthorisedly with his associates. He thus acted in a dishonest manner.

Article-V

The above said Shri D.K. Sharma during the month of 86 and onward failed to comply with the written order of maintaining his headquarters at Ambala during suspension issued under C.No.VIII (I&V) 26/81/86 dated 28.11.86 and continued to defy the order. He has thus acted and continues to act in an indisciplined manner.

It is thus imputed that Shri D.K. Sharma, Inspector of Customs and Central Excise has exhibited lack of integrity, lack of devotion to duty and conduct unbecoming of a Government servant and thereby contravened the provision of Rule 3(1) (i), (ii) and (iii) of CCS(Conduct) Rules, 1967." Q

8. The Inquiry Officer came to the conclusion that Articles III and IV were not proved. Article V stands proved but it has become non-existent in view of the orders of this Tribunal and refixing of the headquarters of the applicant at Delhi. According to him, Article II of the Charge stands proved against the applicant.

9. The disciplinary authority, in the impugned order dated 3.1.1989, agreed with the Inquiry Officer to the extent that Charge II was proved and Charge V was non-existent. He, however, did not agree with the assessment of the evidence made by the Inquiry Officer in his report in respect of the remaining articles of charge, i.e., charge in Articles I, III and IV. After making his own assessment of the evidence available in the documents and oral evidence recorded during the inquiry, the disciplinary authority held that charges in Articles I to IV have been proved and on that basis, he imposed the penalty of removal from service on the applicant. Before doing so, he did not give any show-cause notice to the applicant.

10. The applicant has raised several contentions challenging the validity of the impugned order dated 3.1.1989 passed by the disciplinary authority and the impugned order dated 5.7.1989 passed by the appellate authority. His basic stand is that in the instant case,

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there is no evidence to sustain the Articles of Charge.

The learned counsel for the applicant has relied upon numerous rulings in support of his various contentions.

As against this, the learned counsel for the respondents sought to sustain these charges on the basis of the

~~xxxxxxxxxx~~ of the records on the file.

11. In our opinion, the impugned orders dated 3.1.89 and 5.7.1989 are not legally sustainable on the short ground that the disciplinary authority did not give any show-cause notice to the applicant before imposing the penalty on him after disagreeing with the findings of the Inquiry Officer. It is well settled that before the disciplinary authority disagrees with the findings of the Inquiry Officer and records its own findings based on reasons, the delinquent officer should be given an opportunity of representation to show-cause as to why the findings in his favour should not be disturbed for the reasons given in the show-cause notice. In Narayan Mishra Vs. State of Orissa, 1969 S.L.R. 657, 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 Inquiry Officer and holds him guilty of charges, notice or opportunity should be given to the delinquent official by the punishing authority in order to conform to the principles

of fairplay and natural justice.

12. 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 3.1.1989 and the impugned appellate order dated 5.7.1989, are liable to be set aside and quashed. We order and direct accordingly.

13. The respondents are, therefore, directed to reinstate the applicant as Inspector as expeditiously as possible but preferably within three months from the date of receipt of this order. In the facts and circumstances of the case, we direct that the applicant would be entitled to 50 per cent of the pay and allowances from the date of removal from service to the date of his reinstatement. After reinstating him, the respondents will be at liberty to proceed against the applicant in accordance with law, if so advised. The application is disposed of on the above lines. There will be no order as to costs.

Subj. 22/5732
(I.K. Rasgotra)
Administrative Member

22/5732
(P.K. Kartha)
Vice-Chairman (Judl.)