IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 456/89 198
T.A. No.

DATE OF DECISION 2.8.91

Shri.K.R. Meena Applicant (s)

Shri K.L. Bandula Advocate for the Applicant (s)

Versus

U.O.I. & Ors. Respondent (s)

Shri N.D. Batra Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice U.C. Srivastava, Vice Chairman

The Hon'ble Mr. I.P. Gupta, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(of the Bench delivered by
Hon'ble Shri Justice U.C. Srivastava)

The applicant was appointed as Inspector in the Delhi Collectorate of Customs and Central Excise in the year 1982. He has come against the order of removal passed against him vide order-in-appeal C.No.II-26(6)/Vig/88/258 dated 7.2.89 passed by Collector of Customs & Central Excise Collectorate, Delhi, after the Departmental Enquiry. The applicant was placed under suspension by an order dated 9.6.87 made by the Deputy Collector (P&E) on the ground that the disciplinary proceedings against the applicant were contemplated. Thereafter by Memo dated 29.10.87, disciplinary proceedings were initiated against the applicant for three charges. The applicant denied the three charges and there-

after the enquiry proceeded. The Enquiry Officer prepared an enquiry report and sent it to the Disciplinary Authority. The Department Authority passed the removal order in question dated 31.8.88. The applicants appeal dated 20.9.88 against the removal order was dismissed.

2. The applicant has challenged the enquiry proceedings on the variety of grounds including the reports of the Enquiry Officer was not given before award of penalty.

3. The respondents have observed that the appellant had not made any serious demand for the appearance of Sarv Shri Narinder Kanwar and O.P. Alwadhi as witnesses in the inquiry in as much he failed to plead, before the Inquiry Authority for resisting to provisions of the Departmental Enquiries(Enforcement of attendance of witnesses and production of documents) Act, 1972.

4. The learned counsel for the applicant stresses that the statements of Sh. Narender Kanwar and Shri O.P. Alwadhi, U/S 108 of the Customs Act,1962 recorded immediately after the act of misconduct on part of Shri K.R. Meena, Inspector were important and relied upon but they were not produced before the enquiry and the applicant had no opportunity to cross examine them. In the order-in-original imposing the penalty, it was mentioned that being party to the acts of omission and commission of

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Shri Meena, both of them kept out of the enquiry intentionally.

5. This fact should have been taken into account and also there were benefits on behalf of the prosecution which examined oral and documentary evidence to prove the charges against the applicant.

6. In the case of AIR Hira H. Advani Vs. State of Maharashtra it was held that the power of Customs Officers to summon persons to give evidence and produce documents- Statements made to Customs Officers in inquiry under Section 171-A, Admissible in evidence against maker in criminal proceedings launched against him.

7. It is true in the case of U.O.I. Vs. Parma Nanda, it was held that "We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matter or punishment cannot be equated with an appelate 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 legislalture 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. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is malafide is certainly not a matter for the Tribunal to concern itself with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

8. The fact however remains that the Enquiry Report was not given to the applicant before the imposition of the penalty. This should have been done. In the case of Md.Ramzan Khan Vs. U.O.I., the Supreme Court (JT 1990(4) SC 456) had observed that even though the second stage of enquiry in Article 311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Enquiry Officer. The interpretation of prospective effect has been given in CAT's Judgement (OA No.136 of 1989 decided on 13.12.90 by the Principal Bench) in the case of Babu Singh Vs. U.O.I. The applicant has been pursuing the matter and the Tribunal has also yet to give direction.

9. In the circumstances, the application is allowed. The order dated 31.8.88 removing the applicant

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is quashed as also subsequent order of the appellate authority rejecting the appeal. However, this would not preclude the Disciplinary Authority from revising the proceeding and continuing with it in accordance with law from the stage of supply of the Inquiry Report.

10. There shall be no order as to costs.

(I.P. GUPTA)
MEMBER

(U.C. SRIVASTAVA)
VICE CHAIRMAN