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O. A. No. 2535/90
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DATE OF DECISION 3.9.91

Mr ML Verma Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. Justice Ram Pal Singh, Vice Chairman

and

The Hon'ble Mr. NV Krishnan, Administrative Member

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The applicant is an Inspector in the Office of Respondent-2 i.e., Assistant Collector of Customs, Excise and Gold Control Appellate Tribunal, New Delhi. He is aggrieved by the order dated 30.6.89 (Annexure A-X) by which the Deputy Collector (P&E) imposed a minor penalty of stoppage of three increments without cumulative effect. He is also aggrieved by the Appellate order dated 24.11.89 (Annexure A-XII) passed by the Collector of Customs by which, instead of quashing the proceedings, the appeal was dismissed, but the penalty was reduced ^{to 1/6} with-holding of increments for one year.

2 The application is made on six grounds as mentioned in para 5 of the application. However, when the case came up for final hearing on 1.8.91 Shri KNR Pillai, learned counsel for the applicant, pressed for consideration only ground-A in which it is alleged that in the proceedings initiated for the imposition of a major penalty under Rule 14 of the CCS(CC&A) Rules, ^{the} Inquiry Officer given a report exonerating the applicant, but the Disciplinary Authority disagreed with these findings and passed the impugned order (Annexure A-X) imposing a minor penalty without giving an opportunity to the applicant ^{& of} being heard as to why he should not disagree with the findings rendered [&] by the Enquiry Officer. On this single ground alone the impugned Annexure A-X and Annexure A-XII orders of the Disciplinary Authority and Appellate Authority respectively are liable to be quashed. For this proposition, he relies on the decision of the Hon'ble Supreme Court in Narayan Mishra Vs. State of Orissa (1969) SLR-657.

3 The respondents have filed a reply stating that the applicant is not entitled to any relief. It is alleged that the applicant went to the room of Respondent-2 and misbehaved with him on 23.7.87. He was, therefore, suspended on 25.7.87 by Annexure A-IV which was confirmed by the Disciplinary Authority on

30.7.87 (Annexure A-IV.A). However, the Appellate Authority revoked the suspension by the Annexure A-V order dated 10.8.88.

4 The memorandum of charges was issued to him under Rule 14 of the CSS(CC&A) Rules, 1965 (Annexure A-VII), obviously with the intention of imposing a major penalty. An Inquiry Officer was appointed who submitted his report on 12.5.87 (Annexure A-IX). Admittedly, the Inquiry Officer held that the charges framed against the applicant were not proved. However, the Disciplinary Authority, by her order dated 30.6.89, disagreed with the Enquiry Authority's observation and held the charges as proved and imposed a minor penalty (Annexure A-X order). The appeal filed by him was rejected but the penalty was reduced (Annexure A-XII).

5 Admittedly, before concluding that the applicant was guilty of the charges framed against him, after disagreeing with the Inquiry Officer's report, the Disciplinary Authority did not send a copy of the Enquiry Officer's Report to the applicant and indicate to him that she had provisionally disagreed with the findings and arrived at the conclusion that the applicant was guilty. In other words, she did not give an opportunity to the applicant at this stage to represent why the Enquiry Officer's finding should be accepted and why it should not be varied to his disadvantage. This is a plain denial of natural justice and as held

by the Hon'ble Supreme Court in Narayan Mishra Vs. State of Orissa (1969-SLR 657 SC), if the Disciplinary Authority wanted to differ from the findings of the Enquiry Officer, he must have intimated the employee about this and should have given him adequate opportunity to make a representation, failing which the orders are liable to set aside.

6 The contention of the learned counsel for the respondents, Shri ML Verma is that though the applicant had such an opportunity when he came in appeal before the Appellate Authority yet, he did not even raise this as a grievance before the Appellate Authority. He, therefore, contended that the application cannot be allowed on this ground.

7 We cannot agree with the submissions made by the learned counsel for the respondents. The issue raised is a question of law and can be raised before the even Tribunal for the first time.

8 In the circumstances of the case, we are of the view that the impugned Annexure X order of the Disciplinary Authority was passed after denying a reasonable opportunity to the applicant to explain why the Inquiry Officer's Report should be accepted and not differed from. Therefore, the subsequent proceedings are vitiated and have to be quashed.

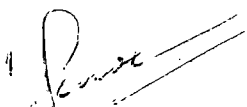
9 The applicant has not impleaded either the Disciplinary Authority who passed the Annexure A-X original order dated 30.6.89, nor the Appellate Authority

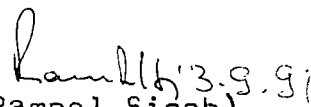
who passed the impugned Appellate Order dated 24.11.89 (Annexure A-XII). However, the respondents have not raised any preliminary objection in this regard.

9 For the reasons given above, we allow this application in part and quash the Annexure A-X and Annexure A-XII orders. We make it clear that this judgment shall not stand in the way of the Disciplinary Authority from continuing the proceedings, if so advised. In that event, the Disciplinary Authority may recommence the proceedings by informing the applicant, within one month from the date of receipt of a copy of this judgment, of this decision and if he disagrees with the findings of the Enquiry Officer, he should briefly state the reasons therefor to enable the applicant to make his representation properly. That authority may then complete the proceedings in accordance with law.

10 There will be no order as to costs.

11 The Registry is directed to serve a copy of this judgment on the Disciplinary Authority who passed the Annexure A-X order as it has not been impleaded in this application.


(NV Krishnan)
Administrative Member.


(Rampal Singh)
Vice Chairman