

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.869/90

NEW DELHI THIS THE 30th DAY OF SEPTEMBER, 1994.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri S.B. Saluja, S/o Shri Sunder Dass,
Inspector of Customs & Central Excise,
Delhi Collectorate of Customs & Central Excise,
Central Revenues Building,
I.P. Estate, New Delhi.Applicant

(By Advocate : Shri KBS Rajan)

VERSUS

1. Union of India, through
Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Collector of Customs,
Customs & Central Excise Collectorate,
I.P. Estate, Central Revenues Building,
NEW DELHI-110 002.
3. Deputy Collector (P & E),
Customs & Central Excise Collectorate,
Central Revenues Building,
I.P. Estate,
New Delhi-110 002. ... Respondents

(By Advocate : Shri R.R. Bharti)

JUDGEMENT

Hon'ble Shri B.K. Singh, Member (A)

This O.A.869/90 has been filed against the following order, which resulted in the stoppage of two increments of the application with cumulative effect :-

- (1) Order-in-Original C.No.4-Vig/82/2629, dated 30.9.1988 (Annexure XVIII) passed by Deputy Collector (P&E), Customs & Central Excise Collectorate, New Delhi (Respondent No.3).
- (2) Order-in-Appeal CNo.II-26(7)Sec/Vig/89/1109, dated 11.5.1989 (Annexure XIX) passed by Collector of Customs, Customs & Central Excise Collectorate, Delhi (Respondent No.2).

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2. The admitted facts are that while working as Air Customs Officer at Indira Gandhi International Airport, New Delhi. The applicant was placed under suspension with immediate effect by an Order dated 25.5.1982 (Annexure I) for contemplated disciplinary proceedings against him. Subsequently, by an Order dated 2.8.82 (Annexure-II) suspension order was revoked without prejudice to the action that might be taken against him at a later stage. The disciplinary action was initiated against the applicant in July 82, and these were finalised on 30.09.88 with imposition of a minor penalty stopping two increments with cumulative effect. There is no order passed about the ~~suspension period~~ suspension period.

3. By Memorandum dated 29.7.1982 (Annexure III), the applicant was informed of the proposal of taking action against him under Rule 16 of the CCS (CCA) Rules, 1965 on the statement of imputations of misconduct or misbehaviour enclosed therewith. He was given an opportunity to make such representation as he might wish to make against the proposal. By letter dated 9.8.1982 (Annexure IV) the applicant had requested for a copy of certain documents referred to in the said statement of imputations and also for providing him an opportunity to cross-examine the concerned Officers but this was denied to him by the department vide letter dated 30.8.1982 (Annexure V) and he was asked to make a representation either admitting or denying the charges. Vide (Annexure -VI) dated 7.09.82 the applicant while denying the allegations reiterated his inability to make a representation unless he was provided with a copy of the related documents. Subsequently, by Memorandum dated

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24.11.82 (Annexure VII) the applicant was informed of the proposal to hold an inquiry against him under Rule 16(1)(b) of the CCS (CCA) Rules 1965.

4. The articles of Charge against him was:

"Shri S.B. Saluja, Inspector of Customs & Central Excise while working/posted as Air Customs Officer at Delhi Airport, New Delhi, in the month of May 1982, failed to maintain absolute integrity as enjoined upon all Government servants and acted in a manner, which is unbecoming of a Government servant in-as-much as a bag which was claimed to be his own, was found to contain among other things, one carton of cigarettes 'Kent' and one 'Bracelet' of 'Tiger Brand' on 19.5.1982 from the Visa-Desk and Telephone Cabin. A carton of cigarette 'London King Size' was also recovered from an almirah kept in the said Cabin. Shri S.B. Saluja could not satisfactorily explain about the unauthorised possession of the aforementioned imported goods, which were reasonably extracted from the incoming passengers. It is, therefore, alleged that by his above acts, Shri Saluja contravened the provisions of Rule 3(1)(i) and (iii) of the Central Civil Services (Conduct) Rules, 1964."

5. By letter dated 6.12.1982 (Annexure VIII), the applicant requested for a copy of the document listed in (Annexure III) to the aforesaid Memorandum dated 24.11.82. The copies were not supplied to him and Disciplinary Authority appointed an I.O. and a Presenting Officer vide its orders dated 3.02.83 (Annexure IX & X), and in spite of the repeated requests of the applicant to expedite the proceeding, the inquiry was inordinately delayed and he was also not supplied a copy of the relevant document sought by the applicant. Thus, he was denied the opportunity to effectively meet the charges. This is (Annexure -XII) of the paper book. The grievance of the applicant is that though disciplinary proceedings

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these were contemplated in 1982 / were started in 1983. When the statement of the witnesses were recorded the applicant was afforded an opportunity to cross-examine them. After examination and cross-examination of all the four key-witnesses, the Presenting Officer and the applicant, submitted their respective briefs to the I.O. on 27.5.85 and 11.7.85 respectively copy of which is annexed as (Annexure XIV & XV). After expiry of 2 years, the I.O. submitted his report dated 26.8.87 to the Disciplinary Authority, a copy of which is marked as (Annexure XVI). Agreeing with the findings of the I.O., the Disciplinary Authority (Respondent No.3) held the charge proved against the applicant and imposed the penalty of stoppage of two increments with cumulative effect. This is the impugned Order dated 30.09.88 (Annexure XVII). The applicant made appeal against this order to the Collector of Customs (Respondent No.2) on 16.11.88 (Annexure XVIII) which was rejected on 11.5.89 (Annexure XIX). Aggrieved by these Orders the applicant filed this O.A. on 10.05.1990.

6. Relief Sought

The applicant has prayed for the following reliefs :-

- (1) To summon the record of the proceedings before the Disciplinary Authority (Respondent No.3) and the Appellate Authority (Respondent No.2) and quash the said proceedings including the orders dated 30.9.89 (Annexure XVII) and 11.5.89 (Annexure XIX);



(2) To direct that the period of suspension undergone by the applicant shall be treated as duty for all purposes including pay and allowances;

(3) To direct that the applicant be confirmed in the post of Inspector of Customs & Central Excise from 1.9.82, i.e., the date from which he was due for confirmation in the normal course and from which date his immediate juniors have been confirmed.

7. A notice was issued to the respondents who filed the reply contesting the application and the grant of reliefs prayed for. We heard the learned counsel Shri KBS Rajan for the applicant and Shri R.R. Bharti for the respondents and perused record of the case and the other departmental files summoned and placed before us. The main thrust of the arguments of the learned counsel for the applicant was that the findings of the I.O. (Annexure - XVI), the impugned orders passed by the Disciplinary Authority dated 30.9.88 (Annexure XVII) and orders dated 11.5.89 (Annexure XIX) passed by Appellate Authority (Respondent No. 2) respectively are violative of the principles of natural justice and as such/for being quashed and set-aside.

8. It is further argued by the learned counsel for the applicant that because of the denial of the documents relied upon by the respondents in sustaining the charge against the applicant, he was prejudiced in his defence. Thirdly, it was argued that the Inquiry Officer in contravention of the CCS (CCA) Rules

allowed the Presenting Officer to plead and argue the case on behalf of the Disciplinary Authority, which was not proper. It was further pointed out that the I.O. did not apply his mind to the evidence adduced during the inquiry and was led to conclusions by the Presenting Officer and his findings are based on suspicions, conjectures and uncalled ^{for} inferences. It was further argued that the Disciplinary Authority and the Appellate Authority have not applied their minds to the facts and circumstances of the case and evidence adduced during the enquiry. The Appellate Authority ignored the provisions of Rule 27(2) of CCS (CCA) Rules, 1965. The Appellate Authority was duty bound to consider certain aspects which were not taken into account by the Disciplinary Authority in imposing penalty on the applicant in as much as while every officer had been asked to remove his items from the almirah except that of the applicant. According

to the evidence on record the Assistant Collector Shri K.P. Singh, did order that all bags should be removed from the cabin (not all items from Almirah) and all bags had been removed from the said cabin except that of the applicant's bag having the label of British Airways since the applicant was on duty as P.R.O. (Telephone) in that cabin. Secondly, according to the Appellate Authority, the applicant was the only person who was in occupation of the room in which Almirah from which the recovery was made was kept. But if one goes thoroughly, through the evidence on record and departmental files the the said room (cabin) was occupied by Visa Desk Officer and the PRO (Telephones) besides it had access to several other Officers. Further, it has been stated by the applicant's

counsel that the Almirah was in use of Visa Desk Officer and not the PRO (Telephones). Thirdly, the applicant was not in the cabin during the relevant time on that date." According to evidence on record the applicant was put on duty to clear the incoming passengers at Counter No.5 from where the applicant was recalled by Shri K.P. Singh, Assistant Collector, in connection with the examination of his bag lying in the cabin. In the circumstances, it was all the more necessary to investigate the matter further and to examine the co-occupant, the Visa Desk Officer. The learned counsel for the applicant argued that in the facts and circumstances of the case, the question of somebody else putting the carton of cigarettes in the bag of the applicant cannot be ruled out. It was further argued that the Inquiry was conducted at the back of the applicant without giving him an opportunity to make a representation with regard to the facts of the case and finally he concluded that the entire inquiry or orders of the disciplinary authority and Appellate Authority are based on no evidence. Thus, he concluded that it is a fit case where the orders should be quashed and set-aside. Against this the learned counsel for the Respondents Shri R.R. Bharti argued that in this application the applicant has claimed plural remedies in one application as such, the application is liable to be rejected under rule 10 CAT (Procedure) Rules, 1987. He also submitted that the applicant did not file any appeal against the suspension order. It was further argued that the application

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is barred under Section 20 & 21 of the Administrative Act, 1985.

Coming to the merits of the case, it was argued that the applicant participated in the enquiry without raising any objections for any irregularity or for non-compliance of the procedure. His application is barred by limitation and doctrine of promissory estoppel when he raises objection after finding the report going against him. In this connection he relied on the following catena of judgements :

V. Gopalan Vs. U.O.I (Ernakulam)
1989 (2) ATR 608.

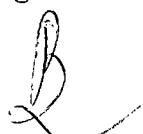
Manjit Singh Vs. Home Secretary,
1990 (1) SLJ (Chand) 244.

Baka Ranjan Dass Vs. U.O.I.
1989 (1) SLJ 362

U.O.I. Vs Parma Nanda
AIR 1989 S.C.1185.

Prem Nath Sharma Vs. U.O.I
1988 (6) ATC 904.

9. The learned counsel for the respondents argued that on 15-5-85 the applicant was deputed on telephone duty in R.R. Cabin. In the morning hours Mr K.P. Singh, Assistant Collector came on round and went inside the R.R. Cabin and ordered the removal of all the bags from the cabin. A Sepoy complied with the orders. The applicant's bag etc were left intact since he was on duty. He was directed to work at Customs Counter No.5 because of great rush of passengers.



10. While taking a round in the International Customs Arrival Hall later, the Assistant Collector along with Shri Inderjeet, Supdt.(P&I), went to the visa-desk and Telephone cabin there. There was an almirah containing visa-desk files in the cabin which was already unlocked. The Superintendent opened the almirah as per the orders of the Assistant Collector, from which a carton of Long King size cigarettes was found. A bag "British Airways" was also found lying in the Telephone Cabin which the applicant claimed as his own. The Superintendent was then asked by the Asstt. Collector to examine the bag which contained the personal things of the applicant, one Carton of cigarettes Kent and one acelet 'Tiger Brand'. A seizure list was prepared and was signed by the Assistant Collector, three Superintendents of Customs and the applicant.

11. The applicant was placed under suspension on 25.03.82 by the Assistant Collector (Hqrs) in exercise of the powers conferred by sub-rule(I) of Rule 10 of the CCS (CCA) Rules, 1965 as disciplinary proceedings against the applicant was contemplated. The applicant was charge-sheeted under Rule 16 for minor penalty action on 29.7.82 by Assistant Collector (Hqrs). The applicant denied the allegations vide his letter dated 7.9.82. Accordingly, a chargesheet under Rule 16 (I)(b) was issued to him on 24.11.82 and Ms Shila Sangwan, Assistant Collector was appointed as I.O. in the case. On review, suspension order was revoked by the Assistant Collector (Hrrs) on 2.08.82. The I.O. in her report dated 26.08.87 found that the charges against the applicant stood proved. The Disciplinary Authority, Dy Collector (P&V)

agreed with the findings of the I.O. and awarded the stoppage of two increments with cumulative effect on 6.9.88. The applicant appealed against this order to the Collector (Customs) on 16.11.88. and also asked for personal hearing. The Appellate Authority viz Collector (Customs) granted him personal hearing on 21.4.89 and finally rejected the appeal of the applicant on 11.5.89.

12. Aggrieved by the aforesaid Order of the Disciplinary Authority and the Appellate Authority, the applicant preferred this application before the Tribunal on 10.05.1990.

13. We have perused the four departmental files placed before us, one is regarding Disciplinary Proceedings against Shri S.B. Saluja, Inspector, the second file relates to the 'Discovery of one Carton Cigarettes and one Bracelet 'Tiger Brand' from the bag of Shri SB Saluja, and the signatures of the Assistant Collector (Customs), three Supdts., and the applicant himself. This is Technical Branch, Room No.3, VIII (AIR Cus.)49/3/82. The other file is of Vigilance Branch bearing File No.4-Vig/82. The fourth file/regarding Vigilance Proceedings against Shri SB Saluja bearing file No.II-26(7)Sec/Vig/89 dealing with the orders of the competent authority. The report of the I.O. is a detailed one. It contains imputation of charge communicated to Shri Saluja and the contravention of the provisions of Rule 3(i) (ii) and (iii) of the CCS (Conduct) Rules 1964. The misconduct alleged as communicated to him has been indicated along with articles of charge in the first Para.

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The appointment of P.O. is there. The P.O. relied on the following witnesses for prosecution and these are :-

1. K.P. Singh, PW 1
2. Inderjeet PW 2
3. C.L. Bhatia PW 3
4. M.L. Sharma PW 4

Their examination in chief was recorded & all the four witnesses testified before the I.O. regarding the goods recovered from the bag belonging to the applicant and they also certified the ^{same &} Panch-nama drawn on the spot was also which was ^{also} signed by the four officers along with the applicant. The I.O. has analysed indepth the evidence of the four witnesses produced before him and he came to the conclusion ^{on the basis} of the circumstancial evidence that it has been fully established from the evidence and the circumstances of the case that the charged officer could not explain away the charges levelled against him for having procured the carton of cigarettes and one Acelet 'Tiger Brand' from a incoming foreign passenger. He could not give any explanation as to how these two things came to his possession. The irresistible inference drawn by any prudent mind would be that these articles were pilfered or fleeced with or without consent from passengers cleared by the charged officer as the charged officer was also posted for clearance of the passengers. Although, there was no direct witness to the extortion of this carton of cigarette or one Acelet 'Tiger Brand' but it has been pointed out by the Hon'ble Supreme Court in their decision

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in the case of Union of India Vs Sardar Bahadur 1972 [SLR 355] Supreme Court that "a disciplinary proceeding is not a criminal case and the standard of proof required is that of preponderance of probability and not proof beyond reasonable doubt." From the evidence and the surrounding circumstances the I.O. came to the finding that the charges have been fully established against the delinquent employee. The judgement quoted by the learned counsel for the applicant are not applicable in this case. He relied on the judgement of Union of India Vs H.C. Goel in Civil Appeal No.546-1962 A.I.R. 1964 SC-364. This judgement lays down a different proposition of law. In this Civil Appeal 645 of 1962 while dealing with the Constitution of India, Article 311(1),(2) and 309, it was held by the Hon'ble Supreme Court that the findings of facts recorded by the Inquiry Officer in a departmental inquiry are not binding on Government. It was held that Government is fully competent to differ from such a conclusion arrived at by I.O. The action based on such a contrary view resulting in dismissal of the government servant does not contravene article 311 and the Hon'ble Supreme Court held that only when it is a case of no evidence that a judicial intervention is called for. In the aforesaid case the Hon'ble Supreme Court has also discussed the judgement in the case of Khem Chand Vs Union of India A.I.R.1958-300 A.D Siliva Vs U.O.I. AIR 1962 SC-1130, State of Assam versus Vimal Kumar AIR-1963 SC 1612. In the present case also the applicant tendered his explanation denying the charges against him and the inquiry was made under the relevant rules. A key-witness Mr K.P. Singh along with

three Superintendents who had signed the Panchnama along with the applicant tendered their evidence before the I.O. and the I.O. came to conclusion that the charges framed against the applicant were established. Thus this ruling cited by the learned counsel for the applicant is not applicable to this case. Similarly, the facts of the other case Dr O.P.S. Luthra, Petitioner vs. U.O.I and the judgement in that T.A. No. 852/85 decided on 17.10.88 establishes a different ratio altogether. In this, the key-witness Jagbir Singh from who bribe of Rs.10/- was taken, was not examined and, therefore, the order was set-aside by the Hon'ble Tribunal. In the instant case, the key-witness is Assistant Collector who has been examined along with three other Superintendents and the Seizure memo signed by them and the applicant was the most important exhibit relied upon and they have testified to the fact of the seizure of carton of cigarettes 'London King size' and one Acelet 'Tiger Brand' from the bag of the applicant. Therefore, there is not question of non-examination of the key witness in this case. Therefore, the facts are different in the two cases.

14. As regards the other judgement of Abraham Tutis Vs U.O.I. the facts of the case have no relevance to the present case. This relates to the promotion case of some Science graduates and it has nothing to do with the disciplinary proceedings.

15. A careful perusal of the record shows that that the applicant was allowed to inspect all the relevant documents which he wanted and if he purposefully refrained from participating in the inquiry actively he is to blame.

The Principles of Natural Justice require only three things :-

(1) The charges should be clearly stated and they should not be vague. The articles and imputations of charge in the instant case are absolutely clear and there is no vagueness about the charge.

(ii) The delinquent employee should be given full opportunity to state his case.

The applicant has been given full opportunity, has been allowed to inspect documents he wanted to examine and if he did not cross-examine the witnessess and did not turn up on certain occasions, it cannot be said to vitiate the inquiry which was conducted as per rules envisaged in the CCS (CCA) Rules, 1965. The procedure is not flawed in any way.

(iii) The disciplinary authority/Appellate authority must pass/orders.

The disciplinary authority has gone through the report of I.O. and has taken the surrounding circumstances in this case and has passed a very speaking-order.

The appellate authority on the request of the applicant, not only perused the charges, the inquiry report but also provided an opportunity to the applicant to be heard in person and then passed the ^{final} orders. Thus the orders of the



Disciplinary Authority/Appellate Authority are both thorough and speaking-orders. The inquiry report is not based on conjectures or surmises but based on solid materials and also key on the testimony of four 1 Prosecution Witnesses who along with the applicant had signed Panchnama i.e. the seizure memo of articles, seized from the bag of the applicant. We do not find any scope for judicial intervention and as such the application fails and is dismissed leaving the parties to bear their own costs.

15. The departmental files summoned and submitted for our perusal are returned to the respondents.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

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