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Central Administrative Tribunal
Principal Bench

O.A. 1889/92

New Delhi this the 19 th day of December. 1997

Hon'ble Shri S.R. Adige, Vice Chairman (A).
Hon'ble Smt. Lakshmi Swaminathan, Member(J).

Hans Raj,
S/o Shri Bhagwan Singh,
R/o RZ-132, Block No. H,
Dharama Pura Colony, Najafgarh,
New Delhi. Applicant.

By Advocate Shri M.K. Gupta.

Versus

1. Union of India, through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Collector (Customs),
Customs & Central Excise Collectorate,
Central Revenue Building,
New Delhi.
3. Dy. Collector (P&V),
Customs and Central Excise Collectorate,
C.R. Building,
New Delhi. ... Respondents.

By Advocate Shri R.R. Bharti.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant has impugned the order passed by the respondents dated 23.1.1992 imposing on him a penalty of stoppage of four increments with cumulative effect and rejection of his appeal against this order by the appellate authority by order dated 17.6.1992.

2. The aforesaid penalty orders have been passed after holding a disciplinary inquiry in pursuance of the charge-memo issued to the applicant on 17.7.1988. The
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allegations made against the applicant are that while he was posted at Palam Air Port and functioning as LDC, on 19.6.1984 he had identified one Shri R.S. Oberoi as Shri S.P. Singh and on being questioned he did not reveal the real identity of S.P. Singh and rather misled the Customs Officers which delayed the investigation with regard to the bill of entry No. 24626 dated 13.6.1984. The Inquiry Officer who had conducted the disciplinary proceedings came to the conclusion that the charges to maintain absolute integrity and devotion to duty are not proved against the applicant as he held that it was not proved that he had identified R.S. Oberoi as S.P. Singh for some ulterior motive and for any considerations. However, he held that the charge of "acting in a manner unbecoming of a Government servant" is proved against him for identifying a wrong person and he had recommended that the applicant, therefore, deserves some minor penalty to be imposed. The disciplinary authority in his order dated 23.1.1992 has in the last paragraph stated as follows:

"I also do not entirely agree with the Inquiring Authority that the part of the Article of Charge relating to the integrity of the charged officer is not proved. Part of the charge relating to the identification of a wrong person knowingly by the charged officer is directly linked with his integrity. He had certainly acted dishonestly when in the first instance he told the Customs Investigating Officers that he had identified Shri S.P. Singh who was previously working with M/s Bharat Electronics Ltd. However, since the charged officer had no official duty to perform in the processing of the papers prescribed by Shri R.S. Singh alias S.P. Singh alias S. Pal Singh, the part relating to lack of devotion to duty against him is not proved. I, therefore, hold that on the basis of record of open enquiry it is proved that the charged officer failed to maintain absolute integrity and acted in a manner unbecoming of a Government servant".

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The learned counsel for the applicant has submitted that in the aforesaid circumstances the disciplinary authority's order has to be quashed and set aside as no show cause notice has been issued when he had disagreed with the findings of the Inquiry Officer. He relies on the judgement of the Supreme Court in **Narayan Misra Vs. State of Orissa** (1969 SLR (SC) 657). He has also alleged that a number of irregularities have been committed, that there is no support of the conclusion arrived at by the Inquiry Officer or by the disciplinary authority, that there is no substance in the allegations, that there is complete non-application of mind on the part of the disciplinary authority and that the inquiry has not been held in a fair and impartial manner.

3. The respondents have filed their reply controverting the above facts. We have also heard Shri R.R. Bharti, learned counsel.

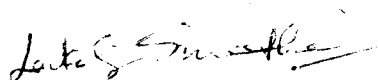
4. We refrain from expressing any opinion whether the disciplinary proceedings were conducted in violation of the rules as we are of the view that the disciplinary authority's order has to be quashed and set aside with a direction to that authority to consider the matter afresh as he has failed to give a show cause notice to the applicant when he has clearly disagreed with the findings of the Inquiry Officer. In **Narayan Misra's case** (supra), the Supreme Court has held as follows:

"Now if the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of forests used against

him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law. If the Conservator of Forests wants to take into account the other two charges, he shall give proper notice to the appellant intimating to him that those charges would also be considered and afford him an opportunity of explaining them".

(Emphasis added)

5. Therefore, in the facts and circumstances of the case, the O.A. succeeds. The disciplinary authority's order dated 23.1.1992 and the appellate authority's order dated 17.6.1992 are quashed and set aside. The case is remitted to the disciplinary authority with a direction to reconsider the applicant's case after giving him a show cause notice and affording him a reasonable opportunity to reply to the same. He shall pass a speaking order and dispose of the matter expeditiously and in any case within a period of 3 months from the date of receipt of a copy of this order. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)


(S.R. Adige)
Vice Chairman(A)

SRD