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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A.No. 2154/92.

Date of decision 18.5.93

Shri Naveen Kumar .. Applicant
Aggarwal.

V/s

Union of India .. Respondents
and Others.

CORAM:

The Hon'ble Mr. N.V. Krishnan, Vice-Chairman (A)

The Hon'ble Mr. B.S. Hegde, Member (Judicial)

For the Applicant .. Shri S.K. Gupta, Counsel.

For the Respondents .. Shri M.L. Verma, Counsel.

(1) Whether Reporter of local papers may be
allowed to see the Judgement ?

(2) To be referred to the Reporters or not ?

J U D G E M E N T

[Delivered by Hon'ble Shri B.S. Hegde, Member (J)]

By this application filed under Section 19
of the Administrative Tribunals Act, 1985, the
applicant has prayed for a direction to set aside
the order dated 30th April, 1991, which is at
Annexure A-1, removing the applicant from the
post of Inspector and also the order dated 29.8.1991,

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which is at Annexure A-2, passed by the Appellate Authority and also direct the respondents to treat the applicant to be deemed in service with effect from 29.4.1991 and grant all consequential benefits including salary and seniority etc.

2. The case of the applicant here is that he joined the office of the respondents in the year 1979 and at the relevant time i.e. on 27-10-1989 he was posted as an Inspector at Attari Road Customs Station, Amritsar. He also states that at the relevant time i.e. on 27-10-1989 the applicant was under the orders of transfer to Delhi Collectorate. He states that the nature of duty of the applicant was to prepare gate passes for the incoming passengers to the Arrival Hall going for customs clearance and to collect gate passes of the outgoing passenger cleared by the Customs Officers from the Departure Hall to Pakistan. He further states that on that day he was present at Joint Check Post(JCP) from 1000 hrs to 1130 hrs. and thereafter as per the direction of the Asstt. Collector incharge, he collected the typed message from the Pakistan Customs and went to Main office of the Land Customs to hand over the same to

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the concerned Assistant Collector Incharge of the Station. He was also directed to put up his relieving orders in the concerned file and then to return to the place of posting at about 1330 hrs. In his absence, the sepoy Shri Baljit Singh and Satish Kumar were performing the duties of the applicant. After 1600 hrs. on the said date he was busy with his relieving formalities in the office of the Land Customs Station. At about 1730 hrs. he was called by the Assistant Collector (Preventive) Customs, Amritsar and was orally asked whether he had any knowledge regarding some seizure effected by the Preventive Staff and the required enquiry was made by the Superintendent (Preventive) Customs House, Amritsar in the presence of Assistant Collector (Preventive), Amritsar. The applicant denied any knowledge of the illicit removal of the seized goods and stated that at the time of the incident he was not present at the Joint Check Post. Nevertheless, he was kept under suspension by the 4th Respondent vide order dated 7-11-1989 which is marked as Annexure A-5.

3. The applicant also states that the respondents vide their Memorandum dated 31-1-1990 issued charge-sheet to him which is at Annexure A-6, which contains

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list of documents, statements of Mohd.Yusuf, Shri Paramjit Singh Pamma Coolie, Smt.Hamsari Begum, Satish Kumar and Baljit Singh etc. On receipt of the charge-sheet, the applicant submitted his reply dated 24-3-1990 denying the charges, which is at Annexure A-7.

4. The respondents directed the applicant to attend preliminary hearing on 24-7-1990 at Jalandhar though his headquarter under suspension was fixed at Amritsar vide the memo.at Annexure A-8. However, on account of medical grounds, the applicant was not able to attend the preliminary hearing and furnished a medical certificate and sought for an adjournment for a month, which is at Annexure A-9.

5. The respondents appointed Shri Y.D.Banga, Assistant Collector as Inquiry Officer and he fixed the next date of hearing on 16-8-90 rejecting the prayer made by the applicant. He further states, that against that direction the applicant sent a letter dated 30-7-90 to the respondents who in turn questioned his leaving the headquarter without prior permission which is at Annexure A-10. Therefore, the applicant sent a letter dated 5-8-1990 which is at Annexure A-11 stating that he had not been paid subsistence allowance for a period of six months. As against that letter,

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the respondents vide their letter dated 19-4-1990, which is at Annexure A-12, stated that since he did not attend office, accordingly, he was not paid subsistence allowance.

6. The applicant informed the Inquiry Officer on 3-8-90 and 10-8-1990 that due to his illness, he could not attend the Inquiry and denied the charges. On 12-9-1990 and 20-9-1990, Inquiry Officer, directed the respondents/Presenting Officer and documents contained in Annexure A(III) to the charge-sheet Annexure A-6 may be brought on records as exhibits. But the applicant, through his defence assistant raised objection that the documents could be brought on record only through witnesses or its author to establish its genuineness. Nevertheless, the Inquiry Officer went ahead and acceded to the request of the Presenting Officer and took the statements on records. He further contended, that the presence of these witnesses during the course of enquiry was necessary to ascertain the truth of the matter and the statement recorded behind the back of the applicant is not valid. Further, he contends that a false case has been foisted against him and an affidavit has been filed by one senior Superintendent of

Police in the High Court in a Writ Petition No.2127/90 against the applicant in the matter pertaining to COFEPOSA under Section 3(1) of the COFEPOSA Act. High Court, by its order dated 9-4-91 quashed the order of detention dated 6-3-1990 which is at Annexure A-15. Despite the same, the Inquiry Officer, by his order dated 31-10-90, proceeded with the enquiry and passed an ex-parte order without any information to the applicant, therefore, he alleges that the enquiry cannot be considered as just and reasonable.

7. Against the findings of the Disciplinary Authority, the applicant preferred an appeal i.e against the order of removal passed by the Disciplinary Authority on 30-4-1991,.However, the Appellate Authority, rejected the appeal and confirmed the order of the Disciplinary Authority. Thereafter, he filed a Review Petition before respondent No.2, which is still pending. As he did not get relief from the respondents, he has filed this petition challenging the removal order.

8. The respondents have denied the various contentions raised by the applicant and reiterated that the orders passed by the respective authorities are valid and correct. The main stand of the respondents was that despite repeated opportunities given to the applicant, he did not care to attend the enquiry

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proceedings, which, on perusal of the records, we find that the said stand has not been substantiated. Even assuming that the medical certificate furnished by the applicant is not acceptable to the Inquiry Officer, it was open to him to direct the applicant to furnish the medical certificate in the prescribed manner which was not done. The applicant has specifically stated that during the course of enquiry, the Inquiry officer relied upon the statement of those persons who did not participate in the departmental enquiry which has not been controverted by the respondents. Regarding his absence at the particular time, the stand taken by the respondents is vague by stating that as per duty roster he was supposed to be present at the place of his duty and no mention about the fact that he was directed by the Assistant Collector concerned to do some other work in some other place. Since the applicant did not cooperate in the departmental enquiry, the respondents had to proceed to pass ex-parte order and come to the conclusion, that the charges levelled against him ^{are} proved beyond doubt.

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proved beyond doubt.

9. The respondents, in their counter, conceded that the applicant was asked to prepare the relieving order but, however, keeping in view of the seizure, the same could not be issued. In their counter, Para 4(xiv), the respondents have conceded that since the applicant did not attend the enquiry, the statements recorded at the time of preliminary enquiry were taken on records by the Inquiry Authority and those statements were relied upon and were brought on records.

10. As stated earlier, the said witnesses have not been cross-examined by the applicant and no intimation was given to him about the same. Similarly, in para 4(xvii) of the counter, the respondents conceded that the statements of Satish Kumar, Baljit Singh, Surinder Singh and Amar Singh were relied upon but they were not called as witnesses. They only said that it is the discretionary powers of the Inquiry Officer not to call the witnesses at the departmental inquiry, statements given by the witnesses is based on documentary proof. In the instant case, those witnesses were not examined/cross examined by the applicant and the statements given during the preliminary enquiry were taken on records which, prima facie, is not

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in accordance with the rules.

11. We have had the benefit of hearing, in details, the counsel of both the sides and we have carefully
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perused the records and /our anxious consideration
to the rival contentions made therein.

12. The short point for consideration is that whether the inquiry was carried out in accordance with the law and the orders of removal passed by the Disciplinary Authority vide dated 30.4.1991 which was further confirmed by the Appellate Authority vide dated 29.8.1991 are justified on the facts and circumstances of the case.

13. At the outset, on perusal of records, we notice that the findings of the Inquiry Officer's Report suffers from many infirmities, not on account of proceeding ex parte, but because the Inquiry Officer had not taken into consideration the vital information required for him to arrive at this conclusion. It is apparent, that the Inquiry Officer had taken into consideration extraneous circumstances for holding the applicant guilty of the charge, which is on the fact of it, cannot be sustained. During the course of preliminary hearing on 20.9.1990 the applicant had raised an objection that no document can be admitted as an evidence without / relevant witness

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or its author. Despite the same, the Inquiry Officer has not given any heed to such objection while bringing the listed documents on record as exhibits, which is against the very concept of disciplinary enquiry and also against the rules of natural justice; thirdly, on perusal of the records, we notice though the hearing took place ten times, out of which five times, the applicant did not receive the notice of hearing, three times, the applicant was present and raised certain procedural anomalies, two times, the date of hearing could not take place due to Bund and administrative reasons, and the remaining two hearings, the applicant had indicated his inability to attend the hearing on account of his illness for which he had adduced medical certificate. Even assuming, that the medical certificate adduced by the private practitioner is not acceptable, in that case it is incumbent upon the Inquiry Officer to inform the applicant to produce medical certificate from the relevant source if it is required as per rules, such is not the case here. On the other hand, the Inquiry Officer without any plausible explanation suo moto rejected the certificate submitted by the applicant and no notice was given to him. Therefore, keeping in view of the

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above factors into consideration, it is apparent that the rules of natural justice were observed more in breach than in compliance, hence, we are satisfied that the entire inquiry proceedings is required to be quashed as it was not carried on in accordance with law.

13. Normally, the findings of the Inquiry Officer must be based on evidence adduced during the Inquiry. Regarding evaluation of oral testimony, the evidence has to be taken and weighed together including not only what was said and who said it and was consistent with the normal probabilities of human behaviour. No material from personal knowledge of Inquiry Officer bearing on the facts of the case which has not appeared either in the Articles of charge or the statement of allegations or in the evidence adduced at the enquiry against which the accused Government servant has had an opportunity to defend himself should be imported into case.

14. In the instant case, it is clear from the events that the enquiry was concluded in a peremptory and superficial manner taking into consideration extraneous documents; such as ;

(i) firstly the statements of Sh.Chand Beg, Mohd.Yusuf, Hamsari Begum and Paramjit Singh which were recorded at the stage of preliminary inquiry to form opinion

as to whether there was a prima facie case to proceed against the applicant were taken into consideration treating the same to be true. The applicant had no opportunity to test the veracity of the statements of those persons by cross-examining. Therefore, those statements could not be raised against the applicant to form the basis of the findings of the Inquiry Officer which is arbitrary and contrary to law; secondly, the statements of Shri Satish Kumar, Baljit Singh, Amar Singh and Surinder Kumar (All Sepoys) dated 27-10-1989 appearing in the list of documents (Annexure A-3) were discussed and relied upon by the Inquiry Officer, but they were neither listed as witnesses in the list of witnesses (Annexure A-4) nor examined in the presence of the applicant.

15. Further, we are concerned with the order of the Appellate Authority dated 29-8-1991 i.e. Annexure A-2. The Appellate Authority has relied on statement recorded before him by certain officials who deposed before him in regard to certain circumstances referred to by the applicant in his appeal. In fact, the Appellate Authority summoned Mr. Yadav and Mr. Arora and recorded their statements behind the back of the applicant without giving the applicant reasonable opportunity to cross-examine them

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while rendering his decision dated 29-8-91. The normal practice in such cases is that the applicant should have been given an opportunity to test the veracity of the witnesses whose statements have been recorded and relied upon by the Appellate Authority.

16. The Applicant has taken a specific ground to this effect in ground 'F' and in reply, the respondents have not controverted this ground. On the other hand, the Appellate Authority did concede that he had examined the aforesaid two officials to ascertain the truth and did not state anything about non-cross examination of the witnesses by the applicant. There is, thus, a clear violation of principle of natural justice in the present case and the Appellate order, is therefore, to be quashed.

17. In the conspectus of the facts and circumstances of the case this application has merit and is to be allowed.

18. We, therefore, allow this O.A. and quash the inquiry proceedings as well as the impugned Annexure A-1 order dated 30-4-91 of the disciplinary authority and the impugned annexure A-3 order dated 29-8-91 of the appellate authority and direct the respondents to reinstate the applicant within one month from the date of receipt of this

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order and give him, inaccordance with the provisions of law, the consequential benefits regarding pay and allowances for the period for which he has remained out of service as a consequence of the impugned annexure A.1 order till he is now reinstated, within three months from the date of his reinstatement. We make it clear that this judgement shall not stand in the way of the respondents from resuming the disciplinary proceedings against the applicant, if so advised, within three months from the date of receipt of this order, from the stage reached when the applicant filed his reply dated 24-3-90 to the annexure A-6 memorandum of charges.

19. This O.A. is accordingly disposed of with no order as to costs.

B.S. Hegde 18/5/93
(B.S. HEGDE)
MEMBER (J)

N.V. Krishnan 18/5/93
(N.V. KRISHNAN)
VICE CHAIRMAN (A)