CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

(9)

O.A./~~XXXX~~ No. 2199/1992 Decided on: 18.12.97

Shri Maheshwar Prasad ....Applicant(s)

(By Shri Madhav Panikkar Advocate)

Versus

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

(By Shri R.R. Bharti Advocate)

CORAM:

THE HON'BLE ~~XXXXX~~ DR. JOE P. VERGHESE, VICE CHAIRMAN(J)

THE HON'BLE SHRI K. MUTHUKUMAR, MEMBER (A)

1. Whether to be referred to the Reporter or not? Yes

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. 2199 of 1992

(10)

New Delhi this the 18th day of December, 1997

HON'BLE DR. JOSE P. VERGHESE, VICE CHAIRMAN(J)
HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

1. Shri Maheshwar Prasad
Deputy Director,
Director Generla of Inspection,
Customs and Central Excise,
New Delhi. ..Applicant

By Advocate Shri Madhav Panikkar.

Versus

1. Union of India through
its Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 001.

2. The Chairman,
Centrall Board of Excise and Customs,
North Block,
New Delhi.

3. Union Public Service Commission,
Dholpur House,
Shahjahan Road,
New Delhi.
Through: Chairman. ..Respondents

By Advocate Shri R.R. Bharti.

ORDER

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

This application is directed against the order of the disciplinary authority imposing a minor penalty of reduction in pay by two stages in the time scale of pay for a period of 2 years without cumulative effect on the applicant, following disciplinary proceedings started under Rule 14 of CCS (CCA) Rules, 1965. The applicant was charged with the following:-

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(i) That while functioning as Assistant Collector of Customs and Central Excise for the period from 3.2.83 to 10.3.83 while on tour to Delhi he left Delhi for Bombay and remained there till 1.3.83 without sanction of leave of absence and permission to leave station from competent authority.

(ii) That during his stay at Ritz Hotel, Bombay in Room No. 604 with effect from 27.2.1983 to 1.3.83 his bills were paid by one Shri Tejinder Singh to cover his stay and other expenses amounting to Rs.1,957.55.

(iii) That he attempted to interfere with investigation in respect of an evasion of customs duty by J.P. Rupani, proprietor of M/s Bharat Export Corporation, Bombay and to seek favours for the purpose.

2. It was held that the above acts committed by the applicant were unbecoming of a Government sevant and contravened the relevant provisions of the CCS (Conduct) Rules. The Enquiry Officer held that the first charge was not proved while the second charge was proved and the third charge was proved only to the extent that the applicant interfered with the investigations but did not put pressure on the SW-3 or SW-2 in giving more time to the concerend party, namely, Shri Rupani. The Enquiry was conducted by the Commissioner of Departmental enquiries and the Central Vigilance Commission. The disciplinary authority referred this case to the Union Public Service Commission as required under the rules. The U.P.S.C. after going through the findings of the Enquiry Officer and the connected records, came to the conclusion that all the three Articles of Charge were

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proved against the applicant. They recommended the penalty of reduction of pay by two stages in the time scale of pay for a period of 2 years without cumulative effect. This is a minor penalty under Rule 11 of the CCS (CCA) Rules, 1965.

3. The main ground alleged by the applicant is that when the UPSC did not agree with the findings of the Enquiry Officer, the disciplinary authority appeared to have acted on the report of the UPSC and no notice or opportunity was given to him. The other ground taken by the applicant is that enquiry proceedings were initiated after inordinate delay as the alleged misconduct related to the period between February, 1983 to March, 1983 whereas disciplinary proceedings were initiated against him only on 31.12.1985 and, therefore, this delay has resulted in denial of reasonable opportunity to defend himself. He also alleges that the respondents have gone ahead with the interim report of the Chief Vigilance Commissioner and were influenced by that report. He also submit that the applicant's detailed representation was not considered by the respondent No.3 and the proceedings were, therefore, vitiated and visted with the vice of arbitrariness. UPSC's advice has been enclosed with the impugned order which clearly shows that the disciplinary authority without applying his own mind, has merely followed the advice of the UPSC and to this extent there was no independent and reasonable application of mind before deciding the impugned orders.

4. The respondents have averred that it is requirement under the rules that the UPSC has to be consulted before action under Rule 15 is taken for imposing any of the penalties specified in Rule 11. The disciplinary authority has to take into consideration the advice of the UPSC before such an order is

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passed. Respondents deny that they have been influenced by the decision of the UPSC and also deny that there has been no application of mind by the disciplinary authority. They have also denied that they have treated the advice of the CVC as mandatory. The respondents submit that the procedure as contemplated under Rule 14 of the CCS (CCA) Rules, 1965 had been clearly followed giving due opportunity to the applicant for his defence and considering the nature of the preliminary investigations involved in this case, the respondents had to take sometime before actual charge-sheet was issued. This delay cannot be considered as undue delay so as to deny any reasonable opportunity to the applicant. They have also denied that no material report which formed the basis on which the disciplinay authority had exercised his consideration was ever withheld from the applicant and the applicant was supplied with the copies of statutory advice of the UPSC. The submissions made by the applicant against the findings of the enquiry report were also considered by the disciplinary authority before passing the impugned order. They have also denied the allegation of the applicant that the UPSC had not applied its mind on the findings of the Enquiry Officer. The Commissioner had given detailed reasoning in respect of various charges and the evidence on record while making the recommendations.

5. We have examined the record and have heard the learned counsel for the parties.

6. The main ground taken by the applicant is that the respondents before issuing the impugned order, had merely gone by the advice of the UPSC. The applicant also contends that the UPSC cannot recommend any kind of punishment as this is within the province and jurisdiction of the disciplinary authority. The

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applicant relies on some of the decisions of the Tribunal in this behalf. We have given our careful consideration to this question. In terms of Rule 15 of the CCS (CCA) Rules, 1965, before imposing a punishment where it is considered necessary to consult the Commission, the record of the enquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant. It is, therefore, obvious that any advice given including the nature of penatly that the Commission deems fit is only in the nature of an advice. There is no requirement in the Rules that the disciplinary authority has to abide by that advice invariably as a mandatory requirement. Merely because the respondents after taking into consideration the advice of the UPSC, imposed the punishment which was the same as was recommended by the UPSC, it cannot conclusively establish that the disciplinary authority had not applied his own mind on the case. There is nothing to infer from record placed before us or the impugned order that the disciplinary authority has merely followed the advice of the UPSC in regard to the nature of the penalty. We, therefore, have to reject this contention of the applicant. We are also unable to conclude that the disciplinary authority has treated the advice of C.V.C. as mandatory. The Commissioner of Departmental Enquiry has given his findings as E.O. and there is nothing to indicate that the respondents have gone by any other report of the CVC independent of the findings of the E.O.

7. In disciplinary matters, Courts and Tribunals cannot reappraise the evidence. They also cannot sit in appeal against the orders passed by the disciplinary authority as a court of appeal. In disciplinary matters, the Tribunal in its judicial reivew has to satisfy itself whether the disciplinary proceedings

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have been conducted in accordance with the rules and procedure laid down in this behalf and whether the proceedings have been vitiated in any manner and whether reasonable opportunity has been provided to the delinquent official for his defence. It is also to be seen whether the charged official has been supplied by all the documents Enquiry Officer's report and whether his representation has been duly considered. In the records placed before us, we do not find any infirmity in the procedure. Law is well settled that in such case where the process of decision making and the disciplinary proceedings are not vitiated, it is not for the courts and tribunals to look into the evidence and reappraise the evidence all over again or to examine the correctness of the decision arrived at by the respondents. We only have to refer to the decisions of the Apex Court in Union of India Vs. P. Upendra Singh, JT 1993 (1) page 658, H.B. Gandhi, Excise and Taxation Officer Vs. Gopinath and Others, 1992 Supplementary 1 (2) SCC 312, B.C. Chaturvedi Vs. U.O.I., J.T. 1995 (8) Supreme Court 865 and Government of Tamil Nadu and Others VS. A. Rajapandian, AIR 1995 (3) SC page 561.

8. In the light of the facts and circumstances and law on the subject, we do not find ground to interfere with the orders passed by the disciplinary authority. Accordingly, this application is dismissed. There shall be no order as to costs.

(K. MUTHUKUMAR)
MEMBER (A)

(DR. JOSE P. VERGHESE)
VICE CHAIRMAN(J)

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