

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 27th day of August, 2003.

Original Application No. 138 of 1997.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman.

Hon'ble Mr. D.R. Tiwari, Member- A.

Fahmeeda Ameer, Lady Searcher,

Custom and Central Excise, Commissionerate, Allahabad.

.....Applicant

Counsel for the applicant :- Sri K.C. Sinha  
Sri A. Srivastava

V E R S U S

1. Union of India through the Secretary,  
M/o Finance, D/o Revenue/Central Board of  
Custom and Central Excise, New Delhi.
2. Chief Commissioner, Custom and Central Excise,  
Kanpur.
3. Commissioner, Custom and Central Excise,  
Allahabad.
4. Deputy Commissioner, Custom and Central Excise,  
Allahabad.
5. Superintendent of Custom and Central Excise,  
Barhni, Distt. Basti.

.....Respondents

Counsel for the respondents :- Sri R.C. Joshi

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A filed under section 19 of Administrative Tribunals Act, 1985, the applicant has challenged the order dated 26.07.1995 by which disciplinary authority awarded penalty of Censure to the applicant on conclusion of proceedings initiated by serving the memo of charge under rule 16 of CCS (CCA) Rules 1965. The punishment order has been

maintained in appeal, by order dated 27.11.1995 (Annexure-2) and ~~by~~ revisional order dated 30.10.1996 (Annexure- 3).

2. The facts of the case are that the applicant had served as Lady Searcher in Custom and Central Excise Department at Lakhimpur Kheri till 13.06.1983. She was transferred to Barhni under the control of Assistant Commissioner of Custom and Central Excise, Gorakhpur but she did not join the new place of duty till 13.03.1991. Consequently she was served with a memo of charge under rule 16 of CCS (CCA) Rules, 1965 on 26.05.1995. The applicant submitted her explanation (Annexure-13).

3. The main contention of the applicant was, <sup>delay in</sup> ~~against~~ the disciplinary action taken against her. Her defence of the absence was that she was suffering from prolonged illness for which she was submitting applications for leave under postal certificates. After joining she submitted all <sup>medical</sup> the/certificates to the authorities.

4. Learned counsel for the applicant has assailed the legality of the impugned orders on the ground that the enquiry has not been done, which was required before passing the order of punishment. In other words, the submission is that the authorities ought to have <sup>Satisfied themselves</sup> ~~ensured~~ about the genuineness of the medical certificates and the applications actually forwarded by her from time to time. As this exercise has not been done by the respondents, the orders of punishment cannot be justified. Reliance has been placed in case of O.K Bhardwaj Vs. U.O.I and Ors. 2002 SCC (L&S) 188. The Hon'ble Supreme Court has expressed the legal position in following words :-

"While we agree with the first proposition of the High Court having regard to the rule position

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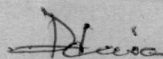


expressly says that " withholding increments of pay with or without cumulative effect" is a minor penalty, we find it not possible to agree with the second proposition. Even in the case of a minor penalty an opportunity has to be given to the delinquent employee to have his say or to file his explanation with respect to the charges against him. Moreover, if the charges are factual and if they are denied by the delinquent employee, an enquiry should also be called for. This is the minimum requirement of the principle of natural justice and the said requirement cannot be dispensed with. "

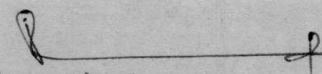
5. In the present case, though the applicant admitted her absence from duty for long period, in her explanation she explained that she was suffering from prolonged illness which was intimated to the concerned authorities from time to time by letters under postal certificates. After joining the duty the applicant filed medical certificates which were found genuine in the enquiry, a copy of which has been filed as Annexure- 10 to the O.A.

6. In these circumstances, in our opinion, the orders passed by the respondents suffer from manifest illegality and the matter requires re-consideration by them for passing fresh order after holding enquiry about ~~these~~<sup>the</sup> facts which may prove the innocence of the applicant.

7. For the reasons stated above, the O.A is partly allowed. The orders dated 26.07.1995, 27.11.1995 and 30.10.1996 are quashed. The Dy. Commissioner, Custom and Central Excise, Allahabad (Respondent No. 4) is directed to hold a fresh enquiry and then pass the order in accordance with law and in the light of observations made above. As the matter is very old, proceedings shall be concluded within 3 months from the date of copy of this order is filed. No costs.

  
Member- A.

/Anand/

  
Vice-Chairman.