

Reserved

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Dated: Allahabad, This the 10th day of November 2000.

Coram: Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr. S. Dayal, A.M.

Original Application No. 1579 of 1992.

Mushtaq Ahmad Khan,
aged about 48 years ,
son of Late Muntaz Ahmad Khan
resident of 124/12, New Labour Colony,
Babupurwa,
Kanpur,
formerly employed as Lower Division Clerk,
C.O.D., Kanpur,
Ex Personnel No.655515.

. . . Applicant.

Counsel for the Applicant: Sri N.K. Nair, Adv.
Sri M.K. Upadhyay, Adv.

Versus


1. Union of India through the Secretary,
Ministry of Defence, Government of India,
New Delhi.
2. Director General of Ordnance Services,
Master General of Ordnance Branch, Army
Head Quarters, D.H.Q. PO. New Delhi.
3. Officer-in-Charge, AOC (Records),
Trimulghery, Secunderabad.
4. Commandant, C.O.D., Kanpur.

. . . Respondents.

Counsel for the Respondents: Kumari Sadhna Srivastava, Adv.

Order (Reserved)

(By Hon'ble Mr. S. Dayal, Member (A.))

 This application has been filed with the following

prayer:-

"The punishment order No. 6955515/LDC/AI/CIV/CA-6 dated 2.4.91 (Annexure A-1) passed by the Officer-in-Charge, A.O.C. (Records), Secunderabad, imposing on the applicant the penalty of compulsory retirement from service with effect from the dates of the service of the order, that is, 19.4.1991 and the Appellate Order No. B/12060/828/OS-BC(ii) dated 14.8.1992 passed by the Director General of Ordnance Services rejecting the appeal of the appellant, be quashed and the respondents be directed to reinstate the applicant in service in the C.O.D., Kanpur with all consequential benefits, including arrears of pay and allowances promotion etc."

2. The admitted facts of the case are that the applicant was apprehended by a Customs Police party along with [^]some others in a car which was carrying smuggled goods. They were arrested on 22.3.78 under section 104 of Customs Act 1969. They were kept in jail custody and released on bail on 25.4.78. The applicant informed the respondents of his arrest on 27.4.78 when he sought to join. He was not allowed to join but was placed under deemed suspension on 27.7.78 under Rules 10(2) of C.C.S. (C.C.A.) Rules with effect from 22.3.78. The suspension order was revoked on 18.10.78 and the respondents sought to inform the applicant by registered post on 17.11.78 and 14.2.79 and by a despatch rider on 29.3.79 but the applicant was not found in his house. He received a letter on 17.4.79 informing him of revocation and he joined on 19.6.79. The applicant was arrested again on 22.10.80 and was detained under COFEPOSA which was challenged by

the applicant through a writ petition and was released on 29.5.81. He was served with order of the respondents dated 12.1.81 placing him under deemed suspension with effect from 22.10.80. The applicant was imposed a penalty of Rs.10,000/- under section 112 of Customs Act by an order dated 13.1.81/7.4.81 which in appeal filed by the applicant before the Central Board of Excise and Customs was reduced to Rs.5000/-. The applicant filed an appeal against this penalty before the Appellate Tribunal of the Customs Department (Annexure A-16). The penalty of Rs.5000/- was confirmed in appeal. He filed writ petition No. 707 of 1987 against this order which is still pending (Annexure A-1).

3. On the departmental action side, the respondents issued a memorandum dated 12.9.81 to the effect that the respondent No.3 who was the disciplinary authority had come to the conclusion that the conviction on a criminal charge under Customs Act, 1962, had rendered his further retention in public service undesirable and that he should be removed from service as he was not a fit person to be retained. He was given fifteen days time to represent. The applicant filed a representation that there was no conviction by a Court on a criminal charge. After this a memorandum dated 20.12.83 was issued containing the following imputation:-

Statement of imputations of misconduct or misbehaviour in support of the Article of charge framed against Sri M.A. Khan, U.D.C.
(Name and designation of the Government servant)



Article of Charge-I

In that on 22 Mar 78 at about 0200 hrs Sri M.A. Khan was found carrying contraband foreign made goods from Nepal. He was arrested by the Custom (Prevention) Division of Gorakhpur under Section 104 of Customs Act 1962 and the Custom case against Shri M.A. Khan had been adjudicated and a personal penalty of Rs.10,000/- was imposed on him under Customs Act 1962. The penalty was subsequently reduced to Rs.5000/- by the Member of Central Board of Excise & Customs New Delhi and subject to this modification the order in original was upheld and confirmed on an appeal by the individual.

Sri M.A. Khan by his above act exhibited conduct unbecoming of a Govt. Servant in violation of Rule 3 of C.C.S. (Conduct) Rules 1964.

Article of Charge-I

Gross Misconduct

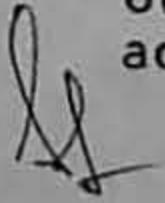
That the said Sri M.A. Khan while functioning as a Civilian Clerk in COD Kanpur during the year 1978 was arrested on 22 Mar 78 by the Custom Authority under Section 104 of Customs Act 1962 as he was found carrying contraband goods from Nepal with his other associates. Later on the said customs case against Sri M.A. Khan had been adjudicated and a personal penalty of Rs.10,000/- was imposed on him under customs act 1962. The penalty was subsequently reduced to Rs.5000/- by the Member of Central Board of Excise & Customs, New Delhi and subject to this modification the order in original was upheld and confirmed on an appeal by the individual. Sri M.A. Khan thus committed an act of gross misconduct which led to imposition of said penalty.

List of documents by which the articles of charge framed against Sri M.A. Khan U.D.C. (Name and designation of the Government servant) are proposed to be sustained:-

- (a) Station Headquarters, Kunraghat, Gorakhpur letter No. 626/1/A dated 30 May 78;

- (b) Customs Preventive Division, Gorakhpur letter No. VIII(26)2-INT(78)Pt-1/708 dated 14 Jun 78;
- (c) Office of the Deputy Collector of Customs (Preventive) Indo Nepal Border Gorakhpur letter No. VIII(26)-2-INT/78/Pt-1/870 dated 22 Jul 81;
- (d) Adjudication order No. 2-cus/81 dated 31 Jan 81 passed by the Addl. Collector of customs Indo Nepal Border, Muzaffarpur; and
- (e) Office of the Deputy Collector of Customs (Preventive) Indo Nepal Boarder Gorakhpur letter No. VIII(26)2-INT/78/PT-1, 1191 dated 23 Oct. 82.

4. The charge was sought to be proved on the basis of five documents mentioned in Annexure III. The applicant sought copies of letters quoted in Annexure-III. It appeared that typed sheets of these documents ^{were supplied} without attestation or authentication. The assisting officer took objection and submitted that the charge was not proved. This was upheld by the enquiry officer who in his enquiry report dated 12.12.85 held that charge was not proved. The disciplinary authority perceived the following defects in enquiry proceedings:-

- (a) Case has been concluded only for the reasons that the documents supplied to the delinquent official were not attested by any officer as a certified true copies. In this connection, refer to para 14(b), 15, 19 and 21 of Don'ts and Do's and Don'ts pamphlet.
- (b) the inquiry officer, permitted the Assisting Officer to record the false allegations against disciplinary authority in contravention of oral inquiry proceedings.
- (c) the inquiry officer permitted Assisting Officer to submit extraneous matters other than the charge framed against the accused Govt. Servant.
- 

- (d) the inquiry officer failed to give definite findings of the Article of Charges. But, discussed various extraneous matters other than the charges.
- (e) the Inquiry Officer, concluded the enquiry proceedings under perfunctory manner and failed to ask both the sides to argue their case or to file written briefs.

He therefore remitted the case to the enquiry officer under Rule 15(1) of the C.C.S. (C.C.A.) Rules 1965 and directed the enquiry officer to hold further enquiry by order dated 12.2.86. The enquiry officer in his report dated 12.10.89 gave the following finding with regard to the charge :

50. The long period of continued of disciplinary proceedings has already had its effect on the delinquents.

51. In view of aforesaid facts and circumstances the delinquents being given benefit of doubt for alleged involvement in smuggling of alleged synthetic and the offence under Customs Act being non-cognizable, merit exoneration from the charges levelled against them.

5. The applicants were furnished copy of the enquiry proceedings on 19.2.90 and a memorandum dated 10.11.90 was sent to the applicant showing reasons why disciplinary authority disagreed with the findings of the enquiry officer and granting him opportunity to represent. After considering the points raised by the applicant in his representation the disciplinary authority by a detailed order dated 2.4.91 imposed the penalty of compulsory retirement and declaring the applicant to be entitled to pensionary and allied benefits. The appeal of the applicant dated 25.5.91 was rejected by the appellate authority on 14.8.92.

6. We have heard the arguments of Sri M.K. Upahdyay learned counsel for the applicant and

-7-

Kumari Sadhna Srivastava for the respondents and considered the written arguments.


7. The main plank of the applicant's arguments has been that the report of the ^{two} enquiry officers in this case was in his favour and yet the disciplinary authority imposed the punishment of compulsory retirement on him. We find that the disciplinary authority has given reasons for disagreement which can not be faulted. It is difficult to understand the reports of both the enquiry officers in the light of imputations which are straightforward and have not been denied by the applicant, The technical grounds of the documents not being proved or pendency of the order of penalty of Rs.5000/- before appellate forum or the illegalities of proceedings against the applicant undertaken by customs authorities were red herrings and had no validity.

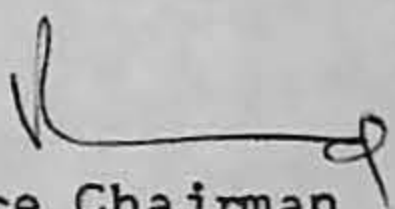
8. The issue of delay is also not of any help to the applicant because the time taken was due to certain reasons and was fully explained. The short tenure of enquiry officers except Major V.K. Nijhawan and Major M. Mukherjee was not due to any malice for the applicant on the part of the respondents. Major V.K. Nijhawan had given a report which was remitted for further enquiry to the enquiry officer by the disciplinary authority.

9. The applicant had also raised the issue of denial of promotion to him in 1979 and to have continued his suspension from 1981 till the order of compulsory retirement was passed on 2.4.91. The

applicant did not challenge the denial of promotion as well as the order of suspension at the appropriate time and is mentioning it in his O.A. to lend colour to his allegation of bias against the disciplinary authority. He has arrayed no respondent by name who was biased against him. Under the circumstances the applicant is not entitled to any independent relief on denial of promotion and suspension. The applicant also fails to establish the allegation of bias.

10. We find no infirmity in the ~~order of~~ disciplinary proceedings nor in the order of punishment nor in the order of appellate authority and dismiss the O.A. as lacking in merits with no order as to costs.


Member (A.)


Vice Chairman

Nafees.