

(Open Court)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Allahabad this the 29th day of August, 2001.

C O R A M :- Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Maj. Gen. K.K. Srivastava, A.M.

Original Application No. 793 of 1993

Wasi Ahmad, a/a 46 years, S/o Late Ali Hussain Siddiqui
R/o 132/463, Babupurwa, Kanpur. Formerly employed as
Lower Division Clerk, P. No. 2660020, COD, Kanpur.

.....Applicant.

Counsel for the applicant :- Sri N.K. Nair
Sri M.K. Upadhyay

V E R S U S

1. Union of India through the Secretary, M/o Defence,
Government of India, New Delhi.
2. Director General of Ordnance Services,
Master General of Ordnance Branch, Army Head Qrs.
DHO P.O., New Delhi.
3. Officer-in-Charge, AOC (Records),
Trimulghery, Secunderabad.
4. Commandant, C.O.D, Kanpur.

.....Respondents

Counsel for the respondents :- Sri S.C. Tripathi

O R D E R (Oral)

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

By this O.A under section 19 of the Administrative
Tribunals Act, 1985, applicant has challenged the order
dated 02.04.1991 passed by the disciplinary authority
(respondent No.3) by which applicant has been

compulsorily retired from the post of Lower Division Clerk. The aforesaid order was confirmed by the appellate authority by the order dated 14.08.1992 which has also been challenged.

2. The facts of the case are that the applicant was arrested under section 104 of Customs Act, 1962 for possession of ^{Contraband} ~~government~~ goods. In adjudication proceedings, the penalty of Rs. 10,000/- was imposed against the applicant under Customs Act, which was confirmed in appeal with alteration by reducing ^{penalty} from Rs. 10,000 to Rs. 5000. The disciplinary proceedings were initiated against the applicant by serving the memo of charge on 20.12.1983. The charge levelled against the applicant was that "on 22.03.1978 at about 0200 hrs, applicant was found carrying contraband foreign made goods from Nepal. He was arrested by the Custom (Prevention) Division of Gorakhpur under section 104 of the Customs Act, 1962 and custom case against him was adjudicated and a personal penalty of Rs. 10,000 was imposed on him. The penalty was subsequently reduced to Rs. 5000/- by the Member of Central Board of Exise and Customs, New Delhi and subject to this modification, the order of original ^{authority} was up held and confirmed in the appeal. The applicant by his above act exhibited conduct unbecoming of Government Servant in violation of Rule 3 of CCS (Conduct) Rules, 1964." As usual the proceedings were completed. Enquiry report was submitted on 12.10.1989. Disciplinary authority dis-agreed with the conclusion of Enquiry Officer and after serving the memorandum of dis-agreement dated 12.11.1990 and after considering the reply of the applicant, passed the order dated 02.04.1991 retiring the applicant compulsorily from service. The order has been confirmed in the appeal. Learned counsel for the applicant



has submitted that the documents mentioned in annexure-3 of the memo of charge were not supplied to the applicant and thus proceedings were held in violation of principle of natural justice and order can not be sustained.

3. We have examined this aspect of the case. However, we do not find any merit in this submission. The applicant, in his application dated 10.04.1984, admitted that he has received all the documents. The only objection raised was that they have not been authenticated. Thus the applicant was given copies of all the documents and he has not suffered ~~any~~ ^{or} any prejudice in his defence. In para 19 of the counter affidavit, it has been specifically asserted that the applicant had been adopted delaying tactic by submitting application one after another. In fact all the documents mentioned in Article-III of the charge-sheet were supplied to the applicant by letter dated 28.03.1984. Thus we do not find any merit in the submission of learned counsel for the applicant.

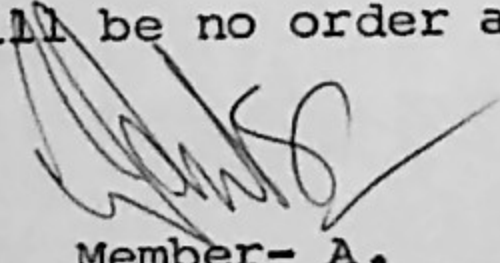
4. The second submission is that applicant has been punished on the basis of statement of defence witnesses. This submission also does not impress us as from the enquiry report, it is clear that the alleged witnesses ~~mentioned~~ were also ^{accused} with the applicant in the case under Customs Act. They were never summoned by the Enquiry Officer. They voluntarily appeared all of sudden. The Enquiry Officer only mentioned their evidence and then pleaded that liberal view may be taken against the applicant which has not been ^{approved} ~~provided~~ by the disciplinary authority and in his memo of dis-agreement, he observed that Enquiry Officer has erred in relying on the statement of the witnesses unconcerned with the department while recording his findings, instead of taking into

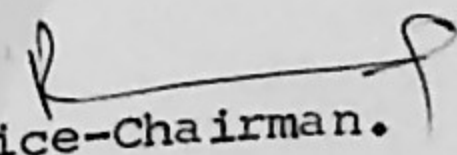
account the aforesaid orders of the Costums Department especially so when no prosecution witnesses ^{have} ~~are~~ listed in the charge-sheet. In our view, the approach adopted by the disciplinary authority is practically justified. No body can appear before Enquiry Officer unless summoned according to the rules on the request of delinquent employee. As misconduct of the applicant was fully proved by the documentary evidence, no oral evidence was required to be provided.

5. Learned counsel for the applicant has lastly submitted that the order of appellate authority is short and criptic and does not contain reasons. We have perused the order of appellate authority dated 14.08.1992 (annexure A- 2). It is difficult to say that the order does not contain reasons. The appellate authority has applied his mind to all the questions of the case and then in last para has expressed general agreement with the view taken by the disciplinary authority imposing penalty of compulsory retirement from service. As the appellate authority agreed with the findings of the disciplinary authority, it was not necessary to repeat the same finding again in the appellate order.

6. The order ~~does~~ ^{is} not suffer from any error of law. In the facts and circumstances of the case, in our opinion, the punishment awarded to the applicant is commensurated to the serious charge for which applicant has been found guilty. The O.A has no merit and is accordingly dismissed.

7. There will be no order as to costs.


Member- A.


Vice-Chairman.

/Anand/
Dt.29.08.01.