

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXXXXXXX~~
~~NEW DELHI~~

O.A. No. 89

198 6

~~XXXXXX~~

DATE OF DECISION 29/9/1989

SHRI P.K.DAVE

Petitioner

SHRI D.M. THAKKAR

Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS.

Respondent

SHRI J.D.AJMERIA

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. TRIVEDI

: VICE CHAIRMAN

The Hon'ble Mr. P.M. JOSHI

: JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

1. Shri P.K. Dave,
Inspector of Central Excise,
Madhav Sadan, Kamdar Street,
Limdi - 363 421

... Petitioner

(Advocate : Mr.D.M. Thakkar)

Versus

1. The Union of India
(Notice to be served through
The Under Secretary to the Govt.
of India, Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Collector of Central Excise
'Customs House', Navarangpura,
Ahmedabad.

... Respondents

(Advocate : Mr.J.D.Ajmera)

J U D G M E N T

O.A. 89 OF 86

Date :- 29/9/1989

Per : Hon'ble Mr.P.H.Trivedi : Vice Chairman

The petitioner in this case under section 19 of the Administrative Tribunals Act has impugned the order of punishment dated 10-3-86 by which his pay has been reduced by two stages in the time scale for a period of 3 years and that during this period he will not earn increments and the penalty will have the effect of postponing future increments. The grounds of his challenge are (a) that the petitioner was not furnished with a copy of the enquiry report, (b) that the impugned order is a non speaking order and, therefore, illegal, (c) that the disciplinary authority order is entirely based upon UPSC's advice, (d) ^{It} does not show any independent application of mind and (e) that the UPSC had exceeded its jurisdiction by suggesting the punishment to the disciplinary authority. In his reply the respondents have taken the plea that the

petitioner was subjected to a disciplinary enquiry involving a set of transactions in which there were various allegations against him and others and thereafter, as required by the rules on the subject, UPSC's advice was obtained. The letter of the UPSC which has been produced by the petitioner itself contains an elaborate discussion of the charges and the evidence in support thereof and its assessment. The respondents deny that the UPSC has exceeded its jurisdiction or in any way has not given proper advice. As the disciplinary authority's order is sufficiently clear about the reasons for the punishment and has been furnished alongwith the enquiry officer's report and the UPSC's letter of advice it cannot be regarded in any manner as deficient or suffering from any infirmity regarding the requirements in this regard.

2. The respondents have produced a copy of the acknowledgment dated 21-4-1986 of the impugned order alongwith the original copy of the enquiry report by their reply dated 15-3-1989 which has been received by the learned advocate for the petitioner on 20-3-1989. This is adequate for raising the presumption that the respondents on being put to proof have established that the enquiry report was furnished to the petitioner alongwith the disciplinary authority's order dated 10-3-1986. When the disciplinary authority has enclosed the enquiry officer's report as well as the UPSC's letter containing the advice and when the material in the documents so enclosed fully discusses the charges, the evidence, the assessment of it and the grounds of establishing the said charges and when the UPSC's report analyses the circumstances and weighs the relevant share of responsibilities of different persons involved in the transactions under enquiry, there is no ground at all to support the plea of the petitioner that the order of punishment is not an adequately speaking order.

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3. The respondents have properly taken the plea that this Tribunal is not to sit in appeal against the disciplinary authority order, AIR 1978 S.C. 1277 Nandkishore Vs. State of Bihar and Others cited by the petitioner in his support does not apply as it is found that the order of punishment is adequately self contained and a speaking order.


4. When the disciplinary authority issues an order in accordance with the advice of the UPSC there is no presumption that there is no independent application of the mind. Adoption of the advice and speaking orders passed in accordance with it shows a complete meeting of minds and not an absence of it on the part of the authority issuing the order of punishment.

5. The petitioner has not adduced any grounds to show how the UPSC has exceeded its jurisdiction. On a perusal of the letter of the UPSC it is found that it has very properly acted in accordance with the rules under which its advice was sought and has to be given.

6. In the petition there is much discussion of whether there was evidence supporting the conclusion regarding the petitioner's guilt. As stated earlier, without proof that the enquiry was vitiated in any manner the Tribunal does not consider it necessary or proper to assess the evidence produced before the competent enquiry officer.

7. In the result, we do not find that there is any ground for interfering with the order impugned and find the petition has no merit. No order as to costs.


(P.H.Trivedi)
Vice Chairman


(P.M.Joshi)
Judicial Member