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CAT/J/12

Dismissed (yes) Judl.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

~~NEW DELHI~~

AHMEDABAD BENCH

O.A. No. 472 1988
~~T.A. No.~~

DATE OF DECISION 11.7.1991

Shri R.K. Kansara Petitioner

Mr. D.M. Thakkar Advocate for the Petitioner(s)

Versus

Union of India & Ors. Respondent

Mr. P.M. Raval Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi .. .. Vice Chairman

The Hon'ble Mr. R.C. Bhatt .. .. Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. Whether it needs to be circulated to other Benches of the Tribunal? Yes

MGIPRRND—12 CAT/86—3-12-86—15,000

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Shri R.K. Kansara,
Inspector of Customs & Central
Excise,
Office of Collector of Customs
and Central Excise,
Ahmedabad. .. Applicant
(Advocate-Mr. D.M. Thakkar

Versus

1. Union of India,
Through,
Under Secretary to the
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. Collector of Central Excise
and Customs,
Ahmedabad.

3. Deputy Collector,
Central Excise & Customs,
Ahmedabad .. Respondents
(Advocate-Mr. P.M. Raval)

O.A. No. 472 of 1988

JUDGMENT

Date : 11.7.1991

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

The applicant Shri R.K. Kansara was charge sheeted for demanding and accepting some cash and gold from various persons by threatening them as an officer attached to Gold Control Cell in order not to initiate proceedings under the Gold Control Act in collusion with certain other persons and thus contravening Rule 3 of the Central Civil Service (Conduct) Rules, 1964. The Inquiry Officer after recording evidence found that the charges were not proved beyond doubt as there was no independent witness except depositions made by the complainent. The disciplinary authority disagreed with the finding of the Inquiry Officer and held the applicant guilty and thereupon imposed penalty of dismissal from service on him and others. The applicant appealed against this order and the appellate authority decided to reduce th

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penalty to reduction to a lower stage in the time scale for a period of 5 years and held that the ground taken in appeal viz. the Disciplinary Authority not having given any opportunity of making representation on the penalty proposed to be imposed had no substance. The appellate authority considered that the ends of justice would be met if a penalty of reduction to a lower stage in the time scale of the pay is imposed. However, the President of India in exercise of the powers under Rule 29 (1)(i) of the C.C.S. (C.C.A.) Rules, 1964 issued a show cause notice after calling for records and forming a provisional conclusion that the penalty should be enhanced to dismissal from service. The respondents' reply to the show cause notice dt. 14.9.1987 was considered and the U.P.S.C. was consulted and its advice obtained. The U.P.S.C.'s findings were that the reply of the applicant to the show cause notice had no substance and the charges of committing gross misconduct and of showing lack of absolute integrity and acting in a manner highly unbecoming of a Government servant thereby contravening Rule 3 of C.C.S. (Conduct) Rules, 1964 is consequently proved and that the guilt of demanding and accepting illegal gratification in collusion with other was proved and that this was a clear instance of corruption by way of harassment and collection of amount from the public by threatening and mileading official position was clearly established. The Commission, therefore, advised that the penalty of dismissal from service should be imposed on Shri Kansara and other from due date. Thereupon, by order dt. 3rd June, 1988, the applicant was dismissed from service. The applicant has approached this Tribunal under Section 19 of the Administrative Tribunals Act with the prayer for relief of quashing and setting aside the decision of 12th August, 1987 which is the show cause notice issued

by the President and the final order dt. 3 June, 1988 dismissing him from service. The grounds on which the relief is sought can be summed up as follows :

1. The Inquiry Officer in his report has not found the applicant guilty beyond doubt and yet the Disciplinary Authority has imposed the penalty of dismissal.

2. No opportunity for representation was allowed to the applicant when the penalty was imposed.

3. Documents were asked for by the applicant were not supplied.

4. The conclusion regarding suit of the applicant was held purely on circumstantial evidence and without any evidence other than the deposition of the complainent.

5. No copy of the Inquiry Officer's report was furnished to the applicant before or after imposition of penalty until the date of the application although it is incumbent on the respondents to supply a copy of the Inquiry Officer's report to enable the applicant to take suitable defence.

6. The revisional powers under Rule 29(1)(i) of the relevant rules in this case have been exercised by the respondents after lapse of a period of one year.

2. The respondents have not filed any reply although several opportunities were given to them. The respondents have not pleaded their case nor furnished written arguments although they had been allowed to do so. Learned advocate for the applicant waived hearing and filed written submission. We, therefore, have decided to dispose of the case on merits as gathered from the record and the written submissions of the applicant.

3. Rule 29(1)(i) of the C.C.S.(C.C.A.) Rules, 1964 as extracted from Swamy's Compilation read as under :

"29.(1) Notwithstanding anything contained in these rules :
(i) the President or

May at any time, either on his or its own motion or otherwise call for the records of any inquiry and (revise) any order made under these rules or under

the rules repealed by by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

Provided that no order imposing or enhancing any penalty shall be made by any (revising) authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 and ( ) except after consultation with the Commission where such consultation is necessary:"

In this case it is clear that the President has powers to call for the records and enhance the penalty and that the conditions of giving a reasonable opportunity of making representation against the penalty proposed and doing so after consultation with the U.P.S.C. have been fulfilled.

4. The application shows that the President called for the record after one year but we do not find any flaw attracted on this account. Sub Rule (2) of the said Rule 29 stipulates that the proceedings shall not be commenced until after expiry for the period of appeal or the disposal of appeal when any such appeal has been preferred. In this case, admittedly, appeal was disposed of and there is no period prescribed under the Rules after which powers under rule 29 cannot be exercised. On these grounds, therefore, the applicant cannot succeed.

5. The other ground is regarding the disciplinary authority having differed from the inquiry officer. Whether an opportunity for a representation was obligatory before imposition of penalty? The appellate authority has held that no such obligation arises under the Rules. The order of the disciplinary authority imposing penalty clearly sums up evidence recorded by the inquiry officer, the conclusion formed by the inquiry officer that the charges have not been proved beyond doubt and thereafter reasons in detail are given by the disciplinary authority for holding that the charges were conclusively proved after examining in detail why he disagreed with the findings of the inquiry officer. In the show cause notice issued dt. 12.8.1987, the applicant was informed why it was proposed to enhance the penalty. The applicant therefore had knowledge of the finding of the inquiry officer and the nature of evidence in the inquiry, the reasons why the inquiry authority disagreed with the finding of the inquiry officer and how he interpreted evidence to arrive at the finding of the applicant's guilt to have been proved and for imposition of the penalty of dismissal. The appellate authority considered the grounds of appeal and found that the disciplinary authority had good reasons to arrive at the finding of guilt on appreciation of evidence and gave the reasons for modifying the penalty to reduction to a lower time scale. Respondent No. 1 gave a show cause notice dt. 12th August, 1987 why he did not agree with the stand taken by the appellate authority and after considering the cause shown and on getting advice of the U.P.S.C., has enhanced penalty. Under Article 311 as amended by the 42nd amendment of the Constitution, the requirement of giving an opportunity or making representation on the penalty proposed has been in terms

taken away by that amendment. The question, therefore, arises, however, whether the obligation of "being given a reasonable opportunity of being heard in respect of those charges" under sub clause (2) of Article 311 has been fulfilled. Before the Supreme Court's decision in Mohd. Ramzan Khan's case, the prevailing view was that the 42nd amendment of the Constitution did not require any opportunity of making representation on the penalty proposed and therefore, if the delinquent officer was duly found guilty in the departmental inquiry, on giving him such opportunity to demand himself as was required under the Rules a reasonable opportunity of his being heard was held to have been given to him. However, the decision in Mohd. Ramzan Khan's case analysed the constituent eliments of "reasonable opportunity of being heard in respect of charges" and held that natural justice was not sufficiently does if an inquiry report was not furnished prior to the communication of the order of penalty. We would not like to burden the record by examination of various decisions on the subject. Before the decision of Mohd. Ramzan Khan's case, in some cases, it was considered that an opportunity of making representation against penalty is required if the disciplinary authority disagrees with the findings of the inquiry officer and imposes penalty; but it was not required if he so agrees with him. There was, however, a weighty consensus that inquiry report was necessary to be furnished alongwith the order of penalty and if this was not done, the applicant is held to be prejudiced in making his or deprived of an adequate opportunity of doing so before the appellate authority. In this case, it is noticed that no inquiry report at all has been submitted. The

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question, therefore arises whether a summary of the inquiry officer's report conclusion and of the evidence on which he found guilt can be regarded as an adequate substitute for the inquiry report.

6. It is necessary to be clear about the precise observation of the Supreme Court and its impact on furnishing of the inquiry officer's report and the circumstances relating thereto. The following extracts sums up the position from the Ramzan Khan's case para 15, 16 and 18 :

> "15. Deletion of the second opportunity from the scheme of Art.311(2) of the Constitution has nothing to do with providing of a copy of the report to the delinquent in the matter of making his representation. Even though the second stage of the inquiry in Art.311(2) has been abolished by amendment, the delinquent is still entitled to represent against the conclusion of the Inquiry Officer holding that the charges or some of the charges are established and holding the delinquent guilty of such charges. For doing away with the effect of the enquiry report or to meet the recommendations of the Inquiry Officer in the matter of imposition of punishment, furnishing a copy of the report becomes necessary and to have the proceeding completed by using some material behind the back of the delinquent is a position not countenanced by fair procedure. While by law application of natural justice could be totally ruled out or truncated, nothing has been done here which could be taken as keeping natural justice out of the proceedings and the series of pronouncements of this Court making rules of natural justice applicable to such an inquiry are not affected by the 42nd amendment. We, therefore, come to the conclusion that supply of a copy of the inquiry report along with recommendations, if any, in the matter of proposed punishment to be inflicted would be within the rules of natural justice and the delinquent would, therefore, be entitled to the supply of a copy thereof. The Forty-Second Amendment has not brought about any change in this position.
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> 16. At the hearing some argument had been advance on the basis of Art.14 of the Constitution, namely, that in one set of cases arising out of disciplinary proceedings furnishing of the copy of the inquiry report would be insisted upon while in the other it would not be. This argument has no foundation inasmuch as where the disciplinary authority is the inquiry officer there is no report. He becomes the first assessing authority to consider the evidence directly for finding out whether the

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delinquent is guilty and liable to be punished. Even otherwise, the inquiries which are directly handled by the disciplinary authority and those which are allowed to be handled by the Inquiry Officer can easily be classified into two separate groups - one, whether there is no inquiry report on account of the fact that the disciplinary authority is the Inquiry Officer and inquiries where there is a report on account of the fact that an officer other than the disciplinary authority has been constituted as the Inquiry Officer. That itself would be a reasonable classification keeping away the application of Art. 14 of the Constitution.

18. We make it clear that whether there has been an Inquiry Officer and he has furnished a report to the disciplinary authority at the conclusion of the inquiry holding the delinquent guilty of all or any of the charges with proposal for any particular punishment or not, the delinquent is entitled to a copy of such report and will also be entitled to make a representation against it, if he so desires, and non-furnishing of the report would amount to violation of rules of natural justice and make the final order liable to challenge hereafter.

7. It is noticed that the requirement of giving inquiry officer's report arises only when the Inquiry Officer has held the delinquent guilty of all or any of the charges whether with or without any proposal of punishment. In such a case, it would be necessary for a delinquent officer to have that report to make a representation and without which he can be said to be prejudised. In this case, however, the Inquiry Officer has admittedly not found against delinquent. The Disciplinary Authority has differed with the Inquiry Officer and found the delinquent guilty and has given a copy of his order in which reasons for his doing so are set out together with summary of the Inquiry Officer's conclusions and the nature of evidence and why he differs from the conclusions and how he interprets differently the evidence. The appellate authority has applied its mind also to the effect of the Inquiry Officer having held the applicant not guilty as the charges having not been established beyond doubt and has agreed with the disciplinary authority for his conclusions differing

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from the Inquiry Officer's conclusion and his interpretation of the evidence. There is no evidence of any violation of Rules of natural justice and no cause for holding that the applicant has not been given a reasonable opportunity of being heard in respect of the charges.

8. The applicant in para 5 of his application has pleaded that he had demanded certain documents vide his letter dt. 4.2.1986 which he has annexed at Annexure A-1 but it was neither replied to by the respondents nor the documents were supplied to him. The relevant annexure shows that it is a letter dt. February 14, 1984 and does not relate to the letter dt. 4.2.1986. The applicant has not given any reference to any ground relating to non-supply of documents which he has pressed at the stage of memorandum of appeal and has not made any reference to it in the order of disciplinary authority or the appellate authority from which the fact of his having made such a demand and his having been refused can be deduced. The applicant has not given any duly served letter to that effect sent by registered post. For this reason, we are unable to pursuade ourselves regarding the genuineness of his plea of the failure on the respondents' part which vitiates the inquiry.

9. For the above reasons, we are not able to hold that there is any violation of rules of natural justice or of rules prescribed for conducting of inquiry, or imposition of penalty of the order at the stage of appeal or impugned orders passed under rule 29(1)(i) of CCS(CCA) Rules which justify any interference with the action of the respondents or impugned decision. The application is held to have failed. There shall be no order as to costs.

(R C Bhatt)
Judicial Member

(P H Trivedi)
Vice Chairman