

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
~~XXXXXXDOBXXXXX~~

O.A. No. 493
~~Tax No.~~

1988

DATE OF DECISION 29-9-1989

SHRI K.T.NANAIAH

Petitioner

SHRI P.K.PANDYA

Advocate for the Petitioner(s)

Versus

THE COLLECTOR OF CUSTOMS &
CENTRAL EXCISE & ORS.

Respondent

SHRI J.D.AJMERA

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?

Shri K. T. Nanaiah,
Inspector of Central Excise,
Kharirohar, (Kutch).

..... Applicant

(Advocate : Shri P.K. Pandya)

Versus

1. The Collector of Customs & Central Excise,
Centre Point Building,
Karansinhji Road,
Rajkot- 360 001.
2. The Chief Accounts Officer,
Customs and Central Excise,
Centre Point Building,
Karansinhji Road,
Rajkot- 360 001.

(Advocate : Shri J. D. Ajmera)

JUDGMENT

OA/493/88

Date : 29-9-1989

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

This application was filed under Section 19 of the Administrative Tribunals Act, 1985. The applicant impugns the order in appeal dated 29.9. 1988 and the communications dated 25.6.1986 and 11.3.1987, from Chief Accounts Officer, Customs and Central Excise, Rajkot. The applicant who was Inspector in the Collector of Customs and Central Excise, was charge sheeted by memorandum dated 22.4.1985 for charges annexed to the memorandum. He was held guilty by the Enquiry Officer and by the order dated 13.3.1986, he was punished with the withholding five increments of pay with cumulative effect. His appeal against the order dated 9.1.1987, was rejected by the letter dated 13.1.1987 on the ground of its being time barred. The Chief Accounts Officer, by his letter dated 5.6.1986 to the Administrative Officer, Central Excise, Jamnagar, ordered the deduction of the pay from 15.4.1984 to 16.4.1984 and the withholding of five increments. The recovery of the pay was to be made by the pay bill of the February 1987. By the copy of the said letter dated 11.3.87. The Chief Accounts Officer informed the Assistant Collector of Central Excise, stating that the

L.T.C. claim of the petitioner was rejected and therefore, the amount of Rs. 1600/- paid to him vide his office advance bill No. 244/84, dated 13.3.1984 has to be recovered with interest from him, even though no such order was passed, according to the petitioner by the Disciplinary Authority. According to the petitioner the order rejecting his L.T.C. claim does not assign any reason for doing so. He presumes that this was done because the appeal was rejected as time barred, and so the L.T.C. claim was rejected and the recovery was ordered with interest. The petitioner approached the Tribunal on 19.5.1987 by O.A./286/87. The Tribunal condoned the delay in preferring the appeal and directed the Collector of Customs and Central Excise, Rajkot to dispose of the appeal within a period of six months. However, the appeal dated 9.1.1987 was rejected by the Collector of Customs and Central Excise, Rajkot vide his order dated 29.1.1988. The petitioner has also made reference to one Shri Suryanarayan Rao, whose L.T.C. claim was rejected because he had not proved that he had travelled by Class I, and that he had actually travelled by Class-II but ultimately his claim was allowed for Class-II, but the petitioner has not been treated similarly. The petitioner has sought several reliefs. He has asked for the order of punishment dated 13.3.1981, and the order in appeal, on 21.9.1988, to be set aside. Further the communications dated 25.5.1986 and 11.3.1987, issued by the Chief Accounts Officer, are also prayed to be set aside as they have been made without any jurisdiction. By the communication dated 25.6.1986, the Chief Accounts Officer has directed the Administrative Officer, Central Excise, to deduct the pay of the applicant from 16.4.1984 to 16.5.1984 treated as unauthorised absence and by communication dated 11.3.1987, rejected L.T.C. claim and ordered recovery of Rs. 1600/- paid by way of advance to the applicant. The petitioner has prayed for the recovery ^{from} ~~of~~ the pay ~~for~~ recovery of the advance for Rs.1600/- L.T.C. to be restored and sent.

2. We shall first deal with the order of punishment and order in appeal against which the relief is sought. The order of punishment dated 13th March, 1986, and the order of punishment dated 29.01.1988 are both fairly detailed and give adequate reasons for their conclusions. The petitioner has cited 1981 (2) S.L.R. Page 807, Food Corporation of India V/s. State of West Bengal and Others, for his plea that withholding of five increments with cumulative effect is not legal. In the case cited however, the judgment makes a clear distinction of the West Bengal Services (Classification, Control and Appeal) Rules, 1971, from Rule 16 (A) of the Central Civil Services (Classification and control) Rules 1965. In that case the West Bengal Rules governed the applicant and it was found that the West Bengal Rules made no provision for withholding of the increments with cumulative effect while it is specifically stated in the judgment that Rule 16 (A) of the Central Rules on the subject provides for withholding with cumulative effect any period. This judgment therefore, does not help the petitioner. He has further relied upon Letters Patent 1982 (1) G.L.R. Page 233, Siddharth Mohanlal Sharma Versus ~~Sou~~th Gujarat University, in which it has been held that the findings of the facts in the course of a disciplinary inquiry, unless they are collateral or jurisdictional, are exempt from judicial review and the Court exercising writ jurisdiction cannot sit in appeal over the ultimate decision based on such findings subject to two exceptions, First when there is 'no evidence', to support the findings. Secondly the ultimate decision based on such findings must not be perverse or unreasonable. The various pleas taken by the petitioner namely that he had sent a telegram from Mysore, that he had sought extension of leave, that the Number of the vehicle and the drivers' name given were bonafide and that there was some

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over sight but no malafide have been discussed in the Inquiry Officer's report and the order in appeal. It is not for the Tribunal to make a fresh assessment of evidence or review it which has been held in the judgment cited is well established law. Another plea taken by the petitioner is that the punishment is disproportionate to the charges established. Having regard to the nature of the allegations and the fact that the Government need to strictly supervise whether the facility of L.T.C. is not abused and that if does not become a source of corruption, we do not find anything disproportionate in the punishment imposed. Another plea is that the petitioner asked for the certain documents which Inquiry Officer did not find relevant. This has been dealt with in the order in appeal which records that the documents asked for by the applicant, are not found relevant. The documents in question are the joining reports submitted by the petitioner on 17.4.1984, and the copy of the transfer order from P.R.O. to Training Cell, Article II of the charge deals with the unauthorised absence of the petitioner from 16.4. 1984 to 16.5.1984 and in the statement relating thereto, is stated as under:-

ARTICLE II :

That the said Shri K.K. Nanaiah Inspector remained absent from office unauthorisedly, from 16.4.1984 till 16.5.1984, as he did not submit any leave application for this period.

That in his statement dt. 2.4.85 recorded before Superintendent (Vigilance) Hdqrs. Officer Rajkot, Shri Nanaiah has wrongly stated that he had applied for leave from 19.3.1984 to 17.4.1984. He has also stated that in that he reported for duty before Shri N.N. Mahida, Assistant Collector (Legal) Hdqrs. Office, Rajkot, that he was not given any specific posting in any section and that his signature in the muster may not be there.

That it appears from the telegram cited earlier that he was My sore on 18.4.1984 and could not therefore, have been at Rajkot on 17.4.1984.

That in the Resume of the work done by him give by Shri Nanaiah for the purpose of writing A.C.R. for the year 1984, he has stated that he was posted to Training Cell in the Rajkot Hdqrs. Office from 17.4.1984 to 31.12.84, which contradicts the statement dated 2.4.85 cited above.

That it is seen from the muster of training cell, Hdqrs. Office, Rajkot, that Shri Nanaiah has been attending duty only with effect from 17.5.1984.

That in the joining report dated 14.6.84, cited above, Shri Nanaiah has stated that he returned to Hdqrs. on 16.5.84.

That the said Shri Nanaiah Inspector, by his aforesaid acts exhibited back of absolute integrity and failed to maintain devotion of duty, and acted in a manner highly unbecoming of a Govt. Servant and thereby contravened the provisions of Rule 3 of the Central Civil Services (Conduct) Rules, 1964.

3. In the list of documents at Annexure -III, Item No.8 and Item No.9 show that the duty joining report dated 14.6.84 of Shri K. T. Nanaiah Inspector addressed to C.A. O. Rajkot, and Item No.10 shows that the Attendance Register of Training cell from 5/84 to 3/85, and Item No. 11 and 12 show the statement, and the resume report given by the petitioner for the purpose of A.C.R. 1984. In the proceedings dated 4-10-85, it is stated that in the absence of the documents namely (1) Duty joining report submitted by the petitioner on 17-4-84. (2) Copy of transfer order from PRO to training cell, the petitioner and his defence assistant did not proceed. In further hearing by letter dated 15-10-85, The petitioner has complained about the non supply of the documents without assigning any reasons is arbitrary and will vitiate the proceedings. The petitioner was examined at Annexure -A-12. He has stated in reply to question No.29, as follows:-

I was asked to work in Training Centre to assist the Superintendent (Training). Whereas the duty joining report dated 14.6.84 have mentioned that I reported for duty on 16.5.84 through oversight.

4. In reply to question no. 31 when he was asked why he did not insist on specific posting in a particular section when he reported for duty on 15.4.1984 as claimed by him, he has stated as follows:

"After I returned from leave, I reported for duty at Assistant Collector, H.Q.Rajkot, I am not having any copy of joining report and I have not maintained any Diary so that I can produce any evidence in support of my joining."

5. We are not entirely happy about the conclusions of the Inquiry Officer, the disciplinary authority and the appellate authority, that the documents asked for by the petitioner were rightly not supplied because they were not relevant. There is room for doubt whether such documents if supplied would have materially altered the findings especially in the light of the other evidence produced against the petitioner, but the fact stands that the petitioner asked for the documents. No scope should be left for him to plead that he was handicapped in his defence. There is no doubt that for the line he could take to advance for his defence, the documents were relevant, that they were refused because they were regarded by the respondents as unnecessary because of other documentary evidence for proving the charges and that it would be wrong for the respondent authorities to presume that the documents even if supplied would have not taken the petitioner anywhere, as that would implied that a decision or conclusion was arrived at before the petitioner was allowed to lead his evidence in defence. In such cases the enquiry has to be held to have been vitiated. We are supported in this view by the decision ⁱⁿ Shri B.J.Kulkarni 1968.SLR 57 (Mysore).

6. The other orders of the Chief Accounts Officer impugned are regarding the recovery of pay for the period regarded as unauthorised, and the recovery of L.T.C. advance with interest. In their reply, the respondents have stated as

follows :

"It is submitted that once the disciplinary authority has held that the said claim was false and penalty was imposed the Chief Accounts Officer had no alternative but to reject the claim and recover the amount of advance given to the applicant in view of the order of disciplinary authority."

7. Regarding the considerable time left in effecting the recovery of L.T.C. advance and the order regarding recovery of interest the respondents has stated as follows.

"Referring to para 6.7. of the application it is submitted that the process of investigation, inquiry and disciplinary proceedings takes its own time as dependant on various factors. It is submitted that the applicant could have refunded the amount of advance provisionally to avoid the payment of interest. It is denied that the order passed by the respondents is without authority of law, as alleged."

Regarding the contention of the L.T.C. claim was rejected without assigning any reasons the respondents has stated as follows :

"Referring to para 6.8. of the application, the contention of the applicant that Chief Accounts Officer had rejected LTC claim without assigning any reason, is misconceived and not accepted. It is submitted that his appeal had already been rejected."

8. The Articles of the charge only relate to submissions of false L.T.C. claims and unauthorised absence. Having taken the grounds that the action of recovery and reduction of the claim automatically followed from and was based on rejection of the appeal, it would follow that no further show cause notice was necessary. We do not take this view of the matter. Firstly we do not find any warrant for imposing the interest on the amount of the advance. We have been shown, no authority investing the respondents with the powers to do so nor how the period for which the interest is claimed to be strictly due to delay having been caused by the petitioner. If the respondents could not decide that the absence was unauthorised or the claim was false, until

the order of punishment of the order in appeal rejecting it, there is no reason to believe that the petitioner was at fault, and was obliged to refund the advance which was earlier sanctioned by the petitioners and that he had to pay interest for the period until the order of punishment or the order in appeal is issued.

9. Secondly, the inquiry has only held that the absence is unauthorised, but not on how the period of unauthorised absence needed to be adjusted and what procedure is to be adopted for it. Even if the L.T.C. claim has to be rejected, the material on record does not warrant a conclusion that there is no intermediate stage in which the petitioner is to be asked that recovery will be effected and that he will be allowed to represent how the period will be adjusted, or his claim is disposed of.

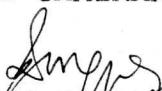
10. After finding the petitioner's guilty of the charges at the stage of effecting recovery, the petitioner has to be given a prior notice before effecting recovery from pay.
11. On holding that L.T.C. claim is false the respondents are entitled to effect deduction from pay but they have not shown how they are entitled to the interest.

12. In the circumstances of this case therefore, having regard to the fact of recovery having been already effected, it would be appropriate to quash and set aside the orders dated 13.03.1986 and 29.1.1988. The respondents should refund the recovery of the pay from 16.04.1984 to 16.05.1984 and the interest on the advance recovered if any. So far as the L.T.C. advancee is concerned, as in the case, it has to be adjusted against the final claim supported by adequate proof. The petitioner may be given an appropriate order by the respondent authorities' officer competent

to do so, stating why the L.T.C. claim has been rejected or to what extent it can be accepted. The respondent authorities are entitled to retain the L.T.C. advance already recovered as stated earlier. The respondent authorities are at liberty to pursue the petitioner by a fresh disciplinary proceedings if they feel justified to do so for imposing any punishment or for effecting recovery from the pay for unauthorised absence.

Subject to the above observations, the application has merit to the extent stated. No order as to costs.


(P H TRIVEDI)
VICE CHAIRMAN


(P M JOSHI)
JUDICIAL MEMBER