

7

CAT/J/13

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. NO. 93/89
T.A. NO.

DATE OF DECISION 11-8-94

Shri K.R. Saiyed

Petitioner

Mr. K.K. Bhah

Advocate for the Petitioner (s)

Versus

Union of India and Others

Respondent

Mr. Akil Kureshi

Advocate for the Respondent (s)

CORAM

The Hon'ble Mr.

K. Ramamoorthy

Member (A)

The Hon'ble

Dr. R.K. Saxena

Member (J)

JUDGMENT

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

yes

(46)

2

Shri K.R. Saiyed
207, Central Excise
Colony, Race Course
Road, Baroda

Applicant

Advocate Mr. K.K. Shah

Versus

1. Union of India
The Secretary
Central Board of Excise
& Customs, New Delhi
2. Collector of Central Excise
& Customs, Baroda.
3. Dy. Collector (P&E)
Central Excise and Customs
Ahmedabad.

Respondents

Advocate Mr. Akil Kureshi

J U D G M E N T

In

Date: 11-8-84

O.A. 23/ 1989

Per Hon'ble Dr. R.K. Saxena

Member (J)

Shri K.R. Saiyed has challenged through this application, the order of punishment dated 28-11-1986, passed by the Disciplinary Authority, stopping next five increments without cumulative effect and upheld by the Appellate Authority, vide order dated 26-4-1988.

2. According to the facts of the case, the applicant was Inspector, Central Excise and Customs, in the year 1984, at Ahmedabad. Shri P.R. Patel, Manager, and Shri Has Mukhsinhji, Accountant, of Shree Ghanshyam Fabricators, Anand, had made a complaint on 2-1-1985, to the Collector Central Excise and Customs, Ahmedabad, to the effect that the applicant had approached

the m and had demaned an amonnt of Rs. 2000/- to get the matter of seizure of ~~books~~ belonging to their establishmnet, settled. On receiving this complaint, the applicant was placed under suspension on 4-2-1985 and a charge-sheet dated 15-3-1985 was served upon him. The applicant had denied the charges and had claimed the copies of the documents which were shown in the charge-sheet and of some other documents. The inquiry of the case was given to Shri J.M. Shah, Assistant Collector, Central Excise and Customs, who concluded and submitted the report on 11-6-1986, but the same having not been prepared as per prescribed guide-lines, he was asked to prepare accordingly and then it was again submitted on 24-11-1986. The Disciplinary Authority, on the consideration of the inquiry report, awarded the punishment of stoppage of five increments without cumulative effect as described above. The applicant had preferred an appeal against the order of punishment but the same was rejected by the Appellate Authority. It was then that this application has been moved before the Tribunal, seeking relief of quashment of the order of punishment as well as of Appellate Authority. The ground of attack is that proper procedure was not adopted and the opportunity of defence was not accorded. It is also contended on behalf of the applicant that certain documents and reports which were relied upon by the Inquiry Officer and the Punishing Authority, were not furnished to him. In this category are placed the alleged slip of name, designation, written by the applicant and given to the accountant Shri Hasmukhsinghji of M/s. Ghanshyam Fabricators. Besides, the ^{copies of} seizure report in the case which was

booked against M/s. Ghanshyam Engineering Works, application dated 22-12-1984 of Shri Pradeepbhai and the date of the release of the goods, were ^{also demanded.} ~~not~~. On the other hand, the contention of the respondents is that the copies of all the documents which were relied upon by the Department during inquiry, were given and enough opportunity of defence was given. It is therefore urged, on behalf of the respondents, that neither there is any force in the application nor is the Tribunal competent to deal with the matter. It is also contended that the applicant has not exhausted all the remedies available to him.

3. We have heard the learned counsel for the applicant and the respondents. The relevant record including the departmental file of the respondents is also ^{given through it} ~~brought to the court.~~

4. Before we deal with the main arguments about the case, we would like to dwell upon the objections about jurisdiction and the incompetency of the applicant for seeking relief, raised on behalf of the respondents. The learned counsel for the respondents, could not disclose as to how the Tribunal is debarred from exercising jurisdiction in the matter. It appears that this is a specified form of opposition and an ornamental para. The applicant has come with the plea that after the order of punishment was passed against him, he had preferred an appeal which was dismissed. This fact has been admitted by the respondents and yet the plea of the respondents is that all the remedies available to the applicant, have not been exhausted. It could not be

disclosed as to what more remedy was available to him. As such, this objection appears to have been raised only for the sake of objection.

5. The main attack of the applicant against the respondents is that the procedure which was required for holding departmental inquiry, was not followed. In this connection our attention has been drawn towards the fact that along with the charge-sheet, Annexure A-1 which was served on the applicant, a list of documents and witnesses was also given but no copy of documents was furnished to him. It is pointed out that soon after the service of the charge-sheet, the applicant had informed the Deputy Collector, Ahmedabad, Head quarters on 27-3-1985 that the copies of the documents were not furnished to him along with the charge-sheet and that they may be made available. Besides, the copies of three documents namely seizure report in the case[&] which was[&] registered against M/s. Ghanshyam Engineering Works, application dated 22-12-1984 ~~xxx~~ of Shri Pradeepbhai, Manager, Ghanshyam Fabricators for release of goods and the date of release of goods, were also required. In this connection letter dated 6-4-1985, Annexure A-2 was given. According to the applicant, copy of the letter dated 2-1-1985 written by Shri Pradeepbhai R. Patel and the copies of the statements of Hasmuksinhji and Pradeep R. Patel were made available and their acknowledgement was made on 24-12-1985. It was also mentioned that the copy of slip containing address and name allegedly written by the applicant, was not made available. The contention of the learned counsel for the applicant therefore is that it was not mere formality to have furnished the copies of the documents and [&] the statement of the witnesses but

D
2

it is legal obligation on the Disciplinary Authority to have furnished them along with the charge-sheet and before calling for the explanation. By not doing so, it is contended, that prejudice is caused to the applicant. In this connection, reliance has been placed on the case Triloknath vs. Union of India, 1967 SLR 759, State of Punjab vs. Bhagat Ram AIR 1974 SC 2335 & Union of India and Others vs. Mohammed Ramzan Khan, 1991 SCC(LS) 612. It has been emphasized^{at} that the copies of the documents and statements of the witnesses relied upon by the department must be made available to the delinquent employee so² that he may prepare his defence, and may be in a position to establish his innocence. The observation of the Supreme Court in the Case State Of Punjab vs. Bhagat Ram^(Supra) is to the effect that the Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying the statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servants, he will not be able to have the effective and useful cross-examination. In this case, the charge sheet dated 15-3-1985 was served on the applicant some-where on or before 27-3-1985 because it is on that date that the applicant had made request to Shri V.K. Jani Head Office, Ahmedabad, to furnish copies mentioned in the charge-sheet and had also demanded copies of three more documents. The learned counsel for the respondents argued that the applicant was at liberty to have inspected the

-7-

the documents and could have taken notes therefrom. In our view, this does not appear to be the correct procedure, because the stage of defence starts right from the time when the charge-sheet is served on the delinquent employee ^{and he} is asked to furnish his explanation. This explanation will be based on the documents or the statements of the witnesses which ^{have} ~~are~~ been relied upon by the department. It is therefore necessary that the copies of the documents and statements must be made available to the chargesheeted employee along with the charge-sheet. Of course, it is ^{the} ~~the~~ a different matter if the document~~s~~ is voluminous one, ^{and} the copy of whole of the volume cannot be made available, in that situation the delinquent employee may be informed to inspect and to make notes thereof. In case explanation about the charges ^{is} ~~sought~~ within 10 days without furnishing such copies, it may amount denial of opportunity. The second stage, of course, of defence comes when the witnesses are examined in support of the charges and the cross-examination is required to be made by the delinquent employee. Unless he is supplied with the copies of the statements previously recorded either at the time of preliminary inquiry by the department itself or by Vigilance ^{officer} or any other agency, ^{are} ~~are~~ made available, he may not ~~be~~ be able to prepare his defence well. In this case copies of some of the documents and the statements of the witnesses were made available to the applicant ~~only~~ only on or near about 24-12-1985. The copy of slip which is alleged to have been written by the applicant himself indicating his name and address, was not given ^{at all} The Punishing Authority while

passing the order of punishment, had relied on this slip. The observation made in this connection may be quoted below in the words of the Disciplinary Authority itself. It reads :

" In particular Shri K.R. Saiyed Inspector has not been able to satisfactorily explain the existence of the slip of paper containing his residential address and how the said paper came in the possession of the complainant. Therefore, the circumstantial evidence in the case proves that the complainant had basis and that Shri K.R. Saiyed Inspector by his aforesaid conduct exhibited lack of devotion to duty in a manner unbecoming of a Government servant."

It shows that the Disciplinary Authority was placing reliance on documents-the copy of which was never given to the applicant. It is, therefore, clear that the prejudice is caused to the applicant and he was prevented from making his effective defence.

6. The learned counsel for the applicant also drew our attention towards the application dated 17-2-1986 which was moved by the defence Assistant of the applicant to the Inquiry Officer making a prayer that Shri R.H. Patel, Superintendent of Central Excise and Customs and Ghanshyam Patel the owner of M/s. Ghanshyam Fabricators, Anand be allowed to be examined as defence witnesses but no order was passed on that application. Shri R.H. Patel is said to have investigated the case and this reference has come in the order of Punishing Authority when he took help of the statements recorded by the Vigilance Officer without examining any of them. It is really surprising that how ^a can the assistance of these statements which were not recorded before the Inquiry Officer but were recorded by Vigilance Officer, can be taken unless the copies were made available to the

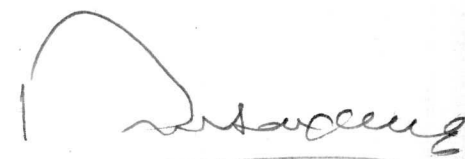
delinquent officer. The Punishing Authority drew conclusion from the statements recorded by the Vigilance Officer namely Shri R.H. Patel that the complaint made by Shri P.R. Patel was genuine and the facts stood corroborated by the Manager of the firm in his cross examination and statement given to the Superintendent, vigilance, Head quarters. This procedure is really unique and can hardly be held proper and legal. It shows that the Punishing Authority had ² have relied on extraneous facts and circumstances and side by side ² depriving access of ~~these~~ documents and statements to the applicant. Looking to these circumstances, it is clear that the proper procedure has not been adopted. The applicant was certainly denied the proper preparation of defence and thus he was prejudiced.

7. The learned Counsel for the applicant also pointed out that the Inquiry Officer in this case had prepared two reports ² of which one was submitted on 11-6-1986 while the other was submitted on 24-11-1986. The explanation of the respondents in this connection is that actually the first report was not prepared in the chronological order or in the order in which ² ~~had~~ ought to have been submitted; and therefore he was directed to submit the report accordingly. We are not convinced with this argument. There cannot be a particular form of report which may have statutory sanction. Even if it is assumed that the report was not chronologically prepared, it is not understandable as to why a period of five months should be taken for arranging the facts recorded earlier in chronological order. Here the conduct

2

of the Inquiry Officer of the Disciplinary Authority cannot be said to be free from suspicion. Not only this, the copy of this inquiry Report was not furnished to the applicant. In this connection our attention has been invited towards the law laid down in Mohammed Ramzan Khan's case, according to which the copies required to be furnished to the applicant. The position whether the implementation of judgement of Mohammed Ramzan Khan's case shall be retrospective or prospective, it was made clear in subsequent cases that the implementation shall be prospective and thus it does not remain the point of material importance because the punishment order was passed on 28-11-1986, much before the pronouncement of the judgement in Mohammed Ramzan Khan's case.

8. In view of the facts and circumstances discussed above, we come to the conclusion that the proper procedure having not been followed, prejudice has been caused to the applicant and, therefore, the order of punishment which is based on such procedure, no more remains legal and sustainable under law. We, therefore, quash the order of punishment of the Disciplinary Authority, as well as of the Appellate Authority and set aside them. No order as to costs.



(Dr. R.K. Saxena)
Member (J)

Per : Hon'ble Mr.K.Ramamoorthy : Member (A)

I have gone through the above judgment of Dr.R.K.Saxena. I agree with the conclusion that prejudice has been caused to the applicant and therefore, the order of punishment should be quashed, on the ground mentioned in para- 6 and 7 and also on the ground of the copy of the slip not being given as referred to para-5. However, I am not able to find myself in agreeing with my brother regarding the other point made in para-5 viz. the need for copies of documents and statements being made available along with the charge-sheet. The various sections relating disciplinary actions have been subjected to judicial examination at various ^{times} ~~lines~~ and at different fora and the Rules have thereafter been made specifically spelling out the steps to satisfy the principles of natural justice as adumbrated in the various judgments. The present Rules are thus a distillation of such various rulings. Therefore, it is not necessary to go beyond the specific provisions made there under, Rule 14 (3) (2) B specifically provides for " only a list of documents by which and a list of witnesses by whom the articles of charge was proposed to sustain." In para-5 itself it has been stated that the judgments where documents are voluminous, this need not be submitted. Issue is not one of volume but one of legal requirement. In fact the Govt. of India Central Vigilance Commissioner's letter No.4/42/73-R, dated the

19th September, 1973, explains the position correctly.

Synopsis of the same has been given in the Swamy's Manual as under :

" In cases where major penalty proceedings are advised on the investigation reports, the delinquent officer is asked to submit his written statement of defence within ten days from the receipt of the memorandum of articles of charge. Generally delinquent officers make a request for inspection of listed documents for preparing their written statement of defence. According to the scheme of CCS (CCA) Rules, 1965, the delinquent officer need not be shown documents at this stage to enable him to prepare his defence statement in reply to charge-sheet. In this connection, extracts from the advice of the Ministry of Law are reproduced below:

" The scheme of Rule 14 of the CCS (CCA) Rules, is somewhat different from the scheme contained in Rule 15 of 1957 Rules. The scheme contemplates that the statement of defence submitted under sub-rule (5) (a) may be limited to admitting or denying the charges communicated to the officer. For such admission or denial, inspection of documents is not necessary.

The disciplinary authorities are, therefore, advised that if a delinquent officer does not submit his statement of defence within the prescribed time, they may go ahead with the appointment of Inquiring Authority. While rejecting the requests for inspection of documents, it may be explained to the delinquent officers that they would get full opportunity to

2

(19)

- 3 -

inspect the listed documents during the course of enquiry."

2. While it is true that in certain cases even at the time of preparation of defence such copies might be necessary solution would be by way of the applicants asking for extra time to submit the reply to enable him to get the copies and to peruse them. But to make it a condition precedent is not necessary nor feasible as there is a well established practice of making available such copies only on requests when necessary and when the enquiry is actually started. It goes without saying that such copies should certainly be available at the time of inquiry itself.

3. It can of course be a healthy precedent if such a copies were supplied, alongiwith the charge-sheet. In fact if such a request is received the time taken to give the copy if necessary can be added to the time given to give the first reply. It is understood that such a general direction is also issued by the department of Personnel and A.R. as seen in Govt. of India, Central Vigilance Commission, letter No.IQ/DSP/3, dated the 19th June,1987 circulated by Home Department, Chandigarh Administration under endst. No.1424-H.II (6)87/15580, dated the 25th August,1987.

With the above remarks, I concur that the application should be allowed.



(K.Ramamoorthy)
Member (A)