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**CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 310 OF 1992
Cuttack this the 18th day of February, 1999

Bhaskar Sahoo & another

Applicants

-Versus-

Union of India & Others

Respondents

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*.
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *No*.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.2.99

15291
(G. NARASIMHAM)
MEMBER (JUDICIAL)

(18)

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO.310 OF 1992
Cuttack this the 18th day of February, 1999

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

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1. Shri Bhaskar Sahoo,
Sepoy, Central Excise & Customs,
Central Revenue Building, Rajaswa Vihar,
Bhubaneswar-751004
2. Shri Muralidhar Patra,
Sepoy, Central Excise & Customs,
"CUSTOMS HOUSE", PARADEEP PORT,
At/Po: PARADEEP PORT,
Dist: Cuttack

Applicants

By the Advocates : M/s.P.K.Panda
P.K.Padhi

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1. Union of India represented through
Collector, Central Excise & Customs,
Orissa, Bhubaneswar
2. Addl.Collector, Central Excise & Customs
Orissa, Bhubaneswar

(Both at Rajaswa Vihar, At/Po: Bhubaneswar
Dist : Puri - 751 004)
3. Sri S.S.Lenka, Customs, "CUSTOMS HOUSE",
Vishakhapatnam - A.P.

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Respondents

By the Advocates : Mr.Ashok Mohanty

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ORDER

MR.G.NARASIMHAM, MEMBER(J): The two applicants, Sepoys in the Collectorate of Central Excise and Customs, Bhubaneswar, in this application under Section 19 of the Administrative Tribuals Act, 1985, challenge the orders of punishment imposed by the disciplinary authority under Annexure-11 and appellate authority under Annexure-14, besides the charges framed under Annexure-2.

2. The matter relates to an incident occurred between 22.00 hrs. of 24.8.1987 ^{and} to 06.00 hrs. of 25.8.1987 in building No.6, Lewis Road, Bhubaneswar, where because of shifting of the Collectorate to Vani Vihar area, records and other materials were ~~got~~ staked. In that night the two applicants along with one Sepoy, Chandrakanta Sahoo were on guard duty. In the morning of 25.8.1987, after arrival of Shri N.B.Mohanty, Inspector of Central Excise, it was found that lock of Room No.1 godown was broken and there was theft of some of the confiscated and ~~seized~~ goods. Preliminary inquiry was made and thereafter disciplinary proceeding was initiated and the charges framed. The charges were under three counts against two applicants and Chandrakanta Sahoo, viz., They had unauthorisedly allowed Sepoy Pramod Kumar Harichandan, who was not on duty and another outsider Maheswar Parida to sleep in the Guest House in Building No.6 during their guard duty hours; they have failed in performing the duty assigned to them for guarding the building where customs seized and confiscated goods

were kept and finally, because of theft of these goods, the Government incurred a loss of Rs.57,459/-.

The applicants filed written statements denying the charges. Inquiry Officer and the Presenting Officer were appointed. The Inquiry Officer, after recording evidence and perusing materials produced before him did not give any opinion as to the pecuniary loss, because the same was under police investigation. However, he held the other two charges to have been established vide Annexure-10. The disciplinary authority accepted the findings of the Inquiry Officer and ordered stoppage of three increments with cumulative effect against the two applicants and Chandrakanta Sahoo (Annexure-11). After passing this order of punishment, the disciplinary authority under F.R. 54(b) directed the period of suspension to be treated as on duty. On appeal, the appellate authority issued notice to show cause why the punishment imposed shall not be enhanced. Thereafter, on receiving the show cause and perusing the record, the appellate authority confirmed the findings of the disciplinary authority and reduced the pay of the applicant No.1, Bhaskar Sahoo from Rs.955/- to Rs.927/- and of applicant No.2 from Rs.847/- to Rs.823/-. He also reduced the pay of Chandrakanta Sahoo by two stages from Rs.823/- to Rs.799/-. He further directed that they will not get increment of pay during the period of reduction and on expiry of this period, the reduction will have the effect of postponing further increments in pay.

These facts are not in controversy.

2. The respondents in their counter take the stand that the proceeding has been initiated as per law, and there was no procedural lapses violating the principles of natural justice. Charges have been framed correctly and orders of different authorities have been passed according to law.

3. The main grounds urged by the applicants are that there was no proper appreciation of the evidence by the concerned authorities; ^{that} Shri N.B. Mohanty, Inspector of Central Excise & Customs is the main culprit behind the entire show and the prayer of the applicants during inquiry to examine Shri N.B. Mohanty has been illegally turned down on account of which they have lost valuable opportunity to elicit the truth and this in turn vitiates the entire proceeding; and that the appellate authority could not have enhanced the punishment.

4. Law is well settled through ^acatena of decisions of Apex Court that a Court or Tribunal cannot sit on appeal against the orders passed by the disciplinary authority or the appellate authority. In otherwords, re-appreciation of evidence is not permitted in hearing before the Court or Tribunal. The orders of the authorities can be interfered only when the findings are based on no evidence or the same are ~~perverted~~ or ~~denying~~ principles of natural justice have been violated denying effective opportunity to a delinquent to defend himself.

We have carefully perused the orders of the Inquiry Officer, disciplinary authority and appellate authority. The orders are very elaborate with discussion of evidence. The orders are, by no means, based on no

evidence. They are neither arbitrary nor purversed. We cannot interfere with the findings of these authorities, simply on the ground that on the basis of evidence available before them, different findings would have been arrived at. The findings are positive on the basis of evidence that the two applicants and Chandrakanta Sahoo unauthorisedly allowed Sepoys Promod Harichandan, not on duty and an outsider, Maheswar Parida to stay in the Guest House during their duty hours, and because of their negligence, there was burglary through breaking the lock.

It is true that Shri N.B.Mohanty, Inspector was not examined during inquiry against the applicants. His non-examination, in our view, would not prejudice the applicants, because it is not their case that Shri Mohanty was present in that building during their duty hours and in the application itself, it has been mentioned that Shri Mohanty arrived at about 9.30 a.m. on 25.8.1987. As to the pecuniary loss due to theft, no finding against the applicants was given because of the pendency of police investigation. This being the position, it is not clear from the pleadings as to how examination of Shri N.B.Mohanty would have disproved the other two charges against them. On careful perusal of the record, we have not come across any other procedural lapse violating the principles of natural justice.

As to the framing of charges, we also do not come across any legal infirmity. Though there is prayer for quashing the charges, it is not explained in the

pleadings how the charges were legally defective. Moreover, charges were framed on 12.2.1988 and this application was filed on 14.7.1992. Hence more than four years after framing of the charges, the applicants are estopped under law of limitation to plead for quashing of the charges.

5. It cannot be disputed that appellate authority under C.C.A. Rules has no discretion to enhance the punishment, after giving opportunity to the appellants to show cause as to why the punishment shall not be enhanced. It is not disputed that appellate authority had issued such show cause notice. Pleadings do not enlighten us as to how the procedure adopted by the appellate authority was legally defective. Even the quantum of punishment imposed by the appellate authority is in no way disproportionate to the charges established.

6. For the reasons discussed above, we are of the view that the application is without any merit which is accordingly dismissed, but no order as to costs.

The interim order of stay passed on 14.7.1992 stands vacated.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
18.2.99

B.K.SAHOO

18.2.99
(G.NARASIMHAM)
MEMBER(JUDICIAL)