

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 158 OF 1999
Cuttack this the 28th day of November/2003

Chandra Kanta Saheb ... Applicant(s)

VERSUS

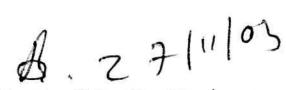
Union of India & Others ... Respondent(s)

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 ? Yes


(B.N. SOM)

VICE-CHAIRMAN


(BHARATI RAY)

MEMBER (JUDICIAL)

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 158 OF 1999
Cuttack this the 28th day of November, 2003

CORAM:

THE HON'BLE MR. B.N. SOM, VICE-CHAIRMAN
AND

THE HON'BLE MRS. BHARATI RAY, MEMBER (JUDICIAL)

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Chandra Kanta Sahoo, aged about 36 years,
Son of Gangadhar Sahoo, Village-Muraripur,
P.S.-Mangalpur, P.O-Chasakhandi, Dist-Jajpur
Dist-Jajpur, at present Sepoy, Central
Excise & Customs, Bhubaneswar, Range-2,
At/P.O-Patia, Dist-Khurda

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Applicant

By the Advocates

M/s. D.R. Patnaik
M.K. Kuntia

VERSUS

1. Union of India represented through Collector, Central Excise & Customs, Orissa, Bhubaneswar, At/P.O-Bhubaneswar, Dist-Khurda
2. Addl. Collector, Central Excise & Customs, Orissa, Bhubaneswar, At/P.O-Bhubaneswar, Dist-Khurda
3. Sri S.S.Lenka (Investigating Officer), Addl. Collector, Customs, "CUSTOMS HOUSE", Vishakhapatnam (Andhra Pradesh)
4. Member (P&V) C.B.E.C., New Delhi, Ministry of Finance Department of Revenue (AD V. Section), Govt. of India, New Delhi

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Respondents

By the Advocates

Mr. B. Dash, A.S.C.

ORDER

MRS. BHARATI RAY, MEMBER (JUDICIAL): This Original Application has been filed challenging order dated 27.12.1995 passed by Respondent No.4 and (received by the applicant on 14.1.1996) and seeking for an order quashing the impugned order of punishment imposed by the disciplinary authority as well as the orders passed by the appellate authority and

revisional authority.

2. Briefly stated the facts of the case are that the applicant, Sepoy, Central Excise & Customs was on night duty from 10.00 P.M. of 24.8.1987 to 6. P.M. of 25.8.1987 in the Central Excise & Customs, Office Building No. 6 at Lewis Road, Bhubaneswar, along with two other Sepoys. On the upstairs of the said Building No. 6, Customs Gedown is located and opposite to the Customs Gedown, a room of the Guest House is also located. A charge memo dated 12.2.1988 under Rule 14 of CCS(CCA) Rules was issued to the applicant on the allegation of gross misconduct by allowing Shri P.K.Harichanda, Sepoy who was not on duty to sleep in the Guest House of the building unauthorisedly along with one Maheswar Parida, an outsider and failed to perform the duty of guarding the building assigned to him and thereby causing a loss by way of theft of customs seized/confiscated goods to the tune of Rs.57,495/-. The applicant made his representation against the said charge sheet vide his letter dated 18.2.1988, denying the charges levelled against him. In consideration of the reply given by the applicant, the disciplinary authority ordered an inquiry into the charges by appointing an Inquiring Officer and the Presenting Officer. A report was submitted by the Inquiry Officer after completion of the inquiry, holding that Shri P.K.Harichandan, Sepoy and Shri Maheswar Parida an outsider were allowed to stay in the guest house in the night of 24/25.8.1987 unauthorisedly. The disciplinary authority, after careful examination of the records of the case and the report of the Inquiry Officer imposed

penalty of stoppage of three increments of pay of the applicant and other two Sepoys with cumulative effect. The applicant preferred appeal against the said order of the disciplinary authority before the Collector, Central Excise and Customs, Bhubaneswar on 8.1.1991 under Rule 23 of CCS(CCA)Rules, 1965. The appellate authority, after going through the records of the case ordered for a revision on 8.4.1991. A Memo dated 17.6.1991 was issued to the applicant proposing enhancement of the penalty as there was justification for imposing major penalty in place of minor penalty. The applicant submitted his representation on 27.6.1991. The appellate authority thereafter passed the order enhancing the penalty to reduction of pay by two stages for a period of three years in place of three increments with cumulative effect. This order the applicant has enclosed to the O.A. as Annexure-7 dated 5.5.1992. It is against this order the applicant preferred a revision petition whereupon the revisional authority vide order dated 27.12.1995 confirmed the order of punishment imposed on the applicant under Annexure-7 dated 5.5.1992. Aggrieved by the orders of the appellate authority as well as the revisional authority, the applicant has approached this Tribunal seeking reliefs as stated above.

3. The learned counsel for the applicant strenuously argued that the order of the disciplinary authority is defective to the extent that no time-limit has been mentioned in the order. However, we find that

the said order of the disciplinary authority has already been modified by the appellate authority by enhancing the punishment awarded by the disciplinary authority to reduction of pay by two stages for a ^{stoppage of} period of three years in place of three increments with cumulative effect. The applicant has been furnished with the inquiry report. The applicant has also preferred appeal to the concerned authority. against the order of punishment. It is the contention of the learned counsel that the order of the appellate authority is illegal inasmuch as the applicant was not given an opportunity to defend his case before the enhancement of punishment was imposed on him. On going through the counter-reply filed by the Respondents, we find that the applicant was issued with Memo dated 17.6.1991 to have his say against the proposed enhancement of punishment and the applicant has submitted his representation on 27.6.1991 replying to the said Memo. Applicant has not filed any rejoinder rebutting the said submissions made in the counter-reply. Therefore, the contention of the applicant that he has not been given opportunity before the proposed enhancement of penalty holds no water. The Revision petition of the applicant was also considered by the authority concerned, which passed the order confirming the order passed by the appellate authority. The learned counsel for the applicant submitted that two other Sepoys who were also involved in the said incident, no action has been taken against them. To this, the Respondents have submitted that two other Sepoys, viz.,

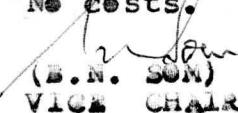
S/Shri Bhaskar Sahoo and Murlihar Patra, who were on guard duty along with the applicant preferred for quashing the charges C.A. No. 310/92 before this Hon'ble Tribunal. The Hon'ble Tribunal while disposing of the said C.A. on 18.2.1999, held as under :

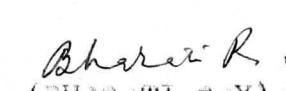
"Though there is prayer for quashing the charges, it is not explained in the pleadings how the charges were legally defective. However, charges were framed on 12.2.1988 and this application was filed on 14.7.1992. Hence, more than four years after framing of the charges, the applicants are estopped under law of limitation to plead for quashing of the charges".

In the present case, on going through the records, we find no legal infirmity in conducting the disciplinary proceedings. The applicant has been provided with all opportunities to defend his case and the applicant has availed of the same. The orders passed by the disciplinary authority, appellate authority and the revisional authority, in our considered view, cannot be called in question as the concerned authorities after observing all the formalities under the relevant rules have passed these orders.

For the reasons discussed above, we do not find any illegality in the action taken by the Respondents. We, therefore, find no merit in this Original Application, which is accordingly dismissed.

No costs.


(B.N. SON)
VICE CHAIRMAN


Bharati R.
(BHARATI RAY)
MEMBER (JUDICIAL)

By