CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 458 of 1999

Tuesday, this the 31st day of July, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. M.K. John,
Inspector of Central Excise,
Central Revenue Building,
I.S. Press Road, Kochi-18 ....Applicant

[By Advocate Mr. P.K. Madhusoodhanan]

Versus

1. The Commissioner of Customs & Central Excise,
Central Revenue Building,
I.S. Press Road, Kochi-18

2. The Member (P&V),
Central Board of Excise & Customs,
North Block, New Delhi-1

3. Union of India, represented by its
Secretary, Ministry of Finance,
Department of Revenue, New Delhi. ....Respondents

[By Advocate Mr. P. Vijayakumar, ACGSC]

The application having been heard on 31-7-2001, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to set aside A7 and A9 and to direct the respondents to promote him to the post of Superintendent of Central Excise forthwith as if there is no punishment imposed, with all consequential benefits.

2. While the applicant was working as Inspector of Central Excise, he was posted to Air Cargo Complex (unaccompanied baggage), Trivandrum for a period of six months. He was served with A1 charge memorandum. He submitted written statement of defence. The Inquiry Officer submitted enquiry report. The

..2.

Disciplinary Authority issued A5 dated 6-2-1998 to the applicant stating that the disciplinary authority does not agree with the finding of the Inquiry Officer that there were no deliberate acts and omissions on the part of the charged officer designed to confer substantial undue benefit and pecuniary gain to the passenger. He submitted A6 representation in response to A5. Thereafter, A7 order was issued by the Disciplinary Authority. Finding the applicant guilty, he was imposed penalty. Against A7 order, A8 appeal was preferred. A9 is the order passed by the Appellate Authority.

3. Respondents resist the OA contending that the impugned orders do not suffer from any illegality. The lapse on the part of the applicant could not have been a bonafide omission or an accidental lapse.

4. The learned counsel appearing for the applicant argued that A7, the order of the Disciplinary Authority, is bad in law for the reason that Inquiry Officer and Presenting Officer were appointed even before the receipt of explanation to the charge memorandum from the applicant. The said action is in violation of Rule 14(4) of CCS (CCA) Rules.

5. According to the learned counsel for the applicant, the disciplinary authority ought to have given the applicant an opportunity of being heard in person and that was denied in this case before appointment of the Inquiring Officer and the Presenting Officer. Rule 14(5)(a) of CCS (CCA) Rules says that on receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted, or, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring

authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15.

6. What the applicant says is that before appointing the Inquiring Officer and the Presenting Officer, he should have heard in person. In support of this stand the learned counsel appearing for the applicant drew our attention to the ruling in State of Punjab, Appellant vs. V.K. Khanna and others, Respondents [AIR 2001 SC 343], wherein it has been held that:

> "It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge-sheet or show-cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record."

7. Under what circumstances it was so held by the Apex Court is also to be seen. Paragraph 21 of the said judgement reads thus:

> "Soon after the issuance of the charge-sheet however, the Press reported a statement of the Chief Minister on 27th April, 1997 that a Judge of the High Court would look into the charges against Shri V.K. Khanna - this statement has been ascribed to be mala fide by Mr. Subramaniam by reason of the fact that even prior to the expiry of the period pertaining to the submission of reply to the charge-sheet, this announcement was effected that a Judge of the High Court would look into the charges against the respondent No.1 - Mr. Subramaniam contended that the statement depicts malice and vendetta and the frame of mind so as to humiliate the former Chief Secretary. The time has not expired for assessment of the situation as to whether there is any misconduct involved - if any credence is to be attached to the Press report, we are afraid Mr. Subramaniam's comment might find some justification."

8. Here, facts are not identical. After the receipt of A1 charge memorandum the applicant submitted his written statement of defence on 5-11-1996. The applicant has not produced the order issued by the disciplinary authority appointing the Inquiry Officer and the Presenting Officer. It is submitted by the learned counsel for the applicant that the said order was issued in November, 1996 and the date is not mentioned in the orders. But it is submitted by the learned counsel for the applicant across the bar that the said order was served on the applicant after the applicant submitted his written statement of defence. That being the position, the said ruling has no application to the facts of the case at hand.

9. The next point urged by the learned counsel for the applicant is that the disciplinary authority in A5 has not stated the reason for his disagreement with the finding of the Inquiry Officer. The learned counsel for respondents submitted that A5 not only says that the disciplinary authority does not agree with the finding of the Inquiry Officer, but also says on what aspect the disciplinary authority is disagreeing and that is that "there were no deliberate acts and omissions on the part of the Charged Officer designed to confer substantial undue benefit and pecuniary gain to the passenger". So, it is not a vague statement by the disciplinary authority that he does not agree with the finding of the Inquiry Officer, but the disciplinary authority says on what aspect he is disagreeing. That being so, the applicant was made well aware as per A5 on what aspect the disciplinary authority is unable to agree with the finding of the Inquiry Officer. On a careful reading of A5 we are unable to accept the argument advanced by the learned counsel for the applicant.

10. As far as A9, the appellate order, is concerned, the learned counsel appearing for the applicant submitted that it is issued in violation of Rule 27 (2) (a), (b) and (c) of CCS (CCA) Rules.

11. Rule 27(2) of CCS (CCA) Rules says that the appellate authority shall consider whether the procedure laid down has been complied with and if not whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice, whether findings of the disciplinary authority are warranted by the evidences on record and whether the penalty or enhanced penalty imposed is adequate, inadequate or severe.

12. According to the applicant, the appellate authority has not considered this aspect and therefore, A9 is bad in law. In this aspect we have to see what are the grounds raised in A8, the appeal memorandum. One of the grounds raised is that there is violation of Rule 14(4) of CCS (CCA) Rules, 1965. On that aspect we have already stated what is the position. The other ground raised is that it is a case of no evidence. In A9, the appellate authority has stated that on a careful examination of Inquiry Officer's report, impugned order of the disciplinary authority, submission of Charged Officer, points raised in the appeal and other relevant materials available on records he has come to the particular conclusion. No evidence means not total want of evidence, but whether with the available evidence the conclusion arrived at would be reached. It cannot be said that this is a case of no evidence.

13. The learned counsel for the applicant submitted that one of the reasons stated in A5 has not been considered by the appellate authority while passing A9 order. In A6 the

applicant has not raised such an objection before the disciplinary authority. As already stated, A6 was submitted in response to A5. So, at the earliest opportunity he has not availed to put forward this particular contention. Apart from that, with regard to that aspect also, we have already stated what is the position.

14. The learned counsel for the applicant further submitted that K.E.Jose, then Superintendent, who supervised the examination of the baggages by the applicant and countersigned the baggage declaration and baggage receipts and who issued the gate pass, who was the 1st accused in Crime No. R.C. 23(A)/94 and who is bound to supervise and liable to be proceeded with for violation of the statutory rules 3(2) of CCS (Conduct) Rules is not even issued with a show cause notice under the Customs Act, 1962 or issued with a charge memorandum under CCS (CCA) Rules, 1965 or suspended and it is only against the applicant proceedings were initiated. The applicant cannot say that he is not to be found guilty or the proceedings initiated against him are bad in law for the reason that no proceedings were initiated against the then Superintendent who was to supervise the work done by the applicant. The applicant has to win or lose the case based on the strength of the case.

15. The learned counsel for the applicant over and above other arguments submitted that no evidence is let in by the department nor even an attempt was made in the enquiry to prove that all the goods arrayed by the DRI officials and CBI were there while examining the baggage by the applicant. On this aspect the report of the Inquiry Officer throws light and it says that during the course of hearing on 4-3-1997 the Charged Officer admitted 15 documents listed in Annexure III of the charge memo and also stated that he had no objection to these

documents being marked and taken on record. Further R1(a) will also go against the stand of the applicant. R1(a) is a statement given by the applicant before the Assistant Director, DRI, Calicut on 20-8-1994 under Section 108 of the Customs Act. In that statement he has clearly stated that he has not done the open examination of the baggage properly and correctly. As per Section 108 of the Customs Act, any gazetted officer of customs shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making in connection with the smuggling of any goods and every such inquiry shall be deemed to be a judicial proceeding within the meaning of Section 193 and Section 228 of the Indian Penal Code. So, in the light of R1(a), this stand of the applicant cannot be accepted.

16. In Managing Director, ECIL, Hyderabad vs. B.Karunakar [JT 1993 (6) SC 1], it has been held that Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done in that case, that the courts should avoid resorting to shortcuts, that since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity and that it is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. So, it is clear that the Tribunal is not to resort to any shortcut method and has to apply its judicial mind to the question and give its conclusion.

17. For the reasons stated, we do not find any ground to grant the reliefs sought.

18. Accordingly, the Original Application is dismissed. No costs.

Tuesday, this the 31st day of July, 2001

G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER

A.M. SIVADAS
JUDICIAL MEMBER

ak.

List of Annexure referred to in this order:

1.	A1	True copy of Memorandum of Charge dated 25-10-96 along with imputation of misconduct, list of witnesses and documents.
2.	A5	True copy of letter dated 6-2-98 along with Inquiry Report dated 26-5-1997.
3.	A6	True copy of the representation sent by the applicant dated 3-3-1998.
4.	A7	True copy of the order No. 11/10A/1/95-Vig-CX/ 419/98 dated 19-6-98 of the first respondent.
5.	A8	True copy of Appeal Memorandum dated 8-7-98 submitted by the applicant to the 2nd respondent.
6.	A9	True copy of Order F.No. C.16012/7/98-ADV dated 22-2-1999 of the 2nd respondent.
7.	R1(a)	True copy of the statement dated 20-8-94 given by the applicant before Asst. Director, DRI, Calicut.