

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.97/2002

Thursday, this the 22nd day of April, 2004.

C O R A M

HON'BLE MR.T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V.SACHIDANANDAN, JUDICIAL MEMBER

K. Nanni Namboodiri,
Superintendent of Central Excise,
Office of the Commissioner,
Central Excise & Customs,
Kozhikode Commissionerate,
Central Revenue Buildings,
Mananchira,
Kozhikode.

..Applicant

[By Advocate Mr. C.S.G. Nair]

Versus

1. Union of India represented by
The Secretary,
Department of Revenue,
North Block,
New Delhi.
2. The Member (P&V),
Central Board of Excise and Customs,
North Block,
New Delhi - 110 001
3. Chief Vigilance Officer,
Central Board of Excise and Customs,
North Block,
New Delhi : 110 001
4. Commissioner of Central Excise & Customs,
Cochin Commissionerate,
Central Revenue Buildings,
I.S.Press Road,
Cochin : 682 018.
5. Commissioner of Central Excise & Customs,
Kozhikode Commissionerate,
Central Revenue Buildings,
Mananchira,
Kozhikode
6. The Assistant Commissioner,
Special Customs Preventive Division,
Kozhikode.

..Respondents

[By Advocate Mr. S.K.Balachandran, ACGSC]

h

O R D E R
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

The applicant who was initially appointed as Inspector of Central Excise, is presently working as Superintendent in the office of the 5th respondent. While working as Inspector of Central Excise in Pudukkottai Range-I, Palghat Division, the applicant was issued with A1 memo dated 18.11.1997 calling for his explanation by the first respondent for the alleged lapses on his part at the time of performing his duty as Inspector in the Air Cargo Unit at Kozhikode. The allegation was that the 6th respondent on arrival at the unaccompanied Baggage Centre, Kozhikode, on 10.11.1997 found that a consignment of baggage was being loaded in a Jeep and on questioning the passenger, he found that the passenger was not having any gate pass or duty paid receipt. The applicant submitted his explanation A2 to the A1 memo denying all the allegations contained in the said memo. Not satisfying with the reply, the 4th respondent issued a memo of charges (A/3) alongwith statement of imputation of misconduct for taking action under Rule 16 of the CCS (CCA) Rules, 1965. The alleged misconduct was that the applicant omitted in listing out certain items in the baggage of one Shri V.P. Kunhimohammed, under valuation of certain other items and allowing the clearance of the baggage before payment of duty and without examination by the 6th respondent. It is averred in the O.A. that the applicant followed all the instructions (A/5) issued for clearance of baggages in the Unaccompanied Baggage Centre, Calicut. Annexure A6 gives the details of the allotment of work to the Superintendents and Inspectors working in the Unaccompanied Baggage Centre. After going through the reply (A/4) dated 6.4.1998 submitted by the applicant, the 4th respondent issued disciplinary order (A/8) withholding the next increment of the applicant without cumulative effect. The applicant preferred an appeal (A/9) dated 31.7.1998 to the second

h

respondent. Vide A/10 order dated 22/28.3.2001, the 3rd respondent rejected the said appeal of the applicant by confirming the order of the disciplinary authority. Aggrieved by the said impugned orders, the applicant has filed this O.A. seeking following main reliefs:-


- (i) "Call for the records leading upto Annexure A3, A8 and A10 and quash the same.
- (ii) Grant such other relief or reliefs that may be urged at the time of hearing or that this Hon'ble Tribunal may deem fit to be just and proper."

2. The respondents have filed a detailed reply statement denying the averments made in the O.A. and further submitting that from the Baggage Declaration (BD, for short), it is seen that the applicant had inventorised only seven items and had omitted four items, which he subsequently included after the Assistant Commissioner intercepted the baggage and examined the contents. R/1 and R/2 are the concerned documents to the episode. It is contended on behalf of the respondents that the applicant has not followed the instructions. It is further stated that the contentions of the applicant that he had taken out complete inventory of all items contained in the baggage and that he inadvertently wrote the value of the said items and after realising the mistake, he stopped it etc. are made to misguide this Tribunal. As per A5 instructions and the instructions in the BD, the officer has to inventorise all the items in the baggage in the presence of the passenger and the details of the items has to be entered in the space provided for in the BD. The statement and the conduct of the applicant clearly indicate that he had indeed examined the goods and had asked the passenger to remove it from the counter. At this point of time, the four items subsequently included, are seen to have been omitted by the applicant while inventorising. The fact that the BD was not signed by him or by the Superintendent cannot be considered for

h

legalising his omission to enter these items also in the inventory. If the Assistant Commissioner did not get a chance to intercept the baggage and reexamine it, the said four items would have escaped assessment in the absence of these items in the BD. The applicant should not have asked the passenger to repack it and remove the same from the counter stating that the examination of the packages are over. He should have waited for Assistant Commissioner's direction in case he has any doubt regarding valuation of the goods. The respondents also submitted that the contention of the applicant that the Assistant Commissioner (6th respondent) did not reexamine the baggage, was not correct. As per A/3 communication, it was clear that the baggage was, in fact, reexamined and the total value for those items was assessed as Rs.25000/- on which the passenger then paid duty. The impugned order Annexure A/3 was issued for imposing minor penalty under Rule 16 of CCS (CCA) Rules, for which no enquiry is necessary to be held and the applicant has also not raised the issue of non-conducting the enquiry before passing the disciplinary order. Further, in the appeal also the applicant did not raise this issue. Therefore, the respondents would urge that their action in the present case is justified.

3. The applicant filed rejoinder contending that it was an inadvertent mistake on the part of the applicant in omitting to list certain items in the baggage of Shri V.P. Kunhimohammed. In a piece of paper those items were noted down and handed over to the 6th respondent on his arrival and the 6th respondent made the final valuation after perusing the piece of paper. Therefore, there is no malafide intention on the part of the applicant as alleged by the respondents. The allegation that the four items would have escaped assessment was absolutely wrong as the assessment was not complete and the passenger was not allowed to take out the goods from the baggage hall. As admitted by the




passenger in Annexure A7, the goods were loaded by him in the vehicle by mistake. The disciplinary authority cannot dispense with the enquiry in disciplinary proceedings, which is against natural justice.

4. The respondents 1 to 6 have filed additional reply statement to the rejoinder filed by the applicant. It is contended by the respondents that the instruction (A/5) on the subject is that "all the packings should be opened and a detailed inventory taken indicating the relevant details for valuation and will be entered in B.D." and if the total value of the goods is not more than Rs. 5000/-, the goods need be inspected by the Superintendent only. Since the applicant was aware that the baggage contains one Air Conditioner etc., the value of the items will surely exceed Rs. 5,000/- and have to be inspected by the Assistant Commissioner. It is stated that the reference made in the rejoinder by the applicant is an after thought to cover up his omissions/commissions.

5. We have heard Mr. CSG Nair, learned counsel for the applicant and Shri S.K. Balachandran, ACGSC, appearing for the respondents.

6. Learned counsel took us through various pleadings, evidence and material placed on record. The learned counsel for the applicant submitted that before penalising the applicant for the alleged misconduct, an enquiry should have been conducted as contemplated in Rule 16 of the CCS (CCA) Rules, 1965. The passenger who was kept waiting for one and a half hours for the arrival of the 6th respondent for inspection of the baggage, was asked to move to a convenient space by the side of the door way, to facilitate other baggage consignments to be examined. It was impossible for the applicant in such a situation to exercise



vigil on the packages removed from the counter and awaiting inspection by the 6th respondent. The imposition of penalty by the disciplinary authority is against the facts and the appellate authority also did not consider the appeal of the applicant with due application of mind as contemplated in Rule 27 of CCS (CCA) Rules.

7. We have given due consideration to the facts and arguments advanced by both the parties.

8. The case of the applicant is that the inspection was not complete and the pax was asked to move a convenient space to facilitate other baggage consignments to be examined by the applicant. The pax mistook the situation and loaded the consignments in a Jeep parked inside the compound, but within the security area. He was not issued with the gate passes, which means that the inspection was not complete. The applicant was waiting for the 6th respondent to examine the consignments as was borne out by the statement of the pax. On going through the memorandum and imputation of misconduct or misbehaviour, we find variation in the charges as it stated that "... omitting to list certain items in the baggage of Sri V.P. Kunhi Mohammed, undervaluation of certain other items and allowing the clearance of the baggage before payment of duty and without examination by the Assistant Commissioner....". For better elucidation, it is also profitable to quote the relevant paras of instruction on the subject and the procedure to be adopted for clearance of unaccompanied baggage. The Paras 3 and 6 of the Instruction No. 1/95 dated 1.8.1995 are reproduced below:


"3. Since there is no free allowance for UB and the each and every item is dutiable unless satisfying the TR/R8 conditions and since in practice it is found that the passengers generally do not declare all items in Baggage Declaration, all the packings should be opened and a detailed inventory taken indicating the relevant details for valuation and will be entered in the B.D.



6. In non-TR/R8 cases, if total value of the goods is not more than Rs. 5000/-, the goods need be inspected by the Superintendent only. In all other cases, the Asstt. Commissioner will also inspect the goods."


Therefore, it is mandatory on the part of the official, like the applicant, to open the packings and take a detailed inventory indicating the relevant details for valuation and will be entered in the B.D. If the goods is not more than 5000/-, the goods need be inspected by the Superintendent only.

9. In the given case, the baggage belongs to one Shri V.P. Kunhi Mohammed and the B.D.No.3901 dated 10.11.1997 filed by him was found to be unsigned by the Inspector and the Superintendent. On reexamination of the baggage, it was noticed that it contained goods amounting to Rs. 25000/- and the goods, namely, (i) O General Air Conditioner 1.5 T valued at Rs.12000/-, (ii) Car Seat Cover valued at Rs. 1000/-, (iii) Satellite Receiver valued at Rs.4000/- and (iv) Vacuum Cleaner valued at Rs. 1500/- were found to be not included in the open examination report recorded by the Inspector in the Baggage Declaration. It is borne out by Annexure R/1 Baggage Declaration wherein those items have been omitted and the total valuation of other items has been shown as Rs. 4000/- only. The submission made by the learned counsel for the applicant that the above four items have been included in the Misc. items as shown in the B.D. taking total value of Rs. 300/in any case, cannot be accepted. The contention of the applicant that Annexure R/1, which was written by himself, was incomplete also cannot be accepted since the total value of the entire baggages have been shown as Rs. 4000/-. This may be because, if all the items were shown, then it need to be supervised by the Assistant Commissioner also. By virtue of Annexure R/2, when the Assistant Commissioner valued the entire goods, total value of Rs. 25000/- has been found out and the pax had remitted the duty without any whisper which will show that



omission to list the items, like O-General 1.5 Ton Air Conditioner and other items cannot be said to be an innocent omission, which conclusively proved that only on the inspection by the Assistant Commissioner, a proper valuation would be arrived at, otherwise it would have been cleared without payment of duty. Therefore, on the question of fact, we have no hesitation in holding that the applicant is guilty of charges.

10. The legal question to be decided in this case is whether it was germane to hold an enquiry or not before imposing the penalty on the applicant. Admittedly, the disciplinary proceedings right from the beginning have been initiated under the minor penalty procedures as contemplated in Rule 16 of the CCS (CCA) Rules. The applicant did not raise any objection that an enquiry should have been conducted before imposing the penalty on him. The learned counsel for the applicant invited our attention to the decision rendered by the Hon'ble Supreme Court in Union of India vs. Tulsiram Patel, (1985) 3 SCC 398, stating that the respondents erred in not holding an enquiry before passing the impugned orders. On going through the said decision we find that in the case cited supra, the original proceedings were initiated under the provisions concerning major penalty and the applicant therein also objected to the same despite the fact that the punishment was imposed without holding an enquiry. Whereas in the instant case, the facts are different. In this case, only minor penalty proceedings were initiated and the incident was not disputed as such. No request was made at any point of time to have a full fledged enquiry. Besides, the co-delinquent suffered the punishment. In a minor penalty proceedings, full fledged enquiry is not contemplated unless otherwise requested for. What is to be ensured is compliance with principles of natural justice. In the case of State Bank of Patiala and Others vs. S.K. Sharma, (1996) 3 SCC 364, Hon'ble




Supreme Court held that if no prejudice is caused to the person proceeded against, no interference of Court is called for. In the present case, we find no infirmity in the procedure adopted by the respondents. On a consideration of the gravity of offence and other imputation of charges, the disciplinary authority passed A/8 impugned order, the operative portion of which is as follows:-

"11. I have carefully gone through the records of the case. The main points raised by the officer in their defence is that since the value of the goods exceeded Rs.5000/- the same was kept for Assistant Commissioner examination as per the prevailing instruction. I am unable to agree with this argument in view of the fact that a baggage declaration was prepared in this case though not signed and is seen closed after adding miscellaneous as the 7th item. It is also seen that the value shown in the B.D. in respect of item numbers 1 to 3 and 5 are much less than as shown in the BD prepared after the examination of the Assistant Commissioner. I also find that the goods were loaded in the jeep which was about to leave at the time of the intervention of the Assistant Commissioner. Shri P.V. Jose has stated that he had not known or consented to loading of the baggages by the passenger in his jeep and Shri Nanni Namboodiri has stated that he had not allowed clearance of the baggage. The passenger has also stated that he had loaded the baggages into the Jeep by mistake after the examination. However, the fact that the passenger had loaded the baggages into the jeep which was about to leave at the time of interception by the Assistant Commissioner shows that there was inadequate supervision on the part of the superintendent and the Inspector in ensuring that the goods did not leave the premises before discharging duty liability. I, therefore, hold that Shri P.V. Jose, Superintendent and Shri K. Nanni Namboodiri, Inspector, has failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant violating the provisions of Rule 3 (i) (ii) and (iii) of the CCS (Conduct) Rules, 1964. I have also found that there was a system failure to the extent that there was no system of issuing gate passes with printed serial numbers. I am therefore inclined to take a lenient view in this case.

O R D E R

For good and sufficient reasons, it is ordered that the next increment of pay due to Shri P.V. Jose, Superintendent and Shri K. Nanni Namboodiri, Inspector be withheld without cumulative effect."

11. The finding of the disciplinary authority seems to be less stringent and a minor penalty was imposed. The appellate authority also rejected the appeal of the applicant confirming the punishment awarded by the disciplinary authority. Having



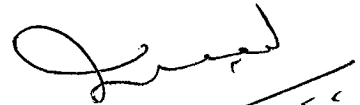
regard to the entire aspect, we are of the considered view that there is no irregularity or any procedure lapse on the part of the disciplinary authority or the appellate authority in passing the impugned orders. We, therefore, do not find any reason to set aside the impugned orders. It is also reported that the other co-delinquent employee, the then Superintendent, had already suffered the punishment in culmination of the same proceedings.

12. In the conspectus of the facts and circumstances, we are of the view that the O.A. is bereft of any merit and deserves to be dismissed. Accordingly, we dismiss the O.A. with no order as to costs.

(Dated, the 22nd April, 2004)



K.V.SACHIDANANDAN
JUDICIAL MEMBER



T.N.T. NAYAR
ADMINISTRATIVE MEMBER

cvr.