

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.117 of 1994

Monday, this the 13th day of March, 1995.

CORAM

HON'BLE MR PV VENKATAKRISHNAN, ADMINISTRATIVE MEMBER

HON'BLE MR P SURYAPRAKASAM, JUDICIAL MEMBER

Chandran V.P,
Inspector of Central Excise,
Statistics Section,
Central Excise Head Quaraters,
Central Revenue Buildings,
I.S.Press Road, Kochi-18.

...Applicant

By Advocate Mr K Sasikumar.

Vs

1 Member(Personnel and Vigilance),
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance,
Govt. of India, New Delhi.

2 Collector of Central Excise,
Central Revenue Buildings,
I.S.Press Road, Kochi-18.

3 Deputy Collector (P & V),
Office of the Collector of Central Excise,
C.R. Buildings, Kochi-18.

4. AK Govindan Kutty,Enquiry Officer,
Assistant Collector (Customs),
Central Excise Headquarters Office,
Kochi-18. ...Respondents

O R D E R

P.SURYAPRAKASAM, JUDICIAL MEMBER

The applicant who is an Air Customs Officer working at Cochin filed the present application as against the finding and punishment rendered by the

Disciplinary Authority in respect of the charges framed under Section 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules 1964 which findings were confirmed both in the appeal and revision and the punishment was reduced.

2 The applicant's case is that while he was working at Trivandrum as Air Customs Officer, on 26.6.91 a foreign lady passenger gave a complaint against him on 26.6.91 for misbehaviour, which was not supported in any material particulars. The department also framed a charge against him against the misconduct and also for misbehaviour with Air India and Immigration staff on 10.7.91. He was subsequently transferred from Trivandrum to Ernakulam. As against the same, he filed an O.A. before the Tribunal in OA 1263/91 challenging the untimely transfer. The Tribunal after going through the case passed an order to the effect:

"... the application is disposed of with a direction to the respondents to complete the disciplinary proceedings within a period of three months from the date of communication of this order and with a further direction that in case the applicant is found not guilty of the charges and fully exonerated, he shall be retransferred to Trivandrum Air Customs Pool at his own cost to enable him to complete his tenure of two years."

3 The department framed two charges against him which are as follows:

"Article I"

Shri VP Chandran, Inspector while functioning as ACO, Trivandrum Airport at counter No.6 on 26.6.91 behaved in a rude and impolite manner towards a lady passenger who arrived from Dubai by flight AI 974 on 26.6.91. This action of Shri Chandran was by misusing his official position which is unbecoming of a Government servant and thereby he contravened Rule 3(1)(ii) and (iii) of the CCS(C) Rules, 1964.

Article II

Shri VP Chandran who was deputed for escort duty on Flight AI 915 on 10.7.91 misbehaved and misconducted with Air India and Immigration staff. Shri Chandran thus failed to maintain devotion to duty and acted in a manner which is unbecoming of a government servant and thereby contravened Rule 3(1) (ii) and (iii) of the CCS(C) Rules, 1964."

In respect of the same, an inquiry has been conducted and the Inquiry Officer after giving due opportunity to the applicant to defend himself held that:

"3. The complainant is an International Passenger, that too, an educated lady holding a Degree in Law. Her complaint merits credence. She has not minced words. She has emphatically and categorically

alleged that the Officer Mr Chandran at Counter No.6 had during the examination of her baggage misbehaved towards her. The manner in which he misbehaved is also indicated by saying that he should not have behaved in that way to a lady travelling alone. She further expressed her doubt whether he had consumed alcohol and was in a state of intoxication."

With regard to the letter said to have been written by the complainant herself on a later date, the findings of the Inquiry Officer is as follows:

"8. The subsequent letter written by the passenger informing the Asst. Collector that she was not interested in pursuing the matter further, even if not engineered through extraneous influence, will hardly be of any value so long as it does not deny the truth of the original complaint and declare the charged officer innocent. Therefore, the Charged Officer's contention that the second letter from the passenger is an admission of his good behaviour is devoid of any reason or logic."

And finally the Inquiry Officer found:

"13. after analysing the facts and circumstances of the case and assessing the evidence adduced by the witnesses examined both by the prosecution and the Defence, I find that the Charged Officer Shri VP Chandran while functioning as Air

Customs Officer at Trivandrum Airport on 26.6.91 has misbehaved towards Mrs Rayees Johan Latheef, who had arrived from Dubai by Flight AI 974 which is unbecoming of a Government servant and has thereby contravened Rule 3(i) (iii) of the CCS (Conduct) Rules.

"I do not find any material or evidences to indicate that Sri VP Chandran has failed to maintain devotion of duty in this matter, I therefore hold that he has not contravened Rule 3(1) (ii) as alleged under Article 1, Annexure-I of the Memorandum."

4 With regard to the second charge, the Assistant Collector Airport was examined as witness for prosecution. No witness has been cited or examined for the defence, and the Inquiry Officer also found that after careful consideration of the facts and circumstances of the case and on an analysis of the evidence available in the case, he found that the charged officer has failed to maintain devotion to duty as an Escorting Officer on 10.7.91 and has thereby contravened Rule 3(1)(ii) of the CCS (Conduct) Rules, and the Inquiry Officer has also found that there is no evidence with regard to the charge under Rule 3(1)(iii) against the charged officer proposed in Article-II of the Memorandum of Charges. So also in respect of the first charge, the Inquiry Officer found that the delinquent has not contravened Rule 3(1)(ii) as alleged under Article-I. Later, the

Punishing Officer has gone through the report and after analysing the whole case held as follows:

"12. In view of the above, I have no hesitation to hold that the charged officer had acted in a manner unbecoming of a Govt. servant and thereby contravened Rule 3(1) (iii) of CCS(C) Rules, 1964 and to this extent the Articles of charge-I are established beyond doubt and the charged officer is liable to penalty under Rule 11 of CCS(CCA) Rules, 1965."

"13. I agree with the findings of the Inquiry Officer that there is no material or other evidence to establish that the charged officer failed to maintain devotion to duty and therefore, it is held that the charge of contravention of Rule 3(1) (ii) ibid is not established."

Further it was held:

"16. In the circumstances, I hold that though there is no direct evidence, the circumstantial evidence coupled with the charged officer's indirect confession about the incident are sufficient enough to pass the test of preponderance of probability. Both the charges that the charged officer failed to maintain devotion to duty and acted in a manner which is unbecoming of a Government servant are therefore established and thereby charged officer contravened Rule

3(1) (ii) and (iii) of CCS(C) Rules, 1964 and hence the charged officer is liable to penalty under Rule 11 of CCS (CCA) Rules, 1965."

5 The Inquiry Officer awarded the following punishments:

"It is therefore, ordered that the pay of Shri VP Chandran, Inspector of Central Excise is reduced by two stages from Rs2180/- to Rs2060/- in the time scale of pay of Rs 1640 - 60 - 2600 - EB - 75 - 2900/- for a period of two years with effect from 1.10.92. It is further directed that Shri VP Chandran, Inspector of Central Excise will earn increments of pay during the period of reduction and that on the expiry of this period the reduction will not have the effect of postponing his future increments."

6 The applicant concerned filed an appeal as against the same and the Appellate Authority passed an order on 6.1.93 as follows:

"7. I observe that although the lady passenger was summoned to appear, she did not comply with the summons since she was no longer staying in India. However, I have perused the letter dated 26.6.91 written by Mrs Rayees Johan Latheef in which she has very categorically alleged that Mr Chandran, Customs Officer in counter No.6 misbehaved with her in a

manner which he should not have done to a lady. She has also wondered whether Chandran had consumed liquor and was intoxicated. Normally, such complaints are very rarely made, especially by a lady and that too in writing. Therefore, I have no hesitation to hold that the Disciplinary Authority had rightly held this charge as having been proved."

"8. So far as the second charge is concerned, it transpires from the records that the dignity of the office of an escort officer was not maintained by Shri Chandran. Although a written complaint is lacking, I consider that there is sufficient preponderance of probability to hold this charge as having been proved.

However, considering the nature of the charges, I would deem it proper to reduce the quantum of penalty imposed by the Disciplinary Authority."

7 While considering the nature of the charges, the Appellate Authority deemed it proper to reduce the quantum of penalty imposed by the Disciplinary Authority as follows:

"to that of reducing by one stage i.e., from Rs 2180/- to 2120/- in the time scale of pay of Rs. 1640-60-EB-75-2900 for a period of two years with effect from 1.10.1992. This will not have the effect of postponing his increments."

8 As against the order passed in appeal dated 6.1.93, the applicant preferred a revision petition to the Central Board of Excise & Customs which was disposed of by Member (Personnel & Vigilance) by order dated 15.11.93 wherein the revisional authority has considered the matter both on facts and law, and finally held:

"12. I have carefully gone through the Revision Petition and records of the case and find that a lady passenger arriving in India, unescorted should have no reason to complain about misbehaviour of the customs officer to the Assistant Collector in writing, unless she strongly felt about the misbehaviour. In fact, she has mentioned that the officer appeared to be intoxicated due to consumption of alcohol.

After a gap of ten days, she had followed it up with a letter that she did not want the complaint to be pursued. She had not specifically stated that there was no misbehaviour on the part of the officer. She appears to be a well educated lady (B.Sc, LL.B). There is no valid ground to ignore her letter."

"13. Apparently during the inquiry, she was not in India, as seen from the remarks of the postal authorities on the envelope, which has been returned undelivered. In the Indian Social scenario, it is too much to expect that a lady must spell out in minute details, the nature of misbehaviour. Preponderance of probability is in favour of the complainant."

And finally held:

"16. I, therefore, see no reason to interfere with the order of the appellate authority on both the charges. The penalty imposed is also not excessive..."

9 The present application has been filed to quash these orders of imposing punishment as well as to exonerate the applicant of the charges.

10 The main thrust of the arguments of the applicant is that that the lady passenger who gave a complaint on 26.6.91 has not been examined as a witness at all, and further the non-examination of the said witness has resulted the non cross examination of the said witness by the applicant, and thus violated the principles of natural justice. It was further argued that since there was no material corroboration with regard to the misbehaviour said to have been committed in the Airport which has resulted in injustice to him by the award of the punishment by the disciplinary authority, and the later confirmation by the Appellate and Revisional authorities. It was further argued that a mere mentioning of misbehaviour by the complainant in the complaint without mentioning or without describing what is the real misbehaviour that has been caused has caused him prejudice. All these things resulted in the denial of justice to the applicant, and therefore, the disciplinary enquiry as well as the consequential punishment are vitiated and as such to be set aside.

11 The respondents' counsel filed a detailed reply statement wherein specifically mentioned that there is no denial of natural justice to the applicant concerned nor he has alleged any malafide or procedural irregularities against the disciplinary authority or for that matter against any of the higher authorities as such. The incident said to have occurred on 26.6.91 is an admitted fact, but with regard to the description of the misbehaviour is concerned may be lacking in the complaint. The complainant who is foreign passenger has given a complaint on the very same date when the incident said to have occurred without any time lag has no reason to be disbelieved, and further there is no ill-motive on the part of complainant against the applicant as such.

The witnesses who have been examined on the side of the prosecution also state that there was an incident.

In fact the applicant himself in one of his statements more or less accepts the incident. The Supreme Court also has held in various cases that in these type of cases the power of judicial review is very limited and is to be exercised very sparingly unless or otherwise the order is perverse or illegal or malafide.

12 We have gone through the papers as well as the arguments advanced by both the parties and we find that no error has been committed either by the Disciplinary Authority or by the other Appellate or Revisional authorities. The charge that has been

framed against him is not for the misbehaviour as such but it is for the misconduct with regard to the mis-behaviour committed by the applicant on the particular date and also failing his duty which amounts to misconduct with regard to the escorting of the staff. The applicant has not been charged with any criminal offence as such wherein alone all the ingredients of the criminal offence has to be proved beyond any reasonable doubt. But in this case, he has been charged under Central Civil Service (Conduct) Rules for a misconduct which arose while discharging his official duties. The nature of evidence that is needed in respect of these cases could not be compared with that of the nature of evidence that is required in a criminal case. And in fact the non-examination of the complainant is due to the fact that on an earlier occasion the applicant preferred a petition before the Tribunal wherein a specific order has been passed fixing the time limit for the completion of the inquiry as such, and the Inquiring Authority also has taken proper steps that is needed for the purpose of getting the presence of the complainant for the purpose of tendering evidence, but unfortunately she being a foreign national ~~who~~ has left India long before the inquiry proceedings started, as stated by the disciplinary authority. Her presence could not be sought in view of the pressure that has been created by the Tribunal's order passed in the O.A.No.1263 of 1991 filed by the applicant, prescribing time limit to finish the inquiry within the time limit, her

non-examination does not result in any prejudice being caused to the applicant. Even in the second letter dated 4.7.91 (A-8) which is said to have been written by the complainant has only mentioned that the matter need not be proceeded with, but she has not withdrawn the complaint as such nor she specifically said that there is no such incident has occurred on the said date when the complaint was given. The question as per the charge that is to be decided is namely, the misconduct and not misbehaviour. And if being charged for the misbehaviour under the Indian Penal Code or any other Criminal Statutes, it is necessary that all the ingredients has to be proved, and that the non-examination of the complaint will have a bearing on the case, but since this happened to be a domestic inquiry, her non-examination has not resulted in causing any prejudice or injustice to the applicant.

13 Further, the Apex Court has held in Union of India Vs Prema Nanda (AIR 1989 SC 1185) as follows:

"We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the

proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with the principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunals to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on the evidence even if some of it is found to be irrelevant or extraneous to the matter."

In State Bank of India and others Vs Samarendra Kishore Endow and another (1994) 2 SCC 537, the Supreme Court held as follows:

"The learned judge also quoted with approval the observations of Mathew, J. in Union of India Vs. Sardar Behadur to the following effect: (SCC p.624, para 19):

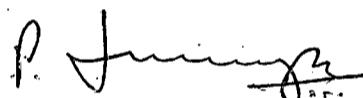
"Now it is settled by the decision of this Court in State of Orissa V. Bidyabhushan Mohapatra that if the order of a punishing authority can be supported on any finding as to substantial misdemeanour for which the punishment can be imposed, it is not for the Court to consider whether the charge proved alone would have weighed

with the authority in imposing the punishment. The Court is not concerned to decide whether the punishment imposed, provided it is justified by the rules, is appropriate having regard to the misdemeanour established."

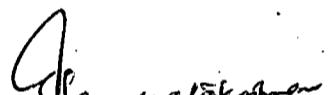
14 We, therefore, find that the application is devoid of any merit both on facts and as well as on law. The punishment that has been imposed for the charges that has been found against him is only meagre, and therefore, we do not want to interfere with the punishment also.

15 In the result, the application is dismissed with no costs.

Dated the 13th March, 1995.



P SURYAPRAKASAM
JUDICIAL MEMBER



PV VENKATAKRISHNAN
ADMINISTRATIVE MEMBER

List of annexures

Annexure A.8: A true copy of the letter dated 4-7-1991 from Rayees Johan Latheef to the Assistant Collector Air Customs, Trivandrum.