

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.14/2002

Thursday, this the 17th day of October, 2002.

CORAM;

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

P.Mammen Kurian,
Inspector of Central Excise,
O/o the Superintendent,
Central Excise,
Neyyattinkara.

- Applicant

By Advocate Mr Vishnu S.Chempazhanthiyil

Vs

1. Additional Commissionee(P&V),
Central Excise Commissionerate-I,
Kochi-18.

2. The Commissioner,
Customs and Central Excise,
Kochi-18.

3. The Member(P&V),
Central Board of Excise & Customs,
Ministry of Finance,
Department of Revenue,
New Delhi.

4. Union of India represented by its
Secretary,
Ministry of Finance,
New Delhi.

- Respondents

By Advocate Mr T.A.Unnikrishnan, ACGSC

The application having been heard on 17.10.2002 the Tribunal
on the same day delivered the following:

O R D E R

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

The order dated 27.7.2000 of the 1st respondent
imposing on the applicant, an Inspector of Central Excise, a

penalty of withholding of 2 increments(A-11), the order dated 14.2.2001(A-13) of the 2nd respondent rejecting his appeal and the order dated 22.10.2001 (A-15) of the 3rd respondent dismissing his revision petition, are under challenge in this application, filed under Section 19 of the Administrative Tribunals Act. The applicant was served with a memorandum of charges A-1. Following were the articles of charges:

"ARTICLE-1; Sri P.Mammen Kurien, Inspector while working as Air Customs Officer at Counter No.7 of Air Customs, Trivandrum on 8.6.96, had demanded and accepted illegal gratification of Rs.5000/- in Dirhams and a bottle of brandy costing 50 Dirhams from Sri M.S.Nambeesan, a passenger arrived from Dubai by Flight No.AI 980, for allowing him to import one Video Camera without payment of duty by endorsing the same in his passport for re-export.

By the above act Sri P.Mammen Kurien had failed to maintain absolute integrity, devotion to duty and behaved in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(i),(ii) and (iii) of Central Civil Service(Conduct) Rules, 1964.

ARTICLE-II; That the said Sri P.Mammen Kurien had, through a close friend of his, contacted Sri M.S.Nambeesan over phone at Dubai saying that Sri Mammen Kurien admitted his mistake and promised to give back the lost amount. Sri M.S.Nambeesan was also told that Sri Mammen Kurien was under suspension against his complaint and asked him to withdraw the complaint. Sri M.S.Nambeesan subsequently sent a fax withdrawing the complaint and requested to treat the matter as closed. Sri P.Mammen Kurien had thus exerted undue influence on Sri M.S.Nambeesan to have the complaint against him withdrawn.

By the above act Sri P.Mammen Kurien had behaved in a manner unbecoming of a Government servant, thereby contravening Rule 3(1)(iii) of Central Civil Service(Conduct) Rules, 1964."

The applicant denied the charges. An enquiry was held. The Enquiry Officer submitted A-6 report holding that the charges have not been established. The disciplinary authority issued

a notice along with a copy of the report. The applicant submitted his explanation as to why the finding of guilt should not be accepted. The disciplinary authority thereupon passed the impugned order A-11. The appeal and revision were also unsuccessful. Therefore, the applicant has filed this application challenging A-11, A-13 and A-15 impugned orders mainly on the ground that the finding of guilt is without any evidence and therefore, perverse and that the applicant was not given a reasonable opportunity to establish his innocence as requested by examination of certain witnesses was not granted.

3. We have carefully gone through the material on record, the enquiry report and the orders impugned and the submissions made by the applicant in reply to the show cause notice issued by the disciplinary authority. A perusal of the enquiry report shows that no evidence at all was adduced at the enquiry. Shri Nambeesan who is said to have made a complaint was not examined as a witness to prove the allegation as also to prove the genuineness of the letters annexed to the Memorandum of Charges. It is also evident from the enquiry report that the request of the applicant for an opportunity to adduce evidence to establish his innocence was turned down by the Enquiry Officer. The situation, therefore, is that the finding of guilt has been arrived at only on the basis of 3 letters which are appended to the Memorandum of Charge and without examining the sender of the letter and the defacto complainant. Shri Vishnu, learned counsel for the applicant argued that although the standard of proof required in disciplinary proceedings need not be the same as that in a

criminal case, mere conjecture and suspicion cannot be allowed to take the place of proof and therefore, the impugned orders are totally unsustainable. Shri TA Unnikrishnan on the other hand, argued that if the applicant had not tried to influence Mr Nambeesan through a friend, the second letter implicating the applicant and stating that he tried to influence him as also the third letter requesting that the matter may be dropped, would not have been sent by Shri Nambeesan. We can accept the logic behind such an argument but are constrained to say that, that logic or conjecture cannot be treated as proof of allegations raised against the applicant when the applicant has specifically denied that. It is a well settled proposition that a suspicion, however, strong cannot be accepted as proof even in a disciplinary proceeding. In this case, apart probably a suspicion caused by three letters no evidence at all is available in support of the charge. The argument of the learned counsel for the applicant that the finding of the guilt is perverse therefore has to be accepted. Hence the impugned orders are liable to be set aside.

3. Shri Unnikrishnan prayed that in case the impugned orders are bad for not affording an opportunity to the applicant to defend his case, an opportunity may be given to the department to resume the proceedings and to complete it after giving the applicant such an opportunity. We find that the order of the disciplinary authority is not being set aside

✓

on the ground of denial of opportunity to defend, but on the ground of perversity of finding. Hence the request cannot be acceded to.

4. In the light of what is stated above, the impugned orders are set aside. There is no order as to costs.

Dated, the 17th October, 2002.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

trs

APPENDIX

Applicant's Annexures:

1. A-1: True copy of the memorandum of charges No.C.No.II/10A/3/98-Vig. Cx./231/98 dated Nil.3.1998 of the 1st respondent.
2. A-2: True copy of the reply dated 6.4.1998 to the 1st respondent.
3. A-3: True copy of the complaint dtd.8.7.96 of Shri.M.S.Nambeesan to the Collector of Customs, Trivandrum Airport, Trivandrum.
4. A-3a: True copy of letter dtd.25.11.96 of Shri M.S.Nambeesan to the Collector of Customs, Trivandrum Airport, Trivandrum.
5. A-3b: True copy of letter dated 1/3/1/1997 of Shri M.S.Nambeesan to the 2nd respondent.
6. A-4: True photocopy of the endorsement in the relevant page of the passport.
7. A-5: True copy of the memo No.Nil dated 27.7.1996 issued by the Assistant Commissioner to the applicant.
8. A-6: True copy of the Enquiry Report (Undated).
9. A-6a: True copy of letter C.No.IV/16/34/98 dtd.29.7.1999 together with the written brief of the Presenting Officer.
10. A-7: True copy of the letter C.No.II/10A/3/98-Vig.Cx./339/2000 dated 9.6.2000 of the 1st respondent.
11. A-8: True copy of letter dated 21.2.2000 to the Enquiry Officer.
12. A-9: True copy of letter dated 17.8.1999 to the Enquiry Officer.
13. A-10: True copy of the representation dated 26.6.2000 to the 1st respondent.
14. A-11: True copy of order C.No.II/10A/3/98-Vig.Cx./427/2000 dated 27.7.2000 of the 1st respondent.
15. A-12: True copy of the appeal dated 14.9.2000 to the 2nd respondent.
16. A-13: True copy of order C.No.II/26-4/2000-Vig.Cx./106/2001 dated 14.2.2001 of the 2nd respondent.
17. A-14: True copy of revision petition dated 9.4.2001 to the 3rd respondent.
18. A-15: True copy of order F.No.C-16018/6/2001-AD.V. dated 1.11.2001 of the 3rd respondent.
