

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.208/2002

Dated Monday this the 11th day of August, 2003.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.A.Nayar
Appraiser
Customs House
Kochi.

Applicant

(By advocate Mr.N.N.Sugunapalan)

Versus

1. The Commissioner of Customs
Customs House, Kochi.
2. The Under Secretary
Government of India
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi.
3. The Union of India
rep.by the Secretary
Ministry of Finance
Department of Revenue
Central Board of Excise & Customs
New Delhi.
4. President of India
(Appellate Authority for Central
Board of Excise & Customs)
New Delhi.

Respondents

(By advocate Mr.K.R.Rajkumar, ACGSC)

The application having been heard on 11th August, 2003,
the Tribunal on the same day delivered the following:

O R D E R

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


The applicant while functioning as an Appraiser in the Customs House, Mangalore, was proceeded against for imposition of a major penalty vide a memo of charges dated 1.12.95. The following are the two Articles of charges.

- (i) that the Charged Officer while functioning as Appraiser in the Customs House, Mangalore during 1990 fabricated and falsified official documents and made false claim that the seizure of 250 silver bars worth Rs.5.8 crores with an Arab Dhow "Al Musharak" on the night of 17/18th December,


1990 was based on a specific information received by him. The charged officer with the help and connivance of Shri D.S.Karanth, the then Addl. Collector of Customs, Mangalore attempted planting a non-existing informer with the mala fide intention of appropriating the reward amount. But for the subsequent enquiry, the reward amount of Rs.87 lakhs would have been disbursed to a non-existing informer, and

- (ii) that during the aforesaid period, while functioning as Appraiser, the charged officer exceeded the jurisdiction of his official work assigned to him and actively engaged in anti-smuggling work like patrolling the sea. There was a regular set up Preventive Unit with an Asst. Collector (Preventive) and other officers to do the anti-smuggling work and as Appraiser, the charged officer, was not expected to do any anti-smuggling/preventive work. The charged officer with the active help and connivance of the then Addl. Collector of Customs, acted beyond his jurisdiction and taking advantage of such acts, attempted to plant a non-existing informer for claiming reward of Rs.87 lakhs in the seizure of 250 slabs of silver with an Arab Dhow on the night of 17/18 .12.1990 near Mangalore.

2. An enquiry was held. The enquiry authority held that the article of charge No.1 was established while the article No.2 was not established. The Disciplinary Authority informed the applicant of his disagreement with the finding of the enquiry authority regarding the article of charge No.2 and he was given an opportunity to explain. After considering the enquiry report, the materials as also the representation made by the applicant, the Disciplinary Authority - The Commissioner of Customs - (First respondent) held the applicant guilty of both the charges and imposed on him the penalty of reduction in pay from Rs.8100/- in the time scale of pay of Rs.6500-10500 to the minimum in the time scale i.e. Rs.6500/- for a period of one year with effect from the date of the order, providing that he would not earn any increment during the said period and on expiry of the said period, the reduction would not have the effect of postponing future increments of his pay. Aggrieved by that, the applicant submitted an appeal immediately to the President of India (Annexure A-1). After a lapse of so many months, the applicant was served with a show cause notice dated 20.12.01 (A-2), issued




in the name of the President of India, calling upon the applicant to explain as to why the penalty imposed on him by the disciplinary authority should not be reviewed and higher penalty imposed on him. The applicant sought extension of time to submit an explanation. Immediately after making A-3 request, the applicant submitted A-4 representation dated 18.2.2002 stating that as the entire records of the case had been placed in the hands of the advocate, which had been lost during the shifting of the advocate's office, he might be given the copies of the entire records in the case to enable him to submit a proper explanation. In reply to the representation, the applicant was given a month's time. Finding that without referring to the relevant records of the case, the applicant would not be able to represent his case adequately meeting the proposal for revised penalty, the applicant made a representation A-6 dated 28.2.2002 to the President of India for making available the records mentioned in paragraph 3 of A-6 representation. Immediately thereafter on 22.3.02, the applicant made a request to the Additional Commissioner of Customs stating that a copy of the Ministry's letter F.No.C-11016/47/2000-Ad-V-990 dated 13.3.2002 received in that office on 20.3.2002 may also be supplied to him. The request of the applicant for supply of the documents was turned down by A-9 memo dated 22.3.03 on the ground that the documents were supposed to be available with the applicant and as regards the documents at Sl.Nos. (i) and (j), the same also could not be supplied to him as those pertained to another officer. Aggrieved by that, the applicant has filed this application for a direction to set aside A-7 and A-9 and for a direction to the respondents to make available to the applicant the copies of all the documents relied upon by the respondents while considering the




appeal forthwith. It is alleged in the application that since the applicant has lost the charge memo and all the connected papers as his advocate misplaced the same during the shifting of his office, the opportunity given to the applicant to submit an explanation against the proposal to enhance the penalty would not be an effective one unless he is able to peruse the material papers and make a proper representation taking all the relevant grounds. The stand taken by the respondents that the documents sought for were supposed to be available with the applicant is not a tenable argument in the facts of the case, alleges the applicant. The applicant has further stated that he has lost the documents which were entrusted to his advocate, irrecoverably. Regarding the documents at Sl.No.s (i) & (j), it has been stated that these documents are very relevant in his case.

3. A reply statement has been filed on behalf of the respondents. The contentions raised are that all the documents are supposed to be in the possession of the applicant, that since four months have already elapsed, the applicant should have been able to search and find the documents, that the documents at Sl.Nos. (i) & (j) listed in A-6 are not relevant as the same relate to some other officer and that the applicant has not communicated his willingness to bear the expenses for making the documents available and, therefore, the application may be dismissed.

4. The applicant has filed a rejoinder stating that the documents sought for by him are relevant in defending his case and that he is prepared to bear the expenses for the supply of the documents.




5. We have gone through the pleadings and the material placed on record and have heard Shri N.N.Sugunapalan, the learned counsel of the applicant and Shri K.R.Rajkumar, the learned ACGSC for the respondents. The learned counsel of the applicant states that the applicant has stated in his representation as also in the application that the documents are not available with him as the advocate with whom the papers were entrusted had lost them during the shifting of his office and without seeing the documents and without perusing the documents mentioned in A-6 and A-8, it would not be possible for the applicant to make an effective representation against the proposal for enhancement of penalty. The opportunity given to reply to the show cause notice would be a futile exercise if the applicant would not have the privilege of referring to the relevant material, argued the learned counsel. We find considerable force in the argument of the learned counsel of the applicant. The arguments of the respondents that the applicant is supposed to have the documents with him is normally correct but the supposition is different from actual fact. If the documents are lost irrecoverably, as alleged by the applicant, the respondents are bound to help him by getting another set of copies to enable him to make use of the opportunity to show cause. The averment in the application that the documents have been irrecoverably lost has not been controverted in the reply statement. Further, in the circumstances of the case, we are convinced that the applicant is not going to gain anything by delaying submission of his representation. On the other hand, the applicant has filed this application for a direction to make available the copies of the documents so that he can make an effective representation at the earliest. Therefore, the stand taken by the respondents that the



applicant is taking dilatory tactics has no meaning at all. Regarding the documents listed at Sl.No.(i) & (j) in A-6 representation, the contention of the respondents that these documents are not relevant does not appear to be correct. A reference to article one of the charges makes it abundantly clear that the charge against the applicant was intrinsically connected with the alleged involvement of Mr.Karanth who was the Additional Commissioner of Customs, Mangalore. The order in the disciplinary proceedings against Sri Karanth and the order by which he was allegedly promoted to higher post also cannot be considered as totally irrelevant in a case where subordinate officer involved in the same matter has been called upon to explain why more severe penalty should not be imposed on him. There cannot be miscarriage of justice if copies of the documents are made available to the applicant especially when no privilege is claimed. The documents referred in A-8 also may be relevant. The applicant has already expressed his willingness to bear the cost for supplying him the copies of the documents in accordance with the rules. Under these circumstances, we are of the considered view that the respondents are bound to supply to the applicant the documents required by him on payment of cost.

6. In the light of what is stated above, the application is disposed of with the following directions:

- (i) The respondents are directed to inform the applicant of the amount he is to pay for getting the copies of the documents mentioned in A-6 & A-8 as early as possible, at any rate within four weeks from today.
 - (ii) On receipt of the information regarding the amount, the applicant is directed to remit the amount within 10 days thereafter.
 - (iii) On the applicant remitting the cost, the respondents shall make available to the applicant the copies of the documents listed in A-6 & A-8 within a period of four weeks.
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- (iv) The applicant shall be given two weeks' time to submit his explanation/representation regarding the proposal for enhanced penalty from the date of receipt of the copies of documents as required and the decision in the appeal shall be made only after considering the representation so submitted after perusing the documents.
- (v) There is no order as to costs.

Dated 11th August, 2003.



T.N.T.NAYAR
ADMINISTRATIVE MEMBER



A.V.HARIDASAN
VICE CHAIRMAN

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