

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No. 367 of 2001

Wednesday, this the 15th day of January, 2003

CORAM

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

1. P. Dass Jacob,
Superintendent of Central Excise,
Central Excise Division, Ernakulam II,
Tharakandam Centre,
Cochin - 682 018Applicant

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

Versus

1. Additional Commissioner of Central Excise & Customs, Cochin Commissionerate, Central Revenue Buildings, I.S. Press Road, Cochin - 682 018
2. Commissioner of Central Excise & Customs, Cochin Commissionerate, Central Revenue Buildings, I.S. Press Road, Cochin - 682 018
3. Union of India, represented by the Secretary, Department of Revenue, North Block, New Delhi - 110 001Respondents

[By Advocate Mr. K. Shri Hari Rao, ACGSC]

The application having been heard on 15-1-2003, the Tribunal on the same day delivered the following:

ORDER

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

The applicant in this case, working as Superintendent of Central Excise, is aggrieved by Annexure A6 order dated 30-6-2000 by which the 1st respondent imposed a penalty of 'Censure' in terms of Rule 11 of the CCS (CCA) Rules, 1965 and Annexure A8 appellate order dated 5-2-2001 by which the 2nd respondent rejected the appeal against Annexure A6.

2. The brief facts relevant for the case are: Enquiries were initiated against the applicant on the basis of a complaint dated 14-9-1994 (Annexure A2) addressed by one Shri K.Cherian of Canada to the then Union Minister of Finance, alleging that an Air Customs Officer at the Trivandrum International Airport demanded \$ 50 from him as customs duty on his arrival from Canada via Bombay in the afternoon of 17th July, 1994 by Air India flight 678. The complainant went on to state that the said Air Customs Officer directed him to go to the customs security police standing next to his counter and that one of the security personnel asked him to pay Rs.1200/as duty. The complainant admits that he placed the money on the counter and the security police man hid the money under the hat and refused to give him a receipt. The complainant has also mentioned in the complaint to the Finance Minister that he realised that the money was collected under the pretext of customs duty as directed by the Air Customs Officer. He attached a floor plan of the customs clearing area of Trivandrum International Airport to indicate the counter of the Customs Officer who interviewed him. On the basis of the information contained in the complaint and the attached floor plan of the customs clearing area, enquiries were made and it was found that the applicant, P. Das Jacob, was the Customs Officer who handled the customs counter identified by the complainant from Canada. Annexure A1 charge sheet levelling two articles of charges against the applicant was issued to him. The articles of charges are:-

"Article - I

Sri P. Das Jacob, Inspector of Central Excise, while working as Air Customs Officer, Air Customs, Trivandrum demanded bribe in the guise of customs duty from a passenger named, K. Cherian, 62. Brentlawn Blvd, Winnipeg, Canada when he arrived at Trivandrum Airport on 17/7/94. By this conduct Sri P. Das Jacob had failed to maintain absolute integrity and acted in a

manner unbecoming of a Government servant and thereby contravened Rule 3(1) (i) & (iii) of CCS (C) Rules, 1964.

Article - II

Sri Das Jacob demanded money from the passenger named Sri K. Cherian as custom duty, without preparing the required documents of assessment at the time of customs clearance of the above mentioned passenger on 17/7/94. By the above act Sri Das Jacob had acted in a manner such that the master cannot rely on his faithfulness in his official dealings and thus had failed to maintain absolute integrity and acted in manner unbecoming of a Government servant and thereby contravened provisions of Rule 3(1) (i) & (iii) of CCS (C) Rules, 1964."

The enquiry officer made detailed enquiries on the basis of the charges levelled against the applicant and one U.Nujumudeen, Sepoy of Central Excise and after a proper appraisal of the material available he came to the following findings (Annexure A3):-

".. On the basis of all documentary evidences produced in the case before me and in view of the reasons given above I hold that both the charges against Sri.P.Das Jacob, Inspector of Central Excise and the charge against Sri.U.Nujumudeen, Sepoy of Central Excise are not proved. .."

However, the disciplinary authority appears to have disagreed with the enquiry report and issued an order on 8-6-1998 imposing a penalty of 'Censure' on the applicant. In appeal preferred by the applicant, the 2nd respondent remitted the matter to the 1st respondent directing him to decide the case afresh after communicating the points of disagreement with regard to the enquiry officer's findings to the applicant. This led to the issuance of Annexure A4 highlighting the disciplinary authority's disagreement with the findings of the enquiry officer as reflected in Annexure A3. The applicant, however, was given an opportunity to offer his explanation, which he did as per Annexure A5 letter dated 15-9-1999. Thereupon, Annexure A6 order was passed imposing a penalty of 'Censure' on the applicant. Annexure A7 appeal dated 18-8-2000

preferred by the applicant was rejected by the impugned Annexure A8 order dated 5-2-2001 by the 2nd respondent. The applicant, aggrieved by the above orders, seeks the following reliefs:-

- "i) Quash Annexure A6 and A8.
- 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."

3. Respondents have filed a reply statement opposing the Original Application by stating that though the complainant has not named the applicant specifically, it is proved beyond doubt that the complainant was cleared by the applicant who was the concerned Air Customs Officer on the material date. The primary work of interviewing the passenger, taking his declaration etc. are carried out by the Air Customs Officer and the Superintendent would come into the picture only at the last stage and, therefore, the involvement of the applicant was certain, according to the respondents. It is also pointed out by the respondents that the applicant has not exhausted all the remedies administratively available, since he could have preferred a revision petition before the Member (P&V), Central Board of Excise & Customs.

4. Rejoinder, additional reply statement and additional rejoinder filed by the respective parties are also on record, practically containing the earlier averments.

5. We have heard Shri C.S.G. Nair, learned counsel of the applicant and Shri K. Shri Hari Rao, learned ACGSC appearing for the respondents.

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6. Shri C.S.G. Nair, learned counsel of the applicant, taking us through the facts of the case, would contend that this is a case of no evidence, since the involvement of the applicant himself is not proved with any degree of satisfactory evidence. The complainant who came from Canada, presumably an educated person, did not bother to make any complaint immediately after the alleged incident. It was not within the applicant's power to assess the duty liability and clear any passenger. There was a Superintendent for this purpose and the applicant was only assisting him as Air Customs Officer. Learned counsel would invite our attention to the fact that Air Customs officials invariably wear name badges for the purpose of easy identification. In the instant case, since someone allegedly demanded money from a passenger, the letter could very well have noted the name of the person involved. It is also shrouded in mystery as to how the complainant, as admitted, could have tendered Indian currency as alleged in the complaint, unless he could get his foreign currency exchanged in the first instance. With regard to the evidence part of the enquiry, learned counsel would emphatically state that the basic principles of natural justice were not complied with in this case as has been pointedly noted by the enquiry officer himself. According to the learned counsel, the complainant was neither questioned nor allowed to be cross-examined with the result that the enquiry with regard to the basic fact finding is vitiated. Since it is an admitted fact that the complainant got cleared by the applicant and the Superintendent In-charge of the counter, it was essential that the Superintendent also was questioned on the matter with an opportunity to the applicant thereafter to cross-examine him. This was also ignored. The applicant, according to the learned counsel, had carried out the duties given to him to the satisfaction of the Superintendent and if the Superintendent had found anything

wanting or irregular or suspicious, he ought to have made immediate note thereof so that the matter could be taken up further. The complainant could have reported the matter to the Superintendent himself. This also has not happened in this case. Learned counsel would draw our attention to the fact that not even a clarificatory enquiry was made seeking further information from the Superintendent with regard to the whole episode. Relying on the decision of the Hon'ble Supreme Court in Hardwari Lal vs. State of U.P and Others [(1999) 8 SCC 582], learned counsel of the applicant would contend that in a case where the principles of natural justice were not observed on account of failure to examine the complainant inspite of a specific demand by the charged officer, the levy of penalty would be totally unjustified. Though the penalty levied in this case is only a 'Censure', such a penalty could not be levied on the basis of mere suspicion, argued the learned counsel of the applicant.

7. Shri K. Shri Hari Rao, learned ACGSC appearing for the respondents, would state that the gate-pass was a clear indication of the fact that the complainant was cleared by the applicant and that, therefore, the applicant's involvement in the subject matter of the complaint could not be ruled out. Further, he would also forcefully urge that the Original Application is not maintainable, since the applicant has not exhausted all the remedies available to him in as much as a revision against the impugned orders could have been filed before the Member (P&V), Central Board of Excise & Customs. Since this has not been done, the Original Application is liable to be rejected.

8. On a proper consideration of the facts and contentions as reflected in the pleadings and the arguments of the learned counsel on either side, we are of the view that the applicant in this case has been unfairly implicated, since no material evidence against the applicant's involvement much less any clinching evidence is forthcoming. The whole genesis of the enquiry and the punishment is the complaint written by a passenger who after several weeks of his sojourn in India has sent the complaint letter from Canada to the Finance Minister. Neither at the time of the alleged incident, nor immediately thereafter did the complainant make any effort to identify the actual culprit. The mere fact that it was from the very same customs counter which was handled by the applicant that he secured his clearance does not prove the alleged incident; nor does it in any manner show the applicant's involvement. It is not the case of the complainant, nor is it established by the enquiry officer and the disciplinary authority, that the applicant had demanded the money and received the amount of Rs.1200/allegedly paid by the complainant before he left the Airport. The whole enquiry is flawed on account of the fact that the complainant has not been questioned by the enquiry officer and therefore the most valuable right of cross-examination has also not been granted to the charged officer.

9. Further, we find considerable force in the argument that the respondent's failure to examine the Superintendent of Customs who was In-charge of the concerned Air Customs counter at the material time as well as the denial of the right to cross-examine him have vitiated the enquiry and the consequential findings. However minor the penalty is, there must be some evidence regarding the charged official's involvement. In this case, we are not persuaded to believe

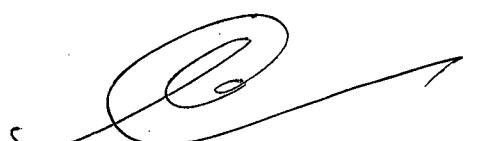
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that there is even a shred of evidence to implicate the applicant. He cannot be censured on the tenuous fact that the gate-pass indicated that the complainant concerned went out into the open from the counter handled by the applicant. Many others also might have been cleared from his desk. So, something more than what is stated in the complaint was required to justify the censuring finger. The argument that the applicant's failure to file a revision petition before the Member (P&V), Central Board of Excise & Customs would make the Original Application untenable deserves to be rejected. A revision, it has been held, is not a statutory remedy which the applicant ought to have explored before approaching the Tribunal. The applicant had good and sufficient reason to approach the Tribunal for seeking redress.

10. In the light of what is stated above, we hold that the impugned proceedings Annexure A6 and Annexure A8, being not based on any evidence, are liable to be set aside and we do so. The penalty of 'Censure' levied on the applicant would remain quashed as if no such penalty was ever levied, and all the relevant records should be set right as expeditiously as possible and in any case within a period of one month from the date of receipt of a copy of this order.

11. The Original Application is allowed as above with no order as to costs.

Wednesday, this the 15th day of January, 2003



K.V. SACHIDANANDAN
JUDICIAL MEMBER

Ak.



T.N.T. NAYAR
ADMINISTRATIVE MEMBER