

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH

O.A.NO.410/2006

Date: 26th December, 2007

CORAM:

HON'BLE MR.JUSTICE P.K.SINHA, VICE CHAIRMAN

HON'BLE MR.AMIT KUSHARI, MEMBER(A)

Ashok Kumar Singh, S/o Late Rameshwar Singh,
resident of village – Dhakanpura,
P.S. Gardanibagh, District – Patna.

... Applicant

By Advocate : Sri C.S.Singh

vs.

1. The Union of India through the Secretary(Revenue), Ministry of Finance,
Department of Revenue, North Block, New Delhi-110001.
2. The Commissioner, Customs(Prev.), Central Revenue Building,
Birchand Patel Path, Patna.

.. Respondents

By Advocate : Sri M.K.Mishra, SSC

ORDER

JUSTICE P.K.SINHA, V.C:-

The applicant, then posted as Superintendent, Customs had faced a departmental enquiry vide memorandum of charge dated 10.02.2003 at Annexure-A2 and was punished by the disciplinary authority, finding the charges to be proved, by order dated 6.11.2003 at Annexure-A4 withholding of next increment in the time scale of pay of the applicant, for next six months without cumulative effect. The applicant went in appeal before the President of India where the same was considered and advice of the



Union Public Service Commission('UPSC' -for short) was sought, and accepted, whereafter the punishment was reduced to that of 'Censure'.

2. The sole argument on behalf of the applicant was that the act alleged in the memorandum of charge did not come within the category of a 'misconduct', hence the applicant could not have been punished for that.

3. Before dealing with the arguments by both the sides, memorandum of charge, may be reproduced:-

“Whereas Shri Ashok Kumar Singh, Superintendent, Customs being incharge of Appeal & Review branch of Customs Commissioner Hqrs., Patna while examining the legality, propriety and maintainability of Orders-in-Appeal No.423/Pat/Cus/Appeal/2002 dated 25th September,2002 through file No.C.No.VIII(28)91-Cus/Appeal/2002 failed to adhere to date within the period which the said order was supposed to be got examined and the final order of the Commissioner of Customs, Patna was supposed to be obtained.

2. Whereas on the said file on the notesheet side page-2 he was directed on 6th November,2002 by the Commissioner to prepare the draft review memorandum after getting the show cause notice files but the negligent and indifferent attitude of Mr.Ashok Kumar Singh did not result in processing of the file in time. Though the DRI report was received well advance in his office. The file was ultimately put up only on 6th January, 2003 and by that date the appeal had become time barred. The Superintendent Mr. Ashok Kumar Singh has not indicated anyway either for himself or for others to see, monitor and ensure the movement of the file so that decision could have been taken within the outer limit of the stipulated period.

3. Whereas the Appeal & Review Branch called the file on 13th November, 2002 from DRI, Patna and again reminded on 5th December, 2002 and the file was received on 12th December, 2002, still the appeal memorandum was not got prepared and not put up by the branch and it became time barred.

4. Whereas the Order-in-Appeal was received in the Commissionerate on 30th September, 2002 wherein the appeal was to be filed by or before 29th December, 2002. But Mr.Ashok Kumar Singh and his subordinates failed to adhere to the date and they could put up the papers after expiry of the time only.

5. Whereas it appears that there is no monitoring system has been got devised by the Superintendent to ensure the timely submission of the files and papers where a decision has to be taken within the stipulated period. He had also failed to exercise proper control on his juniors and subordinates from time to time and in this regard.

6. Now, therefore, in view of the above facts, it is clear that Mr. Singh has not acted in good faith and has not displayed absolute integrity and devotion to duty and thus had contravened the provisions of Rule 3(i),(ii) & (iii) of CCS Conduct Rules, 1964."

The applicant submitted his reply in defence dated 24.2.2003 which is at Annexure-A3 in which the charges were denied. The order of the Disciplinary Authority(DA) is at Annexure-A4 in which he first has stated as to what were the charges and what was the defence reply of the applicant. Here it may be mentioned that the applicant was posted as Superintendent, Customs in 5 branches including the branch of "Appeal and Review" which different branches were headed by the Joint Commissioners/Additional Commissioners and Commissioner himself. So far delay in filing draft of appeal was concerned, it was to be filed before 'CEGAT' by 29.12.2002, the applicant, as admitted in the order of the DA, had placed the file before the Joint Commissioner on 23.12.2002, about 5/6 days before the last date of filing the appeal. As per the order of the DA the applicant, besides pointing out as to how the file was not delayed with him, also pointed out that there was sufficient time for the Joint Commissioner, Customs to place the same before the Commissioner and to obtain his orders for filing the appeal. Having noticed this and some other points, the DA had recorded the order on this point as follows:-

"8. The Superintendent being a senior supervisory officer in fact holds, controls and carries out the entire activities entrusted to his branch being branch incharge. His duties is not restricted to a specific point as has been asserted by CO in his defence. CO, being responsible for disposal of instant case file, was well aware that submission of appeal memorandum to CEGAT, Kolkata was compulsory by 29.10.2002 which was inclusive of transit period. He was also not required to be reminded more so when it was already

ordered that filing appeal against any order is a very important nature of work and has to be given first priority by leaving all other normal and routine work. I do not find any note either in records or otherwise to prove that CO at any point during 23.12.2002 to 29.12.2002 made any sincere attempt to expedite movement of file to ensure that by every means it is put up before Commissioner of Customs much before 29.12.03.

9. Further CO pleads, in his defence, that it was not possible to approach senior officer as the red light of rooms of JC/CCP were always on. I find that this is also a lame excuse. If CO could have personally made entry in the Joint Commissioner room to get the file cleared from his side no one could have stopped him. He would have apprised him about very short period left and importance of the work and for all this there was no restriction. Red light of chamber are kept red to avoid general activities. Even if it was so, he could have reminded his higher officer telephonically. In fact CO was not at all serious about the said important work and has made himself aloof from his responsibility, sooner the file moved from his table. He never bothered that the appeal period was getting short day by day and there would be no remedy left when time limit is over. Obviously he had no mechanism to keep watch on movements of such file, nor have any means to ensure that before outer limit of time such files should come back to him.

10. It has been further defended that appeal memo was required to be compiled after ascertaining the seizure file of DRI and all other inputs from various reference book etc. Commissioner of Customs issued speaking order for filing appeal on 6.11.2002. Being supervisory head it was first and foremost duty of the CO to ensure that inputs required for making appeal Memorandum were processed sincerely and expeditiously. However, it is found that requisition of records from DRI was made in a very casual way and no initiative was made to collect the records on priority basis. Moreover, there was sufficient time even after receipt of case records of A&R Branch to compile the draft memorandum. Had the Superintendent been cautious and alert and not lax and casual every

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thing ought to have been got done and completed in time.

11. I am, therefore, inclined to accept that CO has failed to discharge his responsibility as a supervisory officer incharge of A&R and he was mainly responsible for undue delay in compilation of Appeal Memorandum which subsequently became time barred. The fact is that Commissionerate took up the matter before CEGAT, Kolkata bench soon thereafter, but rightly it was held as time barred by the CEGAT."

4. Further to appreciate the points that were relied upon by the Appellate Authority for reducing the punishment to that of 'Censure', part of that order of the Appellate Authority in which the advice of the UPSC in relevant portions has been quoted extensively, may also be reproduced:-

"(d) The records of the case have been examined carefully and the Commission has agreed to the fact that it was the responsibility of the Superintendent(Appeals) for drafting an Appeal after getting necessary inputs and putting up to the various senior officers, while there was still time left for officers at different levels to apply their minds to the facts in the Appeal. The Appeal is of great importance, since revenue of the Government is at stake. It is not enough that the file is put up before the due date of submission to the Tribunal. The draft has to be studied at the Joint Commissioner and Commissioner levels and vetted several times before the final appeal is ready to be sent to the CEGAT. In those cases where less time is left then the Superintendent should ensure that he gets the final personally cleared at all levels (as in the case where only 5 days were left). In this case, the condonation of the delay by the CEGAT is really no credit to the CO. Incidentally, there was curfew in Patna which reason was given by the Joint Commissioner and Commissioner as the cause of delay and which the CEGAT, accepted.

5. The Commission has also observed that it is apparent that the

Superintendent (CO) had not devised a monitoring system for collection of inputs and papers, drafting of appeal and timely submission of the files. There appears to be no proper control of the CO on his juniors and subordinates. Nevertheless, the Commission find that even at the senior level, no proper system had been devised for monitoring the movement of files which have time stipulation. The Joint/Additional Commissioner and Commissioner must have to keep a tab on Appeals which have to be filed on a stipulated date and ensure that such cases come to them well within time. Normally, a Superintendent(Appeals) sits in the same building as the Commissioner/Additional Commissioner. Why could not the Commissioner/Additional Commissioner in this case remind the Superintendent and ensure that draft came to them much earlier? If they had a proper monitoring system, they themselves would be aware that an appeal has to be filed by 29.12.2003. In view of the Commission, in matters of emergency, even 5 days would have been enough for both the Additional Commissioner and Commissioner to apply their minds and send the Appeals to CEGAT on time. Further, the Commission observed that Superintendent(Appeals) had a number of other charges with him and not just Appeals and Reviews. Since the file on which the Appeal had to be filed, belonged to a case of the DRI, naturally a lot of time must have been spent for getting the facts from the DRI.

6. In the light of their findings and after taking into account all other aspects relevant to the case, the Commission is of the considered view that there is justification for admitting the Appeal partially and that the penalty imposed on the Appellant was rather on the higher side and was not commensurate with the charges proved against him and has advised that the appeal preferred by the Appellant(Shri Ashok Kumar Singh) should be accepted to the extent that the penalty imposed on him should be modified to that of 'Censure'.

7. The advice of the Commission has been examined. It being just, fair and reasonable has been accepted."



5. Whether or not the action of the applicant in the alleged delay in placing the file could be treated as a 'misconduct', has to be assessed in the back-drop of the facts that have been noticed above, apart from the law on the subject.

6. What could be a 'misconduct' has been considered by a Division Bench of the Principal Bench of this Tribunal in O.A.No.2160/2006 dated 31.07.2007 in the case of N.L.Sikriwal vs. Director General of Foreign Trade, Ministry of Commerce & Industry. The applicant was then posted as UDC in the Directorate entrusted with the task to process the applications and documents pertaining to advance licences and was alleged to be negligent, having failed to maintain absolute integrity and devotion to duty as also acting in a manner unbecoming of a Government servant, so much so that he had processed and proposed for issuance of 21 advance licences without taking into consideration the provisions as laid down in EXIM policy and the procedures applicable. The Enquiry Officer in his report had held that the charge relating to integrity was not established. Though holding that there was negligence and mistake in properly applying to the handbook and policy provisions, also held that the charge that his act was unbecoming of a Government servant was not established. For the third charge it was held that there had been negligence and mistake on the part of the applicant and to that extent the charge that he had failed to maintain devotion to duty was established. The DA, on examination of the enquiry report held that the applicant was negligent in properly applying the handbook of procedure and policy provisions as applicable, and thereby had contravened the provisions of EXIM policy. Punishment of withholding of three increments with cumulative effect was awarded. The Appellate Authority, on consideration of the points and holding that it was a case of shared responsibility, had



modified the punishment with stoppage of two increments for two years, with cumulative effect.

7. In that case, this Tribunal, based upon a judgment of the Apex Court in the case of Union of India vs. J.Ahmed;(1979) 2 SCC 286, observed that every negligence is not 'misconduct' unless it is culpable, also observing that acts of 'misconduct' could not be defined precisely, as that would depend upon the facts and consideration of each case.

8. This Tribunal in that case also noted another decision of the Apex Court in the case of Inspector Prem Chand vs. Govt. of NCT of Delhi and others; (2007)4 SCC 566 in which their Lordships of the Supreme Court had discussed as to what could be a 'misconduct' inviting a departmental proceeding and punishment, or whether .. a mere negligence, even including inefficiency could be termed as an act of 'misconduct'.

9. In the case of N.L.Sikriwal(supra), this Tribunal in the Principal Bench had quoted extensively from the judgment of the Apex Court in the case of Inspector Prem Chand(supra). For better appreciation of this point we are also tempted to quote the same portions of the order of the Hon'ble Supreme Court:-

“Before advertng to the question involved in the matter, we may see what the term 'misconduct' means.

In State of Punjab and Ors. vs. Ram Singh Ex.Constable (1992(4)SCC 54), it was stated:

“Misconduct has been defined in Black's Law Dictionary, Sixth Edition at page 999,thus:

'A transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, wilful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehavior, delinquency,impropriety, mismanagement, offense, but not

negligence or carelessness.'

Misconduct in office has been defined as:

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. Term embraces acts, which the officer holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

"In P. Ramanatha Aiyar's Law Lexicon, 3rd edition, at page 3027, the term 'misconduct' has been defined as under:

"The term 'misconduct' implies, a wrongful intention, and not a mere error of judgment.

"Misconduct is not necessarily the same thing as conduct involving moral turpitude.

"The word 'misconduct' is a relative term, and has to be construed with reference to the subject matter and the context wherein the term occurs, having regard to the scope of the Act and statute which is being construed. Misconduct literally means wrong conduct or improper conduct."

(See also Bharat Petroleum Corpn. Ltd. vs. T.K.Raju, (2006 (3) SCC 143).

"It is not in dispute that a disciplinary proceeding was initiated against the appellant in terms of the provisions of the Delhi Police (Punishment and Appeal) Rules, 1980. It was, therefore, necessary for the disciplinary authority to arrive at a finding of fact that the appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service, which was willful in character. No such finding was arrived at. An error of judgment, as noticed hereinbefore, per se is not a misconduct. A negligence simpliciter also would not be a misconduct. In Union of India & Ors. vs. J. Ahmed (1979 (2) SCC 286), whereupon Mr. Sharan himself has placed reliance, this Court held so stating:

"Code of conduct as set out in the Conduct Rules clearly indicates the conduct expected of a member of the service. It would follow that conduct which is blameworthy for the Government servant in the context of Conduct Rules would be misconduct. If a servant conducts himself in a way inconsistent with due and faithful discharge of his duty in service, it is misconduct (see *Pierce v. Foster*, 17 Q.B. 536, 542). A disregard of an essential condition of the contract of service may constitute misconduct (see *Laws v. London Chronicle (Indicator Newspapers)*, 1959 1 WLR 698). This view was adopted in *Shardaprasad Onkarprasad Tiwari v. Divisional*

Shardaprasad Onkarprasad Tiwari v. Divisional

Superintendent, Central Railway, Nagpur Division, Nagpur, (6 Bom LR 1596), and Satubha K. Veghela v. Moosa Raza (19 Guj LR 23). The High Court has noted the definition of misconduct in Stroud's Judicial Dictionary, which runs as under:

“Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment, or innocent mistake, do not constitute such misconduct.”

10. There cannot be two opinion that every Government servant holding a post is not gifted with the same capabilities. Even the best of officers/ employees sometimes may take a wrong decision which may even cause financial loss to the Government or sometimes, not habitually, may be found guilty of negligence, but if a wrong decision or the negligence is not coupled with malafide intention or being purposely willful, then such act could not come within the ambit of the term 'misconduct'. From different definitions of the term 'misconduct', as seen above, one thing is apparent which is that the impugned action or in some cases, an inaction, should be willful, that is, deliberate and culpable in order to make such an act or omission to be an act of 'misconduct' on his part.
11. If a Government servant is habitually negligent, then the effect of such cumulative acts of negligence may be construed in suitable cases as 'misconduct'. 'Misconduct' is defined under Rule 3 of the Central Civil Services (Conduct) Rules, 1964. This states that every Government servant shall at all times (i) maintain absolute integrity, (ii) maintain devotion to duty and (iii) do nothing which is unbecoming of a Government servant. Explanation I of sub rule (2) to Rule 3 states that a Government servant who habitually fails to perform the task assigned to him within the time set for the purpose and with the quality of performance expected of him shall be deemed to be lacking in devotion to duty within the meaning of Clause (ii) of Sub-rule 1

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to Rule 3.

12. There is no charge that the applicant was habitually negligent in similar matters. Rather, the applicant has claimed in writing that he always had performed his duties promptly and within time.

13. There is nothing on the record of the enquiry or on this record to show that the applicant in this matter had failed to maintain absolute integrity.

14. Whether the delay caused in this case, as alleged, could be termed as an action on the part of the applicant to be unbecoming of a Government servant, has to be seen. In this context it may also be noted that clause (i) of sub-rule 2 to Rule 3 aforesaid provides that every Government servant holding a supervisory post shall take all possible steps to ensure the integrity and devotion to duty of all Government servants for the time being under his control and authority. This is noted because there might have been some delay in processing the file of appeal by his subordinates. While saying so, it may also be mentioned that it appears that in this case in which a time-bound action was to be taken, his superior authority also had contributed to the delay, by not processing the file immediately when it was placed before them on 23.12.2002.

15. Annexure-A/6 to the application is a chart showing the movement of the concerned file on different tables. According to this chart, the file movement had taken a total of 95 days out of which 24 days were holidays and 61 were working days. The file from its inception was placed before the applicant 6 times on different dates. Mostly, as per this chart, which has not been disputed in the written statement in para 17 which has dealt with this claim, the applicant had moved the file the very day it was received by him. On one occasion when the draft of appeal was placed before

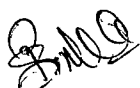
him on 19.12.2002 he had sent the file to the Joint Commissioner on 23.12.2002 but out of those 4 days, 2 were holidays. From this chart it will appear that thereafter the Joint Commissioner put the file before the Commissioner on 1.1.2003, a delay of total of 9 days out of which 2 were holidays. Thereafter, the Commissioner had made certain queries and subsequently the file was again put up before him.

16. From the order of the DA it is apparent that the DA has blamed the applicant not only for some delay made by his junior officer but also has opined that it was his duty to move his superior officers (Joint Commissioner and Commissioner) to speedily dispose of the matter as the matter had taken many days in between these two senior officers.

17. As per the order of the Appellate Authority, the UPSC had not so exonerated the superior officers while also noting that 'appeal and review' was not only the branch placed under charge of the applicant, but he was dealing with other branches also. The UPSC also had noticed that neither the applicant nor his superior officers had devised any system for monitoring the movement of files which have time stipulation.

18. In such view of the matter, even if the applicant had failed to monitor a particular file in absence of any such system, this could only be attributed to some negligence on his part. Such negligence, even if committed, has not been shown to be willful and motivated one, or culpable.

19. It may also be noticed here that in para 4 of the memo of charges the clear allegation is that though the appeal was to be filed by or before 29th December, 2002 but the applicant and his subordinates had failed to adhere to the date and they could put up the papers only after expiry of the time. However, admitted position is that the




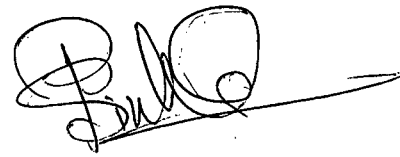
draft of the appeal was placed by the applicant before senior authority on 23.12.2002 and the last date of filing of appeal had expired at the table of the Joint Commissioner. Therefore, this charge cannot be held to have been proved in view of admitted position in this regard.

20. Though it is besides the point but it may be noted that the delay ultimately was condoned by the CEGAT as per the materials on record.

21. Even apart from that, it would be clear from the facts discussed above that the alleged act or omission by the applicant cannot be termed as 'misconduct'. In that view of the matter holding the act to be 'misconduct' by the Disciplinary Authority, while awarding punishment, vide order dated 6.11.2003 at Annexure-A/4 and the order of the Appellate Authority dated 4.10.2005 at Annexure-A/5 by which a reduced punishment was inflicted cannot be sustained.

22. In the result this application is allowed. Annexures-A/4 and A/5 are hereby quashed. No costs.


(AMIT KUSHARI)
MEMBER(A)


(P.K. SINHA)
VICE CHAIRMAN

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