

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
NEW BOMBAY BENCH

Original Application No. 50 of 1987

Shri Ramesh Moreshwar Shringarpure,
20/566, Nehru Nagar,
Kurla(East),
Bombay-400 024.

.. Applicant

V/s.

1. Chief Vigilance Officer,
Central Board of Excise & Customs,
North Block,
New Delhi.
2. Collector of Central Excise,
Bombay-I,
115, M.K. Road,
Central Excise Building,
Opp. Churchgate Station,
Bombay-400 020

.. Respondents.

Coram: Hon'ble Member(A) Shri S.P.Mukerjee
Hon'ble Member(J) Shri M.B.Mujumdar

Appearance:

1. Mr. V.N.Deshpande,
Advocate
for the applicant.
2. Mr. P.M.Pradhan,
Advocate
for the respondents.

JUDGMENT:-

Date: 1-1-1988

BY PER: S.P.Mukerjee, Member(A) (

The applicant who is an Inspector in Central Excise has moved this application under Section 19 of the Administrative Tribunals Act challenging the order of punishment dated 28.2.1985 by which the competent disciplinary authority reduced his pay from Rs. 750/- in the scale of Rs.550-25-750-EB-30-900 to Rs. 725/- for one year.

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He has also challenged the appellate order dated 14.1.1986 by which the Appellate Authority rejected his appeal. He has also challenged the enquiry report dated 19.5.1977 and has prayed that he should be considered for promotion from 1975 onwards. The brief material facts of the case can be summarised as follows: The applicant was on deputation from the Central Excise to the Customs Department between March 1969 ^{and} ~~to~~ December, 1981. While on deputation he was involved along with some other officers of the Customs Department in clearing in excess weight certain imported packages containing dry fruits from Afghanistan in February, 1971. He was charge sheeted on 11.9.1974. He refuted the charges and a disciplinary enquiry was ordered. Even though the actual hearing during the enquiry took place for some days in March, 1977 the ^{enquiry} process took three years from 1974 to 1977. The enquiry report was submitted on 19.5.1977 but the Disciplinary Authority took 8 years more to take a decision thereon and the impugned punishment order was passed on 28.2.1985 and communicated to the applicant along with a copy of the enquiry report. He filed an appeal on 1.4.1985 which was rejected by a non-speaking order dated 14.1.1986. The grievance of the appellant is that in the long drawn out process which took about 15 years from the time of the alleged delinquency in February, 1971 to the rejection of his appeal in January, 1986 he suffered grievously as apart from the punishment of reduction of his pay from 750/- to Rs. 725/- his Efficiency Bar which became~~s~~ operative on 1.1.1979 was cleared only in 1983 because of the pendency of the disciplinary proceedings. He has also challenged the order of punishment on merits

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indicating various infirmities in the process of enquiry and assessment of facts.

2. The applicant has adduced 28 grounds on the basis of which he has challenged not only the legality of the order of punishment and the appellate order but also the process of enquiry and the merits of the case. The main burden of his argument is that he did not have, as an Examiner of Customs, direct responsibility in weighing and clearing of individual packages for which the Customs Appraisers ^{are} mainly responsible. He has also argued that the Central Intelligence Unit who detected the excess weightage of the packages cleared by the Customs, did so in July, 1971 when the clearance had taken place in February, 1971 and that too in a private bonded warehouse where the packages involved got mixed up with other consignments. He has also indicated that the fact that it took three years for framing the charge-sheet, three years more in submitting the inquiry report and eight years more to issue the punishment order of reducing his pay only by one stage shows that the disciplinary authority had no case against him. The respondents have refuted the various grounds of challenge and have generally argued that the consignments involved, even though they were mixed up with other consignments, could be clearly identified and compared with the Bills of Entry which had been used by the applicant and therefore the applicant could not be let off. They have also justified the delay in passing the punishment order by stating that the applicant being an officer on deputation from the Central Excise could be proceeded only by an officer of the Excise Department and the inter-departmental correspondence between the Custom and the Excise was responsible for the delay.

3. We have heard the argument of the learned counsel for both the parties and gone through the documents carefully. The Learned Counsel for the applicant brought to our notice the judgment of the Full Bench of the Tribunal delivered on 6.11.1987 in Shri Premnath K. Sharma v/s. Union of India and Others (Tr. Application No.2/86) In that judgment the Tribunal held that where the Disciplinary Authority after receiving the enquiry report did not make a copy of the report of the Inquiry Officer available to the delinquent officer and did not give him an opportunity of making his representation against the recommendations of the Inquiry Officer before arriving at any findings on the basis of the inquiry report, the ~~Disciplinary Authority are~~ findings of the ~~Inquiry Officer~~ ^{is} bad in law. In that case the Tribunal quashed the order of removal with liberty to the respondents to revive the disciplinary proceedings and complete the same from the stage of submission of the inquiry report. In the instant case the endorsement given below the impugned order of punishment dated 28.2.1985 (Annexure XXII to the petition) shows that the impugned order was communicated to the applicant "(Along with I.O's report)". Thus it is clear that the report of the Inquiry Officer was sent to the applicant along with the order of punishment and not prior to that order. Accordingly the impugned order is vitiated by non observance of the principle of natural justice as laid down by the Tribunal in the aforesaid case.

4. We need not go into the nuances of the degree of responsibility of the applicant in allowing the misdeclaration and under-valuation of the imported

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consignments or the factual matrix of the case, in view of the aforesaid legal infirmity of the impugned order. In accordance with the ruling of the Full Bench of the Tribunal as mentioned above the impugned order has to be set aside and the case could be remanded to the respondents to revive the disciplinary proceedings from the stage of the submission of the inquiry report. However, added to the violation of principle of natural justice, we are constrained to take notice of the unconscionable delay which the respondents allowed to take place in coming to a decision on the inquiry report. The inquiry report itself could be submitted after the ~~alleged~~ lapse of six years ^a ~~alleged~~ from the period of delinquency and inspite of that, the respondents took eight more years to pass a final order on the inquiry report. It will be futile and merely ritualistic at this distance of more than sixteen years to ask the respondents to revive the disciplinary proceedings. More than that, it will be unfair to the applicant now to put him in the dock and expect him to defend his case on facts, documents and memory seventeen years after the alleged misconduct. One cannot also ignore the fact, that even after sitting over the enquiry report for over eight years the Disciplinary Authority and the Appellate Authority rested content with the nominal punishment of reducing the applicant's pay by only one stage for only one year. This also is indicative of the tenuousness of the proof of guilt which the respondents could muster during the thirteen years of disciplinary proceedings. We cannot also overlook the fact that the applicant has already suffered mental agony and obloquy for about two decades during which the disciplinary proceedings were conceived and proceeded with.

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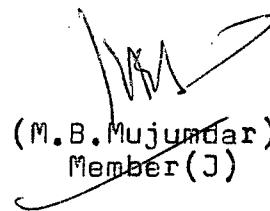
In Manas Ranjan Das V/s. The State of Orissa and Others, 1973(2) SLR 553 the order of suspension as also the disciplinary proceedings were quashed by the Orissa High Court because the enquiry proceedings were pending for ^{Further,} eight years. ^{Further,} the appellate order dated 14.1.1986 is a non speaking order and does not even remotely discuss the points raised in the appeal. It is being held by the Supreme Court as in Ram Chander V/s. Union of India, ATR 1986(2)SC 252 and reiterated in R.P. Bhatt V/s. Union of India, AIR 1986 SC 1040 etc., that especially after the ~~forty~~ ^{second} amendment of the Constitution, taking away from the delinquent Officer, the opportunity of replying to show cause notice on proposed punishment, it is all the more necessary for the appellate authority to pass speaking orders much beyond repeating the provision of the relevant rules for disposal of appeal and merely stating that those provisions have been met. Accordingly the appellate order in the instant case has to be set aside as bad in law.

5. In the facts and circumstances and also keeping ^{the fact} in view that the appellate order is a non speaking order we set aside the impugned order of ^{the} Disciplinary Authority dated 28.2.1985 and the appellate order dated 14.1.1986 and without liberty to the respondents to revive the disciplinary proceedings. The respondents are directed to consider the case of the applicant for crossing the E.B. for each of the years between 1.1.1979 and 1.1.1983 as if the impugned orders had not been passed and allow him to cross the E.B. in accordance with relevant rules and instructions. The applicant's pay as on 28.2.1985 should be restored to the stage due to him as if the impugned

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orders had not been passed. The arrears of pay and allowances consequent upon the restoration of pay and ~~crossing~~ of the E8 as directed above should be made good to the applicant within three months from the date of communication of this order. The application is allowed on the above lines with no order as to costs. A copy of this judgment should be sent to ^{the} Finance Secretary to the Govt. of India with reference to the egregious delay of eight years which has ~~taken~~ place in the passing of the ^{the} order of ~~Disciplinary~~ Authority on the report of the Enquiry Officer in this case.

S/No 1.1.88
(S.P. Mukerjee)
Member (A)


(M.B. Mujumdar)
Member (J)