

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 678/87

Transfer Application No:

DATE OF DECISION 8-9-93

Shri Suhas Sitaram Patil ----- Petitioner

Shri M.D.Lonkar ----- Advocate for the Petitioners

Versus

Union of India & Ors. ----- Respondent

Shri M.I.Sethana and Shri ----- Advocate for the Respondent(s)
A.I.Bhatkar

CORAM:

The Hon'ble Shri M.Y.Priokar, Member(A)

The Hon'ble ~~Smt.~~ Smt. Lakshmi Swaminathan, Member(J)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? - yes
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

Lakshmi Swaminathan
(Smt. Lakshmi Swaminathan)
Member(J)

(11)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY

O.A. 678/87

Shri Suhas Sitaram Patil .. Applicant

vs

Union of India & Ors. .. Respondents.

Coram: Hon'ble Shri M.Y.Priolkar, Member (A)
Hon'ble Smt. Lakshi Swaminathan, Member(J)

Appearance:

Shri M.D.Lonkar
for the applicant.

Shri M.I.Sethana & Shri A.I.Bhatkar
for the respondents.

Judgement
(Per: Smt. L.Swaminathan, Member(J))

Dated: 8-9-93

The applicant in this case, Shri S.S.Patil ~~was~~ filed this application against the imposition of major penalty of reduction in pay by one stage for one year which has been confirmed in appeal. The impugned orders are the orders passed by the Disciplinary Authority dated 31.12.1986 and the appellate authority dated 21.7.1987.

2. The brief facts of the case are that the applicant who was working as an Inspector, Central Excise in the Bombay Collectorate during the relevant period was placed under suspension by order dated 22.3.1985. The applicant had given a statement dated 13.3.1985 written in his own hand, which was made under Section 108 of the Customs Act, 1962. Subsequently, the applicant retracted this confession statement on 4.7.1985, i.e. about 2½ months later. The applicant was issued a chargesheet on 29.10.1985 alleging that he did not maintain absolute integrity and devotion to ~~duty~~ and acted in a manner ~~unbecoming~~ of a

Government servant in as much as:

- (i) He had maintained undesirable contacts with landing agents and smugglers and conspired with them to arrange landing of contraband goods in his jurisdiction.
- (ii) He did not report to his immediate official superiors about the conduct of his subordinates S/Shri Naik, Havldar Yeragi, Seaman who had accused him of aiding and abetting smugglers.
- (iii) He did not submit to his immediate official superiors any source reports or intelligence reports in his capacity as Custom Prev./Intelligence officer about smuggling activities in his jurisdiction.
- (iv) He had admitted in his confessional statement dated 13.3.85 recorded under section 108 of Customs Act, 1962 before the Supdt. Customs (Prev.) Versova circle about his involvement in activities detrimental to the interest of this department, but subsequently on 4.6.85, he retracted his confessional statement.

3. The applicant had submitted his defence to the aforesaid charges denying the allegations. The disciplinary authority after going through the entire evidence has come to the conclusion that the charges (ii) and (iv) above have been proved vide his order dated 31.12.1986. The appellate authority has after considering the appeal and records in the case agreed with the order of the disciplinary authority and has rejected the appeal.

4. Broadly stated the applicant has challenged the validity of the impugned orders on the following grounds. He has urged that since the statement recorded on 13.3.1985 was made under coercion and duress and has been subsequently retracted by him, the same cannot be

relied upon. Secondly, that there was no evidence other than his own statement of 13.3.1985 on the basis of which the disciplinary authority had found him guilty of the two charges. Thirdly, that since he had retracted the aforesaid statement within a short period of 2½ months, the same should not be relied upon as being a true statement. Fourthly, that one document, namely, the letter dated 12.6.1985 stated to have been written by the Asstt. Collector (INV) M&P which has been referred to in the appellate order had not been furnished to him and hence there was a breach of the principles of natural justice in the conduct of the disciplinary proceedings.

5. The learned counsel for the respondents has argued that there was, in fact, no procedural lapses or violation of the principles of natural justice in the context of the disciplinary proceedings. It was also submitted that this is not a case where there was no evidence at all on the basis of which the disciplinary authority/appellate authority could not come to its conclusion that the charges No. (ii) and (iv) have been proved. With regard to charge No. (ii), namely, that the applicant did not report to his immediate official superiors about the conduct of his subordinates, the facts are not in dispute that he did not make such a report. Further, it is also not in dispute about the talk of landing of contraband goods between Shri S.S. Patil and S/Shri Yeragi and Naik on the relevant date. This fact has been relied upon by the disciplinary authority in his conclusion that Patil had failed in his duty to inform his superiors about the landing of contraband goods, irrespective of whether it was correct or otherwise, when he had come to know about it. We, therefore, find no merit in the contentions of the applicant with regard to this charge.

(3)

6. As regards charge No.(iv), the fact of making the confessional statement dated 13.3.1985 is not in dispute nor is the fact of retraction of the statement. On perusal of the orders passed by the disciplinary authority and the appellate authority, it is seen that these very facts have been relied upon and hence the conclusion arrived at by the authorities on this charge is also sustainable.

7. With regard to the use of retracted confession, the Supreme Court in the case of Kalavati vs Himachal Pradesh State (A.I.R. 1953 S.C.131) has held that this does not contravene Article 20(3) of the Constitution. The Supreme Court has also held (Pyare Lal vs State of Rajasthan, A.I.R. 1963 S.C.1094 at 1096-97) that a retracted confession may form the legal basis of a conviction if the Court is satisfied that it is true and was voluntarily made. There are no facts to show that the statement dated 13.3.85 made by the applicant is not voluntary. Another circumstance which reinforces the conclusion about the confession being voluntary is that it was not retracted

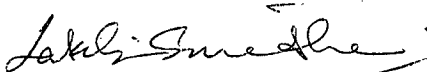
at the earliest opportunity.' (See Shankar ~~vs~~ State of Rajasthan, A.I.R. 1978 SC 1248 at P. 1258). Although there can be no hard and fast rule regarding the time frame in such matters, in the facts of this case we are of the view that the applicant ~~has not retracted~~ his confession at the earliest opportunity. To sum up, therefore, we are of the opinion that both the disciplinary authority and the appellate authority have rightly come to the conclusion on the evidence before them that the charges (ii) and (iv) have been proved against the applicant.


8. On the submission made by the learned counsel for the applicant regarding non supply of the letter dated 12.6.1985, it is clear from the appellate order dated 21.7.1987 that neither the appellate authority nor the disciplinary authority relied upon this letter. In State of Madhya Pradesh vs Chintaman (A.I.R. 1961 SC 1623 at page 1629) the Supreme Court has held that the only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted, the decision reached by the enquiry officers on the merits are not open to be challenged on the ground that " the procedure followed was not exactly in accordance with that which is observed in Courts of Law." In another case, State of Assam vs M.K.Das (A.I.R. 1970 SC 1255) it was also observed by the Supreme Court that the fact that a copy of the report of the Superintendent of Police was not furnished to the respondent is " in our opinion, of no consequence in relation to actual enquiry conducted against the respondent". Having regard to the observations of the Supreme Court, therefore,

15

we are of the view that non supply of the letter dated 12.6.1985 does not amount to non-observance of the rules of principle of natural justice in this case.

9. In the above facts and circumstances of the case, we find absolutely no merit in the application. The application is rejected. No order as to costs.


(SMT. LAKSHMI SWAMINATHAN)
MEMBER(J)


(M.Y. PRIOLKAR)
MEMBER(A)

k