

Per Tribunal

Date

19/8/92

(20)

Applicant in person / by Mr. C. Nathan
Advocate / Respondent by Mr. M. I. Sethna
Counsel. For want of time

The matter adjourned to ~~22/9/92~~ 22/9/92
for final hearing

/Dy. Registrar

Dated: 22.9.92

Mr. C. Nathan, Counsel for the
applicant. Mr. A. I. Bhatkar for Mr. M. I.
Sethna, Counsel for the respondents,

Judgement reserved.

[Signature]
(M. Y. Pholkar)
M(A)

[Signature]
(S. K. Shaon)
Vc

30/9/92 PT

Done for the applicant
Mr. A. I. Bhatkar, Adv. for Mr. Sethna
present.

Judgement signed & pronounced
in the open court

[Signature]
C

(21)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 498/87
~~XXXXXX~~

198

DATE OF DECISION

30/9/92

Shri Vinayak A. Joshi Petitioner

Shri C. Nathan Advocate for the Petitioner(s)

Versus

Union of India through Respondent
Deputy Secretary, Min. of Finance

Shri A. I. Bhatkar. Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice S.K. Dhaon, Vice Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
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 ?

ND

(S.K. DHAON)
 VICE CHAIRMAN

(22)

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No.498/87

Shri Vinayak A.Joshi

... Applicant.

V/s.

Union of India
through Deputy Secretary
Ministry of Finance
Revenue Division
New Delhi.

... Respondent

CORAM: Hon'ble Shri Justice S.K. Dhaon, Vice Chairman

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

Appearance:

Shri C.Nathan, counsel
for the applicant.

Shri A.I. Bhatkar for
Mr. M.I. Sethna, counsel
for the respondent.

JUDGEMENT

Dated: 30-9-92

¶ Per Shri S.K. Dhaon, Vice Chairman¶

The applicant, a retired Superintendent of Central Excise, on 26.12.86 was given a charge sheet with the view to hold an enquiry against him in accordance with the procedure laid down under Rule 14 and 15 of the CCS (CC & A) Rules 1965. At that stage he came to this Tribunal by means of this O.A.

On 9.12.88, this Tribunal passed an interim order to the effect that the respondents may hold and continue departmental enquiry against the applicant in respect of charge No.4, of the charges served on the applicant alongwith the memorandum dated 26.12.86. This Tribunal directed that the respondents shall not hold and continue departmental enquiry against the applicant in respect of charge No.1, 2 and 3 till the decision of this O.A. The relevant portion of the order ran:

....." We may add here that whatever we have said above will not bind the parties or the Tribunal while deciding the case ".....

On or after 15.11.91 a detailed reply was filed on behalf of respondents by one Shri Vijay Singh, an Under Secretary, Govt. of India, Ministry of Department of Revenue. No rejoinder affidavit have been filed, in reply to the said reply by and on behalf of the applicant.

Reliance is placed on behalf of applicant on Rule 9(2) (b) of the Central Civil Services (Pension) Rule 1972 hereinafter referred to as Rules. Sub-Rule 1(2) of Rule 9 is quoted below:

Rule 9(2)(a)

- (b) The Departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,
 - (i) Shall not be instituted save with the sanction of the President,
 - (ii) Shall not be in respect of any event which took place more than four years before such institution
 - (iii)

The only argument advanced in support of this application is that all the four charges levelled against the applicant are in respect of events which took place more than 4 years before the institution of the disciplinary proceedings viz. 26.12.86.

Article 1 of the charges, in substance, is that the applicant while working as Superintendent of Central Excise did not adhere to the order issued by the Central Board of Customs, New Delhi on 11.8.1982 and in violation and contents and spirit of the order, issued L-4 licences to the fictitious persons and for non-existing power-looms. The charge further is that the applicant did not exercise proper care or supervision in his work as Superintendent of Central Excise, in charge of a range.

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Article 2 inter-alia provides that the applicant conspired with the Inspectors and in collusion with local agents issued licences to fictitious persons and non-existent powerlooms on false documents. He had issued near about 4000 licences.

Article 3 contains the allegation that the applicant kept undelivered 509 L-4 licences duly signed by him with an intention to receive undue money at the time of delivery.

In article 4 the allegation is that the applicant while working as Superintendent of Central Excise had not revoked any of the licences which were issued in violation of Board's order even when such licences did not obtain written permission from the Textile Commissioner and produced before the applicant by 31.3.1983.

In the reply filed by Shri Vijay Singh in paragraph 6 the averments, inter-alia, are these :
The following licences were issued by the applicant while he was in service and posted to Ichalkaranji Range
(1) Sou Gita Shridhar Sutar 6682/82 issued on 28.12.82.
(ii) Sou. Sharade Shrikant Sutar 6681/82 issued on 28.12.82.
(iii) Jagande Mahadeo Patil 6680/82 issued on 28.12.82.
(iv) Sou. Malutai Shivram Lokhande 6687/82 issued on 28.12.82.

In para 7 the averments inter-alia are these:

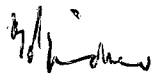
...." (a) The charge sheet was issued on 26.12.86; i.e. within 4 years of the date of issue of licences & Shri Joshi had not exercised any checks and verified power looms and have not taken any disciplinary action against the Inspectors, who were responsible for preparing false Panchnama & other fabricated documents during the period from December, 1982 to

July 1984, i.e. the period when he functioned as Supdt. C.Ex. Ichalkarnaji Range -III. Therefore, it is not merely the act of commission for having issued fictitious licences but also failure on his part to perform his duties, exercise his power and take appropriate action against the defaulting staff which could have been taken by him prior to 31.7.84 (i.e. prior to his retirement). This is not only fraudulent act of commission but also deliberate act of omission pertaining to failure to take appropriate steps against the sub-ordinate staff which could have taken by him upto 31.7.84. These acts of omission vis-a-vis the failure to take necessary action against the staff is not limited to 26.12.82 but relates to the period after 26.12.82 till the time of his retirement on 31.7.84. " ...

As already stated the contents of the reply, as highlighted above, have remained ^{un}controverted. We have, therefore, no option but to assume that the averments are correct.

At this stage, on the material on the record, it is difficult, if not impossible, for us to record a definite finding that the 4 charges levelled against the applicant relate to events which occurred four years before 26.12.82. Prima-facie, we are satisfied that in the disciplinary proceeding the applicant is not being called upon to give his reply to the charges in violation of Sub-Rule 2(b) of Rule 9 of the Rules. We, however, make it clear that we are not expressing any opinion on the merits of the case. We are also not expressing any opinion on the legality of the charges.

We find no merit in this application. It is rejected but without any order as to costs. Interim order dated 9.12.88 is vacated.


(M.Y. PRIOLKAR)
MEMBER (A)


(S.K. DHAON)
VICE CHAIRMAN