

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.142/87
and
Original Application No.143/87

Ashok Jagannath Ghode,
Shankar Chavan Chawl,
Survey No.7,
Gurudeo Nagar,
Pune - 35

.. Applicant in O.A.
142/87

Prakash Vishnu Kulkarni,
1216, Sadashiv Peth,
Pune - 411 030.

.. Applicant in O.A.
143/87.

V/s

1. The Collector of
Central Excise and Customs,
Pune.
2. The Deputy Collector
(Personnel and Establishment),
Central Excise and Customs,
Pune. ..

Respondents in
both the cases.

Coram: Hon'ble Member (A) L.H.A.Rego
Hon'ble Member (J) M.B.Mujumdar

Appearances:

1. Shri R.Ashokan
Advocate
(for Shri D.V.Gangal)
for the applicants.
2. Shri J.D.Desai (for
Shri M.I.Sethna)
Advocate for the
Respondents.

ORAL JUDGMENT
(Per M.B.Mujumdar, Member (J)

Date: 4-2-1988

By this common judgment we are disposing
of O.A.142/87 and O.A.143/87 because both involve the
same question of facts and law.

2. The applicant in O.A.142/87, Ashok Jagannath Ghode, was appointed as Inspector of Central Excise in 1982. On 2-4-1983 for some misconduct while working at Bankot he was suspended but that order was revoked on

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24-12-1983. On 24-7-1984 a chargesheet containing three charges was served on him. He pleaded not guilty to the charges. Shri B.D.Nathu, Asstt.Collector of Central Excise was appointed as Inquiry Officer. He submitted his report dtd. 30-9-1985 holding the applicant guilty of all the charges. Relying on that report the Disciplinary Authority i.e. the Deputy Collector (PE) (Shri T.K. Jayaraman) imposed a penalty of dismissal from service. The applicant preferred an appeal dt.6-5-1986 against that order. One of the grievances in that appeal was that a copy of the Inquiry Officer's Report was not supplied to him. Hence he was supplied with a copy of the Inquiry Officer's Report on 8-8-1986. However, the appeal was rejected on 24-11-1986 by the Collector Central Excise and Customs, Pune (Shri S.D.Mohile) after giving a personal hearing to the applicant and after passing a reasoned and speaking order.

3. Coming to the facts of Original Application No.143/87, the applicant in that case, Shri Prakash Vishnu Kulkarni, was appointed as Inspector of Central Excise in 1975. For some misconduct while he was working at Bankot he was suspended on 24-2-1983. But that order was revoked on 24-12-1983. On 24-7-1984 a chargesheet containing three charges was served on him. At first the same Asstt.Collector Shri B.D.Nathu, who was appointed as Inquiry Officer for holding as enquiry against the applicant in Original Application No.142/87, was appointed Inquiry Officer in his case also. But afterwards that order was modified and he was asked to hold the enquiry against the applicant in the other case viz.O.A.142/87 and another officer P.B.Vichare, Supdt.Adjudication Branch of Customs and Central Excise was appointed to hold enquiry against the applicant Shri Kulkarni. He held him

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guilty of all the charges, by his report submitted in January, 1986. The same Disciplinary Authority accepted the charge of the Inquiry Officer and imposed the same penalty of dismissal from service by his order dt.31-3-1986. The applicant preferred an appeal against that order. As in the other case, one of his grievances was that a copy of the Inquiry Officer's report was not supplied to him. Hence on 8-8-1986 a copy of the Inquiry Officer's report was supplied to him. His appeal was also rejected by the same Collector of Central Excise Shri S.D.Mohile, after giving a personal hearing to the applicant and passing a reasoned and speaking order.

4. The respondents have filed a separate written statement in each case. In view of the order which we are required to pass, it is not necessary to mention the contents of the written statements.

5. We have heard Shri R.Ashokan for Shri D.V.Gangal the learned advocate for the applicant and Shri J.D.Desai for Shri M.I.Sethna the learned advocate for the respondents. Shri Ashokan relied on a Full Bench decision of this Tribunal in Premnath K.Sharma vs. Union of India and Others (Tr.Application No.2/86) decided on 6-11-1987. After considering all the relevant provisions of law and the cases decided by the Supreme Court and the High Court, the Full Bench ^{has} held that the findings and the order of the Disciplinary Authority will be bad in law if the delinquent was not given a copy of the report of the Inquiry Officer and was not given an opportunity of hearing before arriving at the finding. The Full Bench has clarified that hearing does not mean 'oral hearing' and an opportunity to make a representation to the Disciplinary Authority against the report in writing would constitute hearing and amount

to affording a reasonable opportunity to the delinquent. We are bound by this judgment.

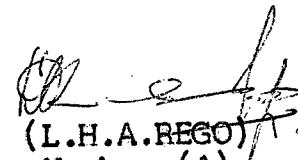
6. In view of this judgment we are required to quash and set aside the orders passed by the Disciplinary Authority and the Appellate Authority, and reinstate the applicants. The respondents however, are at liberty to start the enquiry ~~de novo~~ from the stage of vitiation and complete the same.

7. In the result, we pass the following order:

- (i) The orders of penalty passed by the Disciplinary Authority in both the cases on 31-3-1986 and the orders passed by the Appellate Authority in both the cases on 24-11-1986 are hereby quashed and set aside;
- (ii) The respondents shall reinstate both the applicants forthwith, with all backwages and consequential benefits, to the post which they were holding when they were dismissed from service;
- (iii) The respondents are, however, at liberty to ~~start~~ ^{or} initiate the departmental enquiry ~~de novo~~ from the stage of vitiation and complete the same in accordance with the procedure outlined as above by the Full Bench. If they intend to do so, the Disciplinary Authority shall furnish copies of the Inquiry Officer's Report to the applicants and give them an opportunity to make a written representation ~~or~~ if they so desire a personal hearing and thereafter pass appropriate order.

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(iv) With the above directions the applications
are disposed of with no orders however
as to costs.


(L.H.A. REGO) 42-2-33
Member (A)


(M.B. MUJUMDAR)
Member (J)