

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
NEW BOMBAY BENCH, NEW BOMBAY

Original Application No.413 of 1986

Shri P.V. Subba Rao,  
Flat No. 22A/7th floor,  
Sagar Sanjog, J.P.Road,  
Versova, Andheri(West),  
Bombay-400 061

.. Applicant

V/s.

1. Union of India through  
Collector of Customs,  
Ballard Estate,  
Bombay.
2. Collector of Customs,  
New Customs House,  
Ballard Estate,  
Bombay-400 038.
3. Deputy Collector of Customs,  
New Customs House,  
Ballard Estate,  
Bombay-400 038.
4. Central Board of  
Excise & Customs,  
New Delhi.

.. Respondents

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil  
Hon'ble Member(A), Shri J.G.Rajadhyaksha

Appearance:

1. Mr.S.Natrajan  
Advocate  
for the applicant
2. Mr.J.D.Desai,  
Advocate (for Mr.M.I.  
Sethna) for the  
respondents.

ORAL JUDGMENT:-

Date: 24.3.1988

(PER: Shri B.C.Gadgil, Vice-Chairman)

The applicant who is aggrieved by certain  
orders passed against him in the department proceedings

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has filed this application challenging those orders.

2. The applicant is employed in the Customs Department and is holding the post of Preventive Officer Grade-I (SG). A departmental enquiry was initiated against him on a charge that he was holding assets disproportionate to his known sources of income. An Enquiry Officer was appointed. He held an enquiry and on 31.1.1985, that Enquiry Officer submitted a report (Exhibit-C Page 59) exonerating the applicant. The said report was considered by the Disciplinary Authority and an order dtd. 27.5.1985 (Exhibit-D page 97 to 105) was passed. It is not necessary to go into details of that order. Suffice it to say that the Disciplinary Authority concurred with the report of the Enquiry Officer that the applicant was not holding any disproportionate assets as alleged. However, the disciplinary authority observed that though the charge of applicant holding disproportionate assets was not proved against the applicant, the applicant's conduct was not above board altogether. He found that the applicant's wife operated a ~~joint~~ <sup>joint</sup> account with one Shri Krishnamurthy and that this had created ~~a~~ serious doubts regarding the nature of the financial transactions undertaken by his wife with Shri Krishnamurthy. It was further held that the applicant had failed to take reasonable precautions in respect of that transaction thereby bringing himself and the department to disrepute and that, therefore, he should

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be punished for his said unbecoming act. With this finding the penalty of stoppage of two increments with retrospective effect was inflicted.

3. The applicant preferred an appeal to the Collector of Customs against the said penalty of stoppage of two increments. The Appellate Authority passed an order dtd. 22/25.11.1985 (Exhibit-F). It is this order that has been challenged before us. The appellate authority set aside the order of the disciplinary authority and remanded the enquiry for de novo trial.

4. The order of the appellate authority shows that the said authority discussed only the question about the applicant holding disproportionate assets. The various items which formed the alleged disproportionate assets were considered by the appellate authority and it appears that the appellate authority disagreed with the findings of the Inquiry Officer as well as disciplinary authority about the exoneration of applicant of the charge. After this discussion, the appellate authority as stated above set aside the disciplinary authority's order and remanded the case for de novo trial.

5. The main grievance of the applicant is two fold. It was contended that the appellate authority should have decided the validity or otherwise of the penalty of withholding two increments which was imposed on the basis of a circumstance that the applicant's wife and one Shri Krishnamurthy were

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holding a joint Bank account. Mr. Natarajan contended that the appellate authority has not at all discussed this aspect and there appears to be much substance in this contention. We would, therefore, like to consider as to whether the penalty that was imposed against the applicant is legally tenable. Mr. Desai urged that <sup>the</sup> an appeal should be remanded to the appellate authority as that charge has not been discussed though there was no decision in the appeal regarding penalty of withholding of two increments. Ordinarily, we would have followed this course. However, in the peculiar facts of this case we do not think that it is necessary that the appeal should be remanded to the appellate authority.

6. It cannot be doubted that the charges framed against the delinquent do not include the alleged misconduct of the applicant arising from the joint Bank account of the applicant's wife and Shri Krishnamurthy. Thus, the applicant is right in averring that the penalty was imposed on the applicant regarding this alleged misconduct though no charge in that respect was framed. The service rules contemplate framing of charge memo, articles of charges and statement of imputations. These are to be served on the delinquent and after considering his defence, enquiry is to be held. In the absence of a charge with respect to the above mentioned alleged misconduct, it will not be possible for the disciplinary authority to punish the applicant and to pass an order withholding the two increments. It is on account of this legal lacuna

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that we do not intend to remand the appeal to the appellate authority. It would be in proper course of nature if we quash the said penalty.

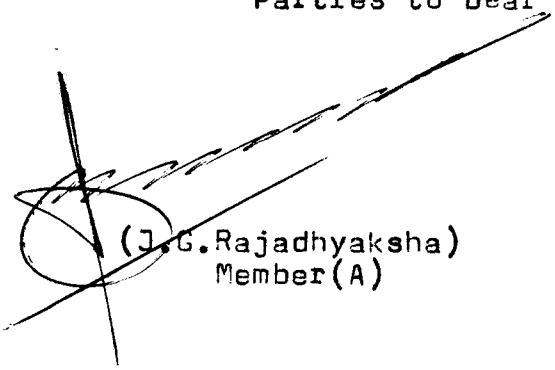
7. Another contention of Mr. Natarajan is that in an appeal not arising from any finding that the applicant was holding disproportionate assets the appellate authority should not have discussed the question as to whether he disagrees with the disciplinary authority when that authority has exonerated the applicant. Mr. Natarajan further submitted that in this back-ground, it was not open to the appellate authority to remit the case pertaining to the charge of disproportionate assets for de novo trial. He also made a grievance that the applicant was not heard about the question as to whether the applicant was holding disproportionate assets and that the discussion by the appellate authority on that point without such hearing would be erroneous. There is much substance in this contention. and remand of the departmental enquiry for de novo trial on the basis of certain observations made by the appellate authority would not normally be permissible. Of course, we do not intend to convey that the appellate authority has no jurisdiction to exercise revisional powers against the order that is passed by the disciplinary authority. But such powers are to be exercised in a legal manner and that too after giving an opportunity to the applicant to show cause as to why this power


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should not be exercised. The revisional authority, in a given case may pass appropriate orders as contemplated by rule 29 and those powers would include remanding the case for further enquiry. Of course, whether there is any ground for exercising the revisional powers and to pass any consequential orders has to be decided by the appropriate authority. After hearing the applicant we find that all this has not been done, and it is on this ground that the setting aside of the disciplinary authority's order and remanding the enquiry for de novo trial should not be allowed to stand. We must hasten to add that this judgment would not prevent any Competent Authority to exercise revisional powers in accordance with law.

8. For the above reasons, the application succeeds. The impugned order setting aside the disciplinary authority's order and remanding the enquiry for de novo trial is set aside and quashed. Similarly, the penalty of withholding two increments awarded by the disciplinary authority on 27.5.1985 under orders at Exhibit-D are quashed and set aside. However, this order would not prevent the authorities from holding appropriate proceedings as discussed in this judgment.

Parties to bear their own costs.

  
(J.G. Rajadhyaksha)  
Member(A)

  
(B.C. Gadgil)  
Vice-Chairman.