

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

Tr.Application No.171/86
Original Application No.324/86, &
Original Application No.347/86.

Shri Baba Abaji Kamble,
Central Govt.Revenue Colony,
"A" Sector, R.No.35,
Bhandup(E),
Bombay - 400 078.

... Applicant in
all the cases.

vs.

1. Union of India
2. Collector of
Central Excise,
Bombay.

Coram:Hon'ble Member(A)L.H.A.Rego

Hon'ble Member(J)M.B.Mujumdar

Appearances:

1. Mr.Sanklecha
Advocate for
the applicant
2. Mr.J.D.Desai(for
Mr.M.I.Sethna)
Advocate for the
Respondents.

ORAL JUDGMENT

Date: 12-2-1988

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

By this judgment we are disposing of
Tr.Application No.171/86, O.A.No.324/86 and O.A.
No.347/86.

2. The essential facts for the purpose
of this judgment are as follows: In 1956 the
applicant was appointed as Upper Division Clerk
in the Central Excise Department at Bombay. In
1976 he was promoted as Superintendent of Central
Excise. At the relevant time he was working as

Superintendent of Central Excise under the Collector of Central Excise Bombay-1.

3. From 4-2-1978 to 7-4-1978 the Gold Mohur Textile Mill was under his jurisdiction for supervision. On 18-10-1979 a chargesheet containing two charges was served upon him. The first charge was that during the period from 1-2-1978 to 7-4-1978 he committed gross negligence and dereliction of duty inasmuch as he did not point out the failure on the part of the Inspector in charge of Gold Mohur Mills in carrying ~~about~~ the checks prescribed under the Production Based Control System, as a result of which, the Mills could manage to clear the man-made yarn without payment of duty at the spindle stage. The second charge was that he did not carry out duties entrusted to him as Superintendent under various orders relating to the Production Based Control System faithfully when he was in charge of I.C. Range XIII of Dn.F. The chargesheet and the necessary accompaniments were served upon the applicant along with a memorandum in regard to the action proposed to be taken against him under Rule 16 of Central Civil Service Rules, 1965. He was asked to make such representation as he may wish to make within 10 days of receipt of the memorandum. Accordingly he submitted a detailed representation dtd. 2-2-1980. After considering the representation and the facts and circumstances of the case the Collector of Central Excise, Bombay-1, who was the Disciplinary Authority, by his order dtd. 9-10-1980 rejected the

explanation given by the applicant and held that the charges were proved. He therefore imposed the penalty of withholding of two increments of pay, without cumulative effect. The applicant preferred an appeal dtd. 15-11-1980 against that order to the President of India, who after taking the opinion of the Union Public Service Commission rejected the appeal on 4-10-1985.

4. From April, 1978 to October, 1979 the applicant was in charge of Indian Tobacco Co.Ltd. On 1-10-1980 a memorandum along with two charges and necessary documents were served upon him. The first charge was that while functioning as Superintendent of Central Excise I.C.Range of Bombay Dn.F he had committed negligence and disobedience of the orders of the superior officers inasmuch as he failed to issue show cause-cum-demand notice to M/s. India Tobacco Co.Ltd, Parel, in respect of differential duty on Cigarettes manufactured from duty paid unmanufactured tobacco during the period from 1.3.1979 to 29.3.1979 as a result of instructions issued by the Finance Ministry in its letter dtd. 31-3-1979. The second charge was that he had disobeyed the orders of the Asstt. Collector, Bombay Dn.F, contained in para 3 of his letter dtd. 3.8.1978 in relation to the audit objection raised by the Supdt. Central Excise Revenue Audit order dtd. 24-8-1979 as he did not issue show cause-cum-demand notice to M/s. India Tobacco Co.Ltd., Bombay, even though he was asked to do so by the Asstt. Collector under his letter dtd. 29-9-1979.

He was also alleged to have submitted a draft show cause-cum-demand notice only for Rs.74,660.16 although he was directed by the Asstt. Collector Dn.F under his letter dtd. 27-9-1979 specifically, to raise a demand on the basis of audit objection which amounted to Rs.21,69,704.07. By the said memorandum the applicant was informed that it was proposed to take action against him under Rule 16 of CCS(CCA) Rules,1965 and was asked to submit his representation within 10 days of receipt of the memorandum. After asking for inspection of some documents he submitted his detailed representation on 3-2-1982. After considering the representation and facts and circumstances, the Collector of Central Excise Bombay, I who was the Disciplinary Authority by his order dtd. 11-2-1985 rejected the explanation given by the applicant and held that the charges were established. He therefore imposed the penalty of withholding of one increment of pay for one year without cumulative effect. The applicant preferred an appeal dtd. 25-3-1985 against that order to the President of India, who rejected it on 17-4-1986 after obtaining the opinion of the Union Public Service Commission.

5. As Superintendent of Central Excise the applicant was in the grade of Rs.650-30-740-35-810-EB-35-880-40-1000-EB-40-1200. The applicant had already reached the stage of Rs.810/- on 1.9.1979 and he was eligible to cross Efficiency Bar on 1-9-1980. However, a show cause notice was issued to him on 18-10-1979 in respect of two charges.

His case was put up for consideration in the Departmental Promotion Committee meetings held on 6-1-1981, 16-5-1981, 7-12-1981, 3-7-1982, 22-12-1982, 16-3-1983, 24-1-1984, 4-6-1984 and 27-10-1984. However, as the departmental proceedings were going on, the DPC did not consider his case in all these meetings. But the DPC in its meeting held on 25-3-1985 allowed him to cross the EB with effect from 12-2-1986 as the period of second penalty ~~was~~ awarded on 11-2-1985 was over by that time. The date of next increment was 1-9-1986. On that date the applicant's pay in the said scale was fixed at Rs.845/-.

However, since 1-1-1986 new pay scale had come into force in view of the IVth Pay Commission Report his pay was fixed at Rs.2,450/- on 1-9-1986 in the new scale.

6. On 23rd September, 1986 the applicant filed Writ Petition No.1931/85 in the High Court of Judicature at Bombay. It may be noted that at that time the appeals preferred by him against both the orders of penalty were pending before the President. Hence in that writ petition the applicant had made only two prayers. The first was for directing the respondents to release his increment with effect from 2nd February, 1983 by cancellation or modification of the order dtd. 26-4-1985 by which he was allowed to cross Efficiency Bar from 12-2-1986. The second prayer was for directing the Appellate Authority to dispose of the appeals preferred by him expeditiously.

7. The applicant filed O.A.No.324/86 on 3-10-1986 challenging the order of penalty passed by the Collector of Central Excise on 9-10-1980 which was confirmed by the President ^{Eleven} on 4-10-1985. ~~Twelve~~ days thereafter, on 15-10-1986 the applicant filed O.A.347/86 challenging the second order of penalty passed on 11th February, 1985 which was confirmed by the President on 17-4-1986.

8. The respondents have filed separate written statement in each case. We will refer to the relevant contendtions at proper stage.

9. We have heard Mr.Sanklecha, the learned advocate for the applicant in all the cases and Mr.J.D.Desai(for Mr.M.I.Sethna) advocate for the respondents in all the cases.

10. We will first deal with O.A.324/86 and O.A.347/86, because the decisions in these cases will be relevant in the previous case viz. Tr.Application No.171/86. It may be pointed out that in both the cases show cause notices along with the charges were issued to the applicant under Rule 16 of the CCS(CCA)1965. That rule relates to the enquiry regarding minor penalties. The applicant had submitted detailed representations to both the show cause notices. Charges were based mainly on documentary evidence and some statements. The explanation given by the applicant was considered in each case by the Disciplinary Authority,viz., the Collector of Central Excise Bombay I. The first penalty

order dtd.9-10-1980 was passed by Shri K.Dulip Singh who was the Collector of Central Excise Bombay I at that time. Perusal of his order shows that he has dealt with all the facts on record as well as the explanation given by the applicant in his representation. The explanation given by the applicant was two fold. Firstly, he was not aware of the Ministry's instruction regarding Production Based Control System which was newly introduced and secondly he was heavily loaded with budgetary work due to inadequate staff. The explanation was rejected by the Disciplinary Authority by pointing out that if the applicant had carried out the instructions properly such a large quantity of manmade yarn liable to be dutied over Rs.10 lakhs would not have escaped. It may be pointed out here that M/s.Gold Mohur Mills had to pay necessary duties on that yarn because it was detected in time by the officers of the Preventive Branch of the Central Excise department. Against the order passed by the Disciplinary Authority the applicant had preferred an appeal to the President. The President had sought the opinion of the Union Public Service Commission. The report of the Union Public Service Commission shows that it had also considered all the relevant facts in the light of the defence raised by the applicant. It was also not impressed by the defence taken by the applicant. According to the Commission it was established that the applicant had exhibited lack of supervision over the work of his Inspectors in ensuring that the prescribed checks were carried out.

The slackness on his part would have resulted in loss to the Government revenue of over Rs.10 lakhs but for the detection by the Divisional Prevention and Intelligence Superintendent. On facts the Commission held that the charge of lack of devotion to duty was proved against the applicant, but the charge of conduct unbecoming of a Government servant was not substantiated against him. The finding of the Commission shows that it has taken a balanced and impartial view of the matter. Accepting the recommendations, the President confirmed the order of penalty passed by the Disciplinary Authority.

11. The record of the second case also shows that the Disciplinary Authority as well as U.P.S.C. has considered all the facts and circumstances on record while holding that the charges against the applicant were established. The charges depended on documentary evidence and the statement of the Assistant Collector. It is pointed out by the Disciplinary Authority in his order dtd. 11-2-1985 that inspite of directions from the Assistant Collector of Central Excise the applicant had failed to issue show cause-cum-demand notice to the India Tobacco Co.Ltd., in respect of differentialduties on cigarettes manufactured from duty paid unmanufactured tobacco during the relevant period. He has also pointed out that the applicant had ignored relevant instructions issued by the Ministry of Finance in its letter dtd. 31-3-1979 and Circular No.16/79. The report of the U.P.S.C. is more exhaustive.

12. After going through the orders of the Disciplinary Authorities and the reports of the U.P.S.C. in both the cases we find that there is no reason to defer with the view taken therein. It may be pointed out that the applicant has not challenged any of the orders or reports on the ground that some principle of natural justice was breached by the concerned authorities. As the show cause notices were issued under Rule 16 of CCS(CCA)Rules there was no question of appointing any Inquiry Officer or recording/evidence. The applicant has challenged the orders of the Disciplinary Authority on the ground that no personal hearing was given. But in our opinion it was not necessary for the Disciplinary Authority to give a personal hearing when it was not asked for as pointed out by the Disciplinary Authorities in their orders. Moreover, giving an opportunity of making a written representation regarding the charges was tantamount to giving reasonable opportunity of hearing. In this connection we may point out that according to the Judgment of the Supreme Court in Ram Chander v/s. Union of India(ATC 1986(47) it was necessary for the Appellate Authority to give a personal hearing to the applicant but Mr.Sanklecha, Learned Advocate for the applicant, fairly and rightly conceded that he will not ~~be~~ press this point in view of the detailed report of the U.P.S.C. We, therefore, find no merit in O.A. 324/1986 and O.A.347/1986.

13. However, we feel that the applicant deserves substantial relief in Tr.Application No.171/86(Exhibit 'J'). As already pointed out the applicant was due for crossing the E.B. on 1-9-1980. In view of the departmental proceedings pending against him his case was not considered for crossing E.B. by the Departmental Promotion Committee(DPC)in their meetings held between 6-1-1981 and 27-10-1984. However, DPC in its meeting held on 3-5-1985 found him fit to cross E.B. with effect from 12-2-1986. It is on the basis of this recommendation that the Collector of Central Excise,Bombay-I issued the order on 26-4-1985 allowing the applicant to cross E.B. from 12-2-1986. It is in view of that order that his pay was fixed at Rs.845/- in the old scale on 1-9-1986, which is equivalent to Rs.2,450/- in the revised scale. In our opinion, the authorities have committed a gross error in fixing his pay at Rs.845/- on 1-9-1986 without allowing him to get the earlier increments.

14. In notes 22 and 23 at Pages 44 and 45 of Swamy's Compilation of CCS(CCA)Rules,1965 the relevant provisions as to how pay in such cases should be fixed are given. ^{The} It reads as follows:

"(22)When penalty of withholding of increment imposed while official held up at efficiency bar stage.-

Recently a case has come to the notice in which a Government servant became due to cross efficiency bar in October,1970, but was not found fit to cross the bar. In the meantime, he was placed under suspension

and he could not, therefore, be allowed to cross the efficiency bar while under suspension in October, 1971 and October, 1972. The disciplinary proceedings against him ended with the imposition of penalty of withholding of increments for five years as per the punishment order issued in December, 1972. A question has been raised as to how the penalty can be enforced and the pay of the Government servant regulated.

It has been decided in consultation with the Department of Personnel and the Ministry of Finance that in the type of case referred to, the case of the Government servant for crossing the efficiency bar should be reviewed on a date immediately following the date of order of penalty and if he is found fit to cross the efficiency bar, the stage at which he would draw pay above the efficiency bar should also be decided. Once it is done, five increments commencing from the date of next increment after being allowed to cross the efficiency bar can be withheld and the penalty thus enforced. In case he is not found fit to cross the efficiency bar from a date immediately after the conclusion of the disciplinary proceedings, his case should be reviewed with reference to every subsequent anniversary of the original due date until he is found fit to cross the efficiency bar. Thereafter, the stage at which he should draw the pay above the efficiency bar should also be decided and the penalty order enforced as explained above.

For a proper appreciation of this ruling the details of the following concrete case will be helpful:-

An official was not allowed to cross the E.B. with effect from 1-2-1973 on account of the pendency of disciplinary proceedings.

As a result of the disciplinary proceedings, punishment order was issued on the 19th April, 1977 imposing the penalty of withholding of increment for a period of one year without cumulative effect. As a result of review of his case for crossing the E.B. he was allowed to do so with effect from 1-2-1978, releasing the earlier increments. In this case, the proper course would be to fix the pay on 1-2-1978 giving the benefit of five earlier increments which were due on 1-2-1973, 1-2-1974, 1-2-1975, 1-2-1976, 1-2-1977 and the sixth increment which was due on 1-2-1978 should be withheld for one year. Thereafter, the withheld increment should be released with effect from 1-2-1979 in addition to the increment which was due on that date.

(23) Implementation when a series of penalties of stoppage of increments are imposed. -

Cases where a series of penalties of stoppage of increments are imposed on a Government servant, were being referred to from time to time for clarification as to how these orders will be implemented in actual practice. Such cases were under consideration of the Directorate for some time past and it has now been decided that where the disciplinary authority imposes penalties of stoppage of increment one after the other in separate cases on the Government servant, the effect of the first punishment order of stoppage of increment will continue for the period specified in the punishment order. Thereafter the pay of the Government servant will be raised by giving him increments which, but for the imposition of the penalty, would have been admissible to him and only then the second order of stoppage of increment will be made effective which will continue for the period specified in the second punishment order for stoppage of increment and so on."

15. For deciding the question of pay of the applicant in this case the case given in Note 22 above is helpful. It may be recalled that the applicant was due to cross E.B. on 1-9-1980. However, in view of the departmental proceedings and the penalties awarded to him he was allowed to cross the E.B. with effect from 12-2-1986. However, while fixing his pay with effect from the next date of increment, namely, 1-9-1986 he was not given the earlier increments which were due to him from 1-9-1980. This was absolutely necessary because in both the orders of penalty increments were withheld without cumulative effect.

16. For implementing the principles laid down in Note 22 and 23 quoted above we feel that the respondents should be directed to fix the pay of the applicant on 1-9-1986 by releasing all the earlier increments due to him from 1-9-1980. On that basis, the order of penalty passed on 9-10-1980 should be implemented by withholding two next increments that fell due on 1-9-1981 and 1-9-1982. Similarly, the second order of penalty dtd. 11-2-1985 should be implemented by withholding one increment which fell due on 1-9-1985.

17. In result, we pass the following order in respect of Tr. Appln. No. 171/86, O.A. No. 324/86 and O.A. No. 347/86 -

- (i) The respondents shall fix the pay of the applicant as on 1-9-1986, by giving him all the earlier increments which were due to him on 1-9-1980, 1-9-1981, 1-9-1982, 1-9-1983, ~~1-9~~⁴-1984 and 1-9-1985;
- (ii) As the applicant has to cross the second EB at Rs. 1,000/- the increment due to him on 1-9-1985, should be released, provided he is declared fit by the specially constituted Departmental Promotion Committee to cross the second EB;
- (iii) The respondents shall withhold the amount of increments due to the applicant on 1.9.1981 and 1.9.1982. Similarly they shall withhold the amount of increment due to him on 1.9.1985 subject to clause (ii) supra;
- (iv) The respondents shall calculate all the arrears due to the applicant on the above basis and pay the same to the applicant within three months from the receipt of a copy of the order;
- (v) Parties to bear their own costs.

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