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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CIRCUIT SITTING AT NAGPUR  
BOMBAY BENCH, "GULESTAN" BUILDG. NO. 6  
PREScot ROAD, BOMBAY - 1

OR NOS. 438/86; 479/90 & TR.A. No. 3/87.

Shriniwas Venkatesh Dixit  
18 Bhaskar Apartments  
Laxminagar; Nagpur 22

Applicant in  
O.A.No.438/86

Prabhakar Gopalrao Ghonge  
203 Hind Finance Flats  
West High Court Road  
Rani Laxmi Nagar  
Nagpur 2

Applicant in OA  
No. 479/90

Vasant Shridhar Johsi  
Plot No.6; Modern Housing Society  
Pratap Nagar, Nagpur

Applicant in  
TR.A. No.3/87

V/s.

1. Union of India through  
the Secretary  
Central Board of Excise and Customs  
New Delhi
2. The Collector,  
Central Excise, Manik Bag Palace,  
Indore (M.P.)
3. The Collector  
Central Excise  
Nagpur, Saraf Chambers  
Sadar Nagpur
4. Shri M S Bindra  
Collector  
Central Excise  
C/o. Directorate of  
Revenue and Intelligence  
New Delhi
5. The Commissioner of  
Departmental Enquiries  
(Enquiry Officer)  
C/o. Central Vigilance  
Commission,  
New Delhi

Respondents in  
the above 3 cases

Coram: Hon. Shri Justice M.S. Deshpande, V.C.  
Hon. Shri M Y Priolkar, Member (A)

... 2/-

23

APPEARANCE:

Mr. P C Madkholkar  
Counsel  
for applicant in OA 438/86

Mr. Gauttam Dutta  
Counsel  
for applicant in OA 473/90

Mr. P C Marpakwar  
Counsel  
for applicant in TR.A. 3/87

Mr. M.G. Bhangade  
Counsel  
for the respondents in  
all the above three applications.

JUDGMENT:

DATED: 15-04-1993  
(Per: M.S. Deshpande, Vice Chairman)

These three applications, OA No. 438/86, O.A. No. 479/90 respectively by S.V. Dixit and P.G. Ghonge, who were working as Upper Division Clerks (UDCs) at the time of the incident; and TR.A. No.3/87 by V.S. Joshi, the then Inspector of Central Excise, are directed against the penalty of removal from service imposed upon them as a consequence to the inquiry initiated and finding of guilt recorded against them at the departmental inquiry.

2. Together with the three applicants three more persons - K.P.V. Menon, V.M. Kolte and M.R. Joshi - were also charged in respect of the incident dated 9.2.1975. The brief facts are these: The search party headed by Shri S.G. Rangari, Superintendent of Central Excise, took two 'Panchas' and went to the house of one Sukhdeo Ramratan Malani at village Kurum, Dist. Akola and searched the premises, on the strength of the search warrant issued by Shri Rangari. The warrant for search was issued in the name of Shri V.N. Kolte, Inspector, Central

(24)

Excise, while Shri Ghonge and Dixit accompanied the search party for rendering assistance in the search though they belong to clerical cadre. Sukhdeo Malani was not at home when the search party reached. M.R. Joshi and Narayandas Rambilas Malani went to fetch Sukhdeo from village Runmochan by Taxi which had been hired by the officers. A search was carried out and several gold ornaments and Indian currency kept in the house ~~was~~ collected. The property so collected included two 'Akbari Mohars'. Ghonge demanded Rs. 40,000 from Bhagwandas Sukhdeo Malani, who told that he would discuss the matter with his father Sukhdeo Malani. Pursuant to the suggestion that they would have their meals at Nagzai, a village about five miles from Kurum, Rangari, M.R. Joshi, Ghonge and Kolte left the premises without offering their personal search. After they had their meals Ghonge told Narayandas that a lot of gold has been found and the matter was serious but it could be hushed up if an amount of Rs. 40,000 is paid. He pointed out if the money is not paid they would handcuff Sukhdeo. Narayandas stated that Sukhdeo was not having such amount and the officers suggested that they would accept the amount available in Indian currency and in lieu of the remaining amount they would take the gold ornaments of their choice. Narayandas told them that he would speak about it to Sukhdeo. Narayandas paid for the meals and the party returned to Kurum. Sukhdeo refused to pay the amount of Rs. 40,000. One of the officers "Madhu" told Bhagwandas while they were on the first floor that if Rs. 40,000 is paid the matter could be hushed up. Sukhdeo again declined to pay the amount. Madhu used to come up

and go down from the ground floor where the gold ornaments were kept in paper packets in the steel trunk and Bhagwandas saw him pocketing some paper packets taken out from the steel trunk in which the gold ornaments have been kept. A gold-smith, Madhu Shamsa Chinchmalatpure, was called by the officers and the ornaments were weighed. The total gold was 847 gms and included four gold Kordodas, ~~and~~ one chain weighing 730 gms, locket with one padak and four bangles weighing 60 gms, one lady necklace weighing 35 gms and Indian currency of Rs.3,000. Neither in the panchnama nor in the inventory drawn there is any mention about the two gold Akbari Mohars weighing about 22 gms.

3. Three charges were framed on the basis of this incident against the three applicants as well as the others that they individually failed to (i) select respectable persons from the locality as 'panchas' for ~~it~~ the house search as the two panchas from Amravati did not have social standing; (ii) threatened the owner of the premises with arrest and demanded illegal gratification of Rs. 40,000 to hush up the case and surreptitiously removed two gold 'Akbari Mohars' and some gold ornaments; (iii) left the premises without offering their personal search to the owner/panch witnesses before finalisation of the operation. The charge further reads that each of them thus failed to maintain absolute integrity and devotion to duty and behaved in a manner unbecoming of a Government servant and thus alleged to have contravened Rule 3(1)(i), (ii) and (iii) of C.C.S.(C.C.A.) Rules, 1964.

4. The applicants pleaded not guilty to the charge. The Inquiry Officer, Ramesh Chandra, then Commissioner of Departmental Inquiries, held the delinquent officers to be guilty of all the three charges. The finding was affirmed and the penalty of removal from service was imposed by the disciplinary authority. The appeal taken to the Appellate Authority was dismissed and so was the statutory representation to the President.

5. The grievance of S.V. Dixit, the applicant in OA 438/86 is that there is no evidence to connect him with any of the irregularities for which he was found to be responsible. The witness examined in the case were Bhagwandas, who was son of Sukhdeo Malani, whose house was searched; Narayandas, P.W.2, who happened to be present at the time of the incident; and Sukhdeo Malani who is alleged to have come to the place from Runmochan after the search party left for meals; Madhu Shamsa Chinchmalatpure, who was called to weigh the gold ornaments; S.R. Khankhoje, Deputy Superintendent of Police, C.B.I., Bombay, who investigated into the matter.

6. It is not open to this Tribunal to reappreciate the evidence for reaching conclusions on facts. But the only role which was ascribed to Shri Dixit was on the basis that he was the person named "Madhu" to whom the witnesses had referred. The Inquiry Officer has observed as follows:

"The testimony of these witnesses indicates that while Bhagwandas and Sukhdeo Malani were having conversation on the first floor an officer called "Madhu" made two trips between the first floor and the ground floor. P.W.1 Bhagwandas saw him taking out a packet containing gold ornaments from the steel box kept in the 'baithak' and going to the first floor along with it. He also saw him later putting it in his pant pocket. While it is alleged in the statement of imputations that Shri S.V. Dixit was called Madhu, P.W.5 Shri Sukhdeo Malani could not identify him. P.W.1 Bhagwandas Malani identified Shri M.R. Joshi as Madhu, while P.W.2 Narayandas Malani identified Shri K.P.V. Memon as Madhu. The witnesses also stated that because of the lapse of time they were not able to properly identify the person who was called "Madhu". Thus the identify of the officer called "Madhu" could not be established and it could not be brought out as to who actually packed the packet containing gold ornaments. It may be mentioned that according to P.W.1 and 2 this officer called Madhu who packed the packet left the house along with Shri V.S. Joshi, charged officer, in autorikshaw before the preparation of panchnama. While so leaving these officers did not give their personal searches to the house owner. The surreptitious removal of the articles must have obviously taken place through them. The charged officers have contended that gold ornaments weighing 847 gms said to have been surreptitiously removed could not have been kept in pant pocket. It is not for me to find out as to how the surreptitious removal was actually managed. P.W.3 Shri Madhukar Shansha Chinchmalatpure, who was called for weightment of the ornaments, has stated that in the ornaments weighed by him there were two Akbari Mohars. This witness could not remember if these Mohars were of gold or brass. ...."

7. The presence of Mr. Dixit at the time of raid was not in dispute but he was then working as a UDC and had been to assist the raiding party which was ~~led~~ allowed by Deputy Superintendent Mr. Rangari. No other role except removing the ornaments and the Akbari Mohars was attributed to him and during the inquiry he was referred by P.W.1 as "Madhu". The Inquiry Officer's finding shows that there is no evidence to prove that Dixit was the person who was referred to as "Madhu". If this was the position, it is clearly a case where there is no evidence to hold Dixit guilty of the role attributed to him. There

is no material also to show that he was the person responsible for selection of the panchas and that he had taken the two panchas from Amravati to Kurum. There is no independent evidence to show that the two persons who figured as panchas had been purposely taken from Amravati to Kurum. The only ground given by the inquiry officer for holding that the two persons were unsuitable to act as panchas and were not respectable was that one of the panchas suggested to Narayandas that the matter could be hushed up by paying some money to the raiding party. Evidence was led to show how this offer was made. The inquiry officer was disposed to take the view that the introduction of removal of ornaments surreptitiously and the demand for a bribe could not have been an after-thought, overlooking the glaring fact that in the FIR lodged on 15.2.1975 i.e., six days after the raid, there is not even a whisper of the demand for bribe. The FIR is silent about the payment of Rs.40,000 and there is no reference to the missing of gold Akbari Mohars. A complaint was made to the Superintendent of Police on 11.5.1975 at Akola and it was only then that the reference was made to the Gold Akbari Mohars and ornaments weighing 847 gms worth Rs.40,000. But again the complaint was silent about the demand for bribe of Rs.40,000. The only reference to the demand of bribe in the complaint is that the anxiety of the party appeared not to perform any duty regularly but they wanted to be bribed and in fact they wanted a share in the valuables collected. If there was demand of bribe so specifically as stated, at least in the complaint which was made, obviously on legal advice, on 11.5.1975 some details

29

-7-

should have appeared. The panchas admittedly made no reference to the missing Akbari Mohars and ornaments and it was on account of this omission that the story given by the witnesses that the ornaments missing were surreptitiously removed came to be accepted. We are <sup>refining</sup> recording these facts only because reliance has placed been on the witnesses for saying the panchas were not reliable persons apart from the fact that they were not responsible persons of the locality and they should not have been selected. Narayandas on whose evidence the inquiry officer relied referred to Ghonge telling that if Sukhdeo Malani pays Rs.40,000 the matter could be dropped or else all the persons would be handcuffed and asked him to speak about it with Sukhdeo Malani. He also refers to a talk between one of the panchas and the officers from the raiding party and admitted in his cross examination that the talk about the payment of the money was started by the officer and not by him and that on their return from Nagzari the officers first had a talk with Panch witnesses when the panch was talking with Sukhdeo he could listen to the talk but he could not listen <sup>to</sup> anything when the panch was talking with the officers. He did not hear anything between the officer and Sukhdeo Malani about the demand of money. Narayandas had the cheek to say that when V.S.Joshi was leaving the residence of Sukhdeo Malani, he <sup>(Narayandas)</sup> asked the remaining officers, <sup>for</sup> his share. He made these enquiries with V N Kolte and Kolte asked him to contact Joshi and gave the address of V S Joshi. Narayandas's interest in Sukhdeo Malani is apparent from the fact that they were both connected with Gorakshan Sanstha at Kurum and he had kept the ornaments with Sukhdeo as security.

8. It is not the function of this Tribunal while exercising jurisdiction under Article 226 of the Constitution to reappraise the evidence and reach conclusions of fact. All that is necessary to ascertain is whether there was any evidence to justify the findings recorded by the inquiry officer. From Narayandas's evidence it is clear that he did not hear the talk between the panchas and the officers. The panchas who had initiated the discussion in this respect were not examined as witnesses and Narayandas's version regarding Ghonge's opening the talk while they were away from Kurum is negatived by the admission in the cross examination that the officers had first talked to the panchas. The evidence of Narayandas was not such that it could have been at all accepted for holding that the members of the raiding party, in particular Ghonge, had asked for money or a share in the ornaments for hushing up the matter. It was Narayandas who wanted a share in the ornaments which were not entered in the panchanama and obviously no share was given to him. He had no knowledge about the ornaments which had been collected and which were short or missing.

9. The inquiry officer has clearly not examined the ~~accident~~ case before taking the view that surreptitious removal of two Akbari Mohars was established beyond doubt. There is absolutely no evidence to connect Dixit with the misconduct and there was no material on the basis of which the finding that Dixit was responsible for selection of panchas and had not offered his personal search could have been reached.

10. Though the ~~memo~~ <sup>copy</sup> before the appellate authority raised several issues, the Member (Personnel) who decided the appeal in October 1983 did not apply his mind to the points raised and he passed an identical order in respect of the different appeals preferred by the three applicants by only saying that the points raised by the appellants were mostly technical in nature and would fall within the purview of the criminal proceedings and the test in departmental proceedings for considering a charge as having been established is that of preponderance of probability and not proof beyond reasonable doubt. He stated that after going through critically all the related records there was sufficient evidence to justify the findings of the Inquiry Officer and the Disciplinary Authority which are well reasoned and judicious, and that they had not been contradicted by any statement, deposition or evidence produced by the appellant. The cryptic order made by the appellate authority shows non-application of mind and refusal to come <sup>to</sup> grips with the points raised and was a denial of opportunity to the applicants to have the matter properly examined at the appellate stage.

11. We are not impressed with the submission of the learned counsel for the respondents that all the relevant material has been considered properly and a finding of fact reached which would not be subject to a scrutiny by this Tribunal and that the extraordinary jurisdiction under Article 226 of the Constitution should not be invoked. In view of the circumstances, to which we have referred, it is difficult to sustain the findings recorded which were supported by no evidence on record.

(21)

-10-

12. That takes us to the points raised in OA 479/86 by P.G. Ghonge. He was also a clerk just as Dixit and was not cloathed with the power to call panchas or conduct the search and his duty was also to lead ~~lead~~ such ministerial assistance as might be necessary at the time of the raid. No particular act was attributed to him <sup>in</sup> either of the two complaints dated 15.2.1975 and 11.5.1975.

13. P.W.5 Sukhdeo stated that one of the panchas Bhaurao Bhagwant had a talk with two officers, but he could not remember who those two officers were. Bhaurao took him aside and told him that he should pay Rupees two to three thousand to the Central Excise officers to hush up the matter. He stated that he had Rs.2,000 and he will be able to collect Rs.1,000 more. Thereafter Bhaurao had a talk with the Central Excise Officer and the demand was raised to Rs. 10,000. When this was conveyed to Sukhdeo he refused to pay the amount. Then they started weighing the ornaments and after the return of the officers from Nagzari, Narayandas had a talk with Bhagwandas Malani who told him that the officers were demanding Rs.40,000 to hush up the case. Thereafter the son told him that they were ready to take the ornaments in lieu of Rs.40,000 but he refused. He could not indicate any of the officers who had made this demand and could not even recollect who had drafted the complaint dated 11.5.1975 and whether it was drafted at Amravati or at Akola. One of his sons is a practicing lawyer at Amravati but at that time he, <sup>the</sup> lawyer son, had gone to Rajasthan. He could not say how the sections of the Indian Penal Code came to be quoted in the complaint and that he might have got the complaint

drafted by some lawyer. It is curious that the demands went on escalating even though the offer to make payment of Rs.3,000 was denied. Sukhdeo's evidence did not implicate Ghonge at all.

14. We have already pointed that the improbability about the demand having been made. Even the Inquiry Officer in his report went by the concept of joint responsibility of all the persons constituting the raiding party though there is no specific charge regarding constructive liability of applicants for individual acts of others. The entire order is based on a mere guess work without any basis in the evidence.

15. It was urged on behalf of Ghonge that he was the General Secretary of the All India Federation and a Union Leader and, therefore, Shri Bindra on whose behest the entire inquiry was initiated was biased against him. The learned counsel for the respondents urged that there could be no question of bias because though the vigilance officer <sup>had</sup> was recommended to conduct an inquiry against all the applicants on a minor charge, that advice was not accepted and the inquiry for a major penalty was initiated. In that it appears that the Central Vigilance Commission was consulted at every stage by the Disciplinary Authority. With regard to the submission that Shri Dhar who was the Collector of Central Excise had no animosity against Ghonge and in fact para 5 of the order dated 6.8.81 passed by Shri Dhar makes a reference to Bindra's conclusion in the following words:

51

-12-

"On a careful consideration of the inquiry report, my predecessor agreed with the findings of the inquiry officer and came to the provisional conclusion that Shri P.G.Ghonge was not a fit person to be retained in service and accordingly my predecessor proposed to impose on him the penalty of removal from service."

This would not, however, be sufficient to justify the finding of bias. In Writ Petition No.1453/78

Joshi had questioned the appointment of Bindra and that petition was dismissed in limine on 28.11.1978.

So far as Ghonge is concerned we do not think that the allegations of malice and bias made against Bindra have any basis, though for the reasons recorded earlier we find that the charges framed against Ghonge had not at all been established.

16. V.S. Joshi, the applicant in TR.A. 3/87 was Inspector of Central Excise at the time of incident. Apart from the identical submissions regarding the incident, which were <sup>have</sup> considered above, it was urged that no reasonable opportunity to defend himself was afforded at the time of inquiry because he had been placed under suspension in respect of another incident on 14.5.1976 in respect of which a charge sheet had been filed on 21.3.1977 and he was not paid subsistence allowance since 14.5.76 till 1980. In respect of charge sheet dated 21.3.77 he was asked to appear before the Chief Judicial Magistrate, Hoshangabad and a non-bailable warrant was issued to him. His earlier suspension was revoked on 13.4.1978 but on the same date Shri Bindra issued a suspension order in respect of the present inquiry.

17. V.S. Joshi's grievance was that though he asked for inspection of certain documents vide Annexure F-1 dated 5.4.78 he was informed that no TA advance could be sanctioned and paid to him unless he joined the place of his headquarters at Gwalior. Shri Bhangade, learned counsel for the respondents pointed out that no TA advance could be sanctioned to him because he had not joined at Gwalior which was to be his headquarters during the period of suspension. No exception can be taken for the refusal by the authority to sanction this TA advance because Shri Joshi had not complied the conditions of the suspension order. It is apparent, however, that Joshi has made the grievance regarding non-granting of opportunity for inspecting certain documents which were at Bombay. What is more important is that by the letter dated 10.4.78 Annexure F2 he had made a grievance that Assistant Collector, Central Excise Gwalior, had not granted the advance of Rs.750/- to meet the expenses for obtaining copies of relevant documents which the inquiry officer permitted him to have and that Assistant Collector of Central Excise by his order dated 5.4.1978 informed that no advance for TA expenses could be sanctioned by him. It was not, therefore, possible for him to go to Bombay for copying out the documents which ~~are~~ <sup>were</sup> relevant and essential for the purpose of inquiry. This amounted to denial of opportunity in the course of inquiry. A request was made by Joshi to postpone the inquiry till the documents ~~are~~ <sup>were</sup> obtained from Bombay or till such time the advance is granted as in the absence of those vital documents he would not be in a position to defend himself. The

inquiry officer took no steps to make the copies of the documents available to Joshi. The explanation by respondents counsel that Joshi had not joined at Gwalior, which was to be his headquarters, cannot be accepted for not getting documents from Bombay and making copies available to Joshi.

18. Reliance is placed on the observations in 1966(I)CLR 440 SC, FAKIRBHAI FULABHAI SOLANKI V. THE PRECIDIING OFFICER & ANOTHER, where the Hon. Supreme Court observed while considering the provisions of S. 33(3) of the Industrial Disputes Act that it is reasonable to hold that the workman against whom the application is made should be paid some amount by way of subsistence allowance to enable him to maintain himself and the members of his family and also to meet the expenses of the litigation before the Tribunal. And if no amount is paid during the pendency of such an application it has to be held that the workman concerned has been denied a reasonable opportunity to defend himself in the proceedings before the Tribunal. Such denial leads to violation of principles of natural justice and consequently vitiates the proceedings before the Tribunal under S.33(3) of the Industrial Disputes Act and any decision given in those proceedings against the workman concerned.

19. We may also refer to the observations of the Madras High Court in 1990(2) Labour Law Journal 273 SC S.V.ANGAPPAN V. THE TAMIL NADU ELECTRICITY BOARD & ANOTHER, The learned judge while pointing out that the petitioner wanted documents during the inquiry and refusal to supply the documents asked for

by the delinquent amounts to denial of principles of natural justice. It is further observed that why the petitioner wanted the documents during the enquiry and for what purpose he wanted the records is not for the respondent Board to decide and the Board ought to have supplied those documents. May be it is an evasive tactics by the petitioner, but that does not mean that the respondent Board also can take a view not to allow the petitioner to peruse those documents. In the present case the applicants are facing very serious charges relating to theft and bribery and the casual approach with which the applicant's requests were being treated would only show that they had to face the ~~battle~~ <sup>war</sup> of attrition. Even otherwise we are not satisfied that there was any evidence to support the three charges as against the applicant Joshi.

20. Shri Bhangade, the learned counsel for the respondents brought it to our notice that in OA No. 488/88 K.P.VIJAYAN MENON V. COLLECTOR, CENTRAL EXCISE AND CUSTOMS, it was decided on 15.9.92 to which one of us Shri M.Y. Priolkar, Member(A) was a party) identical appellate order had been considered and the application preferred by the applicant was dismissed. The judgment shows that there was no appearance for the applicant and the case came to be decided after hearing only the learned counsel for the respondents. There <sup>was</sup> is no occasion in that case to consider whether there was evidence in support of the charges and the present applicants were <sup>not</sup> parties to that decision. They cannot be held bound by the observations that might have been made while consider-

ing Manon's case. It is difficult to see how in these circumstances that decision can be held as binding the present applicants. We must mention that Shri Bhangade, learned counsel for the respondents, also did not contend that the decision in Manon's case would bind the present applicants. The learned counsel for the applicant, however, brought it to our notice that an application had been filed for reviewing the decision. It would not in any event be open to us to look into the reasons which then led to the dismissal of OA No. 488/88.

21. In the result we allow O.A. Nos. 438/86 and 479/90 and Transferred Application No. 3/87, and set aside the order of removal passed against the applicants.

22. We are informed that Ghonge and Joshi who were born on 13.10.1929 and 5.8.1924 would have retired in October 1987 and August 1982 respectively. No order of reinstatement can be passed in their case. We would only direct that they be paid half of the backwages upto the date of their retirement and would be entitled to have been in continuous service for the pensionary and other benefits flowing from it. The pensionary benefits will be worked out on the basis of the pay which the two applicants would have drawn in the normal course from time to time upto the date of their superannuation.

23. With regard to Dixit it is urged that he would retire in normal course in March 1995. We direct his reinstatement with half back wages and continuity in service. The entitlement of the applicants shall be

(39)

-17-

worked out and be paid within three months from to-day.

24. We direct the respondents to reinstate Dixit within one month from the date of receipt of a copy of this order.

No order as to costs.

Certified True Copy  
Date .. . . . .

Section Officer  
Central Admin. Tribunal,  
Bombay Bench.

M.P.W. 403/93 for  
extension of time,  
fixed on 11-6-93.

KR 29/7/6

OA 438/93

11.6.93

Mr. Dattamoorthy, counsel for the  
applicant.

Admit

Written statement within 8 weeks of  
service on the respondents.  
Rejoinder within 4 weeks thereafter.  
Matter to appear before Registrar on  
24.9.93 and thereafter keep in sine  
die list.

(Usha Savare  
M(A))

(M.S. DESHPANDE)  
V.C.