CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 221/89

Shri S.C. Rastogi ... Applicant.

V/s.

Union of India through
the Collector of Central
Excise, Bombay III
Navprabhat Chambere
Ranade Road, Dadar(W),
Bombay.

The Deputy Collector (P & E)
Central Excise, Bombay III
Thane. ... Respondents.

Original Application No. 252/89

Shri A.K. Ishwardas (A.K. Sharma) ... Applicant.

Vs/.

Union of India through
the Collector of Central
Excise, Bombay III
Bombay.

The Deputy Collector (P & E)
Central Excise, Bombay III
Thane. ... Respondents.

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

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

Appearance:

Shri S.R. Atre, counsel
for the applicant.

Shri P.M.Pradhan, counsel
for the respondents.

JUDGEMENT Dated: 27.7.92

(Per Shri S.K. Dhaon, Vice Chairman)

Common disciplinary proceedings were initiated against S/Shri Bhatia, A.T. Khenat, S.C. Rastogi (Applicant in OA 221/89) A.K. Ishwardas (Applicant in OA 252/89). All of them were on the relevant date , Inspector, Central Excise. Shri S.C. Rastogi and Shri A.K. Ishwardas were punished. They were given 'Censor Entries'. Both of them

appealed but remained unsuccessful. They have come up before this Tribunal by means of these original applications. These applications involve the same controversy and are, therefore, being disposed of by a common judgement.

The charge-memo given to the applicants were different but similar. We are referring to the charge memo given to Shri S.C.Rastogi. The charge contains two articles. In the first, the charge is that Shri Rastogi, while functioning as Inspector, Central Excise, Bhiwandi between July 81 and November 82, in collusion with other Inspectors, Central Excise, Bhiwandi including Shri A.K. Ishwardas (applicant in OA 252/89) delayed the disposal of the applications of the members of the Powerloom Weaver's Association , in the office of Superintendent, Central Excise, Bhiwandi with the view to obtaining illegal gratification.

Article No.2 contains the charge that the applicant in collusion with the afore mentioned persons allowed private persons to make entires of their applications in the official records.

The Enquiry Officer, while dealing with the case of Shri Rastogi, held that on the evidence on record it could not be established that there was any delay in the disposal of the applications. He also recorded the findings that Rastogi did not delay matters with the object of obtaining illegal gratification. He also found that there was not an iota of evidence to establish collusion between Rastogi, the Superintendent and the four Inspectors.

Private persons made entries of the applications for licences in the register maintained in the office of the Central Excise. The fact whether the said persons were allowed to make entries by Rastogi was not established beyond a reasonable doubt. There was no evidence to substantiate the charge of collusion. The Enquiry Officer exonerated Rastogi from the first charge and recommended that he should be given the benefit of doubt on the second charge. He made a similar recommendation in the case of A.K. Ishwardas.

The punishing authority agreed with the finding of the Enquiry Officer with respect ~~of~~ both the applicants as far as article No.1 was concerned. With regard to article No.2, in the cases of both the applicants it recorded the finding that it agreed with the Enquiry Officers that in enquiry, it could not be conclusively proved that outsiders made entries in the record at the behest of the applicants but, according to it, the fact could not be ignored that the applicants knew that outsiders were making entries in the records and they did not take any steps to prevent them from doing so. The applicants were, therefore, guilty of deriliction of duty.

The appellate authority went a step further and recorded the finding that outsiders made entries in the register at the instance and to the knowledge of the applicants. It observed that the witnesses desposed before the Enquiry Officer that the applicant did not ask them to make entries in the register. However, in their statement before the investigating officer, they admitted that the applicants had asked them to make such entries. It also observed : " I will not give much credence to their retraction because S/Shri Ishwardas and Rastogi themselves in their statement

in 1983 before the investigating officer admitted that they had requested the persons bringing applications to make entries in the register " ...

The first point urged in support of this application is that the punishing authority before imposing the punishment upon the applicant, did not give him an opportunity to show cause as to why it (the punishing authority) should disagree with the finding recorded by the Enquiry Officer. It will be remembered that the Enquiry Officer had recommended that even on the charges contained in the article No.2 the applicant should be given a benefit of doubt. The punishing authority had evidently not accepted that part of the recommendation. In paragraph 4.12 and 4.13 of the application specific averment that no opportunity whatsoever was given by the punishing authority has been made. In paragraph 11 of the reply no attempt had been made to controvert the said allegation. On the contrary, the stand taken is that no such opportunity was necessary.

The stand taken by the respondents in the counter affidavit is untenable. Principles of natural justice required that atleast an opportunity should have been given to the applicants. This short coming is enough to vitiate the order of the punishing authority.

The punishing authority held that there was no material to come to the conclusion that the applicants directed any person to make any entry in the official records. However, it recorded the finding that the said entries were made to the knwoledge of the applicants. The appellate authority went a step further and recroded a finding that the entries were made at

the instance of the applicants. He had noted the fact that the witnesses retracted from their earlier statements before the Enquiry Officer. However it has relied upon alleged statements made by the applicants before the investigating officer that they had permitted certain persons to make entries in the official records. The applicants were not confronted with the statement made by them before the investigating officer, when their deposition were recorded by the Enquiry Officer. If that had been done, they could have either denied the fact that they had made such a statement to the investigating officer or they could have explained the circumstances under which such a statement had been made. The appellate authority, therefore, was not entitled to rely on the alleged statement of the applicants to the investigating officer.

So far as the finding that certain persons made entries in the official records to the knwoledge of the applicants is concerned, the same is not based on any direct evidence. Probably the punishing authority based the finding upon an inference. Even an inferential finding is not sustainable, unless there is some material in support of it and it is further found that such an inference could be possibly drawn by a reasonable person. On the whole, we are satisfied that it will be unsafe to uphold the punishment awarded to the applicants on the basis of an inferential finding, as recorded in the instance case. The net result is that the orders passed by the punishing authority and the appellate authority are not sustainable.

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These applications are allowed. The orders passed by the punishing authority and disciplinary authority are quashed. The respondents are directed to proceed on the assumption that the "Censure entries" given to the applicants do not exist.

There shall be no order as to costs.