

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 150 of 1996.

Dated this _____ the 21st day of June, 2002.

CORAM : Hon'ble Shri S. L. Jain, Member (J).
Hon'ble Shri M. P. Singh, Member (A).

Harcharan Singh,
Ex. Appraiser of Customs, Bombay.
Residing at - 917 Face IV,
Mohali, Chandigarh.

... Applicant.

(By Advocate - Shri G. K. Masand)

I agree.

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Hon'ble President of India
through the Chief Vigilance
Officer, Central Board,
Customs, New Delhi.
3. Collector of Customs,
Custom House,
Ballard Estate,
Bombay - 400 038.

... Respondents.

(By Advocate Shri V. D. Vadhavkar for
Shri M. I. Sethna).

O R D E R

PER : Shri S. L. Jain, Member (J).

This is an application under Section 19 of the
Administrative Tribunals Act, 1985 to quash and set aside the
impugned order dated 07.12.1992 removing the applicant from
service issued by Respondent No. 3, confirmed by the Appellate

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Authority vide order dated 20/23.09.1994 with consequential benefits.

2. The Applicant was working as Appraiser of Customs in the Customs House. A charge-sheet was issued to him bearing No. S/99/33/86 dated 10.07.1989 to which the Applicant replied by his letter dated 23.08.1989 alleging the fact that the charge-sheet was not accompanied by the listed documents mentioned in Annexure-II. In order that the Inquiry Officer may be appointed early, the Applicant submitted a Written Statement of defence denying the charges levelled against him. The charges were not tainted with any vigilance angle and hence could be handled by Customs House. Respondent No. 3 without giving any thought to the defence submitted by the Applicant, and possibly at the behest of the Central Vigilance Commission, appointed Shri Nilkanthan, Commissioner of Departmental Enquiry, New Delhi, as the Inquiring Authority for enquiring into the charges levelled against the Applicant. By a separate order dated 29.09.1989 Shri S. P. Joshi, who had earlier been associated with the investigation of the case and who had also recorded the Statement of Witnesses, was appointed as the Presenting Officer to represent the case [✓] on behalf of the Disciplinary Authority. On 08.02.1991 and 09.02.1991 out of 19 Witnesses, 15 witnesses were examined on behalf of the Disciplinary Authority. The Presenting Officer, who holds the same rank as the Applicant, i.e. to say, Appraiser of Customs, deliberately did not examine other witnesses who had, in their statements given to the Investigating

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Officer, supported the case of the Applicant, namely - S/Shri Shrikant R. Tiwari, J. T. Chopra, Shri Yuvraj Pandu More. After the conclusion of recording of the evidence, the Inquiry Officer recorded the examination of the Applicant and with the permission^{of} Enquiry Officer the Applicant sought to introduce four documents as defence documents, but only one document was taken on record as Exhibit D-1. The remaining three documents were not taken on record on the plea that these were not available. The Presenting Officer submitted his written brief to the enquiry officer with copy to the applicant under the cover of his letter dated 19.2.1991 whereafter applicant submitted his written brief on 23.02.1991. The Applicant states that in accordance with the practice, whenever the Enquiry officer is the Commissioner for Departmental Enquiries, the enquiry report by the Inquiry Officer is invariably submitted to the Central Vigilance Commission, who thereafter forwards the same to the Disciplinary Authority together with its own recommendations, including the punishment to be awarded to a delinquent employee. The said practice was followed in the present case also. Respondent No. 3 thereafter forwarded the report of the Inquiry Officer dated 28.02.1991 under cover of his letter dated 13.08.1991 to the Applicant. The recommendations of the Central Vigilance Commission with regard to the punishment awarded to the applicant were however not furnished to enable him to represent against the same. On going through the report of the Inquiry Officer, the Applicant learned that the Inquiry Officer had held Charge No. 2 as not proved. Rest of the charges, viz. Article Nos. 1, 3, 4 and 5 were combined and single assessment of entire evidence was recorded by

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the enquiry officer. The Enquiry Officer held Charge Nos. 1, 3, 4 and 5 were proved. Thereafter, the Disciplinary Authority passed the impugned order. The Applicant appealed against the said order which was rejected. The Applicant claims that the finding recorded by the Disciplinary Authority as well as the Appellate Authority is perverse. Hence, this O.A. for above said reliefs.

3. The claim of the Applicant is resisted by the Respondents with an averment that the investigating officer is always the best Presenting Officer for presenting the case on behalf of the Department. Moreover, there is no bar on the appointment of Investigating Officer as the Presenting Officer. The three witness cited by the Department did not come forward to give evidence in the enquiry proceedings, though all of them were summoned. Therefore, there was no option for the Presenting Officer but to drop them. The statement of witnesses recorded during the preliminary investigation cannot form part of the enquiry proceedings unless they attend the proceedings to give evidence. As such, the statement of these witnesses would not have given any benefit to the petitioner. The Presenting Officer never declined to produce the documents. The said documents were not available with the department. The department has pursued the matter with BPT, which is an independent agency for forwarding the BPT copies of the shipping Bills but the BPT which is not under the control of the department replied that these documents were not available with them. The envelopes containing the representative samples could not be supplied to the Applicant as they were not traceable. The fourth document called for was

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the statement/report of Shri T. Mathews, who was later on examined/cross examined during the enquiry proceedings. It is claimed that the charge against the applicant has been established based on the inquiry.

4. The baselessness of the Inquiry Officer was not pressed by the Applicant at any time and the Respondents deny the correctness of such allegation as baseless and appears to have been made out of total desperation. The fact that the said officer was one of the Commissioners appointed for conducting departmental enquiry and that he was a member of an independent body set up by the Central Government. The applicant made this plea before the U.P.S.C. which is negated after thorough examination of such allegation.

5. The Learned Counsel for the Applicant relied on 1999 (2) SC SLJ 212 [R. S. Saini V/s. State of Punjab & Others] to state that if there is some evidence to reasonably support the conclusion of enquiring authority, it is not the function of the court to review the evidence and arrive at its own independent finding. Enquiring authority is the sole judge of the facts so long as there is some legal evidence to substantiate the finding - Adequacy or reliability of the evidence is not a matter which can be permitted to be canvassed before the court in the writ proceedings. Regarding the scope of judicial review and quantum of punishment the case reported at 1998 (9) SCC 553 [Secretary to Government, Home Department & Others V/s. Srivaikundathan] was relied on by the Learned Counsel for parties which lays down the proposition that findings of Enquiry Officer unless perverse or

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based on no evidence, held, could not be set aside by the Administrative Tribunal merely for its dissatisfaction with the evidence which was led and quantum of punishment to be imposed is a matter to be considered by the disciplinary authority. 1993 (1) SCC 13 [State Bank of India & others V/s. D.C. Aggarwal & Another] is also relied by the Learned Counsel for the Applicant for the preposition that order of punishment passed by the Disciplinary Authority vitiated for violation of principles of natural justice in denying the respondent copy of recommendation - CVC which was prepared behind his back without his participation and taking decision against him relying on that recommendation.

6. The fact that Shri S. P. Joshi, who is alleged to have earlier associated with the investigation of the case and also recorded statement of witnesses was appointed as Presenting Officer to represent the case on behalf of the Disciplinary Authority is not denied by the Respondents. It is stated that he is the best authority to conduct the case on behalf of the Disciplinary Authority and there is no bar to appoint him as Presenting Officer. We have to examine this preposition in the light of the facts that whether such an action of the Respondents could be permitted in the course of departmental enquiry. In fact, this practice ~~which~~ was followed earlier in criminal cases. Keeping in view the principle that the investigating agency and the authority to conduct the prosecution could not be one and the same but it must be a separate one, has been adopted since decades. The discontinuation of the said practice in criminal cases has been adopted since decades

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deserves to be applied even in departmental proceedings. The object behind it is that the duties of Presenting Officer is to see that the charged employees gets a fair trial. The witnesses who have been examined before the Investigating Agency, when appears before the Enquiry Officer, where the Investigating Officer is available as Presenting Officer, is not free to state the facts.

7. We find that the Presenting Officer has examined only those witnesses who did support the case of the department and the other witnesses though claimed to be not present even after service of the summon of notice were left. Such a practice helps no one because the job of the state which is being performed/assisted by the Presenting Officer is not to held the charged officer guilty but to see that the charged officer gets a fair trial and if he is guilty, be punished. Any action contrary to the same object, is denial to the charged officer of a fair trial which prejudices the defence of the charged officer.

8. The three documents were not allowed to be produced on the ground of not available. When documents are not available, the secondary evidence in respect of the same must be allowed to be produced.

9. Article of Charge No. 1,3, 4 and 5 are held to be proved. The allegation of the applicant that the department pressurised Class-IV employees to give false evidence have been denied by the Respondents and we do not find anything on record to show that class-IV employees were pressurised to give evidence.

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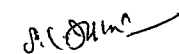
9. Article of Charge No. 1, 2, 4 and 5 are held to be proved. The allegation of the applicant that the department pressurised Class-IV employees to give false evidence have been denied by the Respondents and we do not find anything on record to show that class-IV employees were pressurised to give evidence.

10. In view of discussions in Para 6, 7 & 8 of this order, we are of the considered opinion that the disciplinary enquiry proceeded against the applicant cannot be termed as a fair trial which has prejudiced the case of the charged officer. Therefore, the other points raised by the applicant and contested by the respondents, i.e. scope of judicial review, non supply of CVC Report etc., we are not examining the same as the matter is being remitted to the Disciplinary Authority for appointing a Presenting Officer who is not associated with the investigation of the case and then to proceed afresh in accordance with law. Any finding in respect of non supply of CVC Report, scope of judicial review etc. may prejudice the case of either party. As such, we restrain ourselves from recording any opinion in respect of the same.

11. In the result, OA. is allowed. The matter is remitted to the Disciplinary Authority with the direction that if he elects to appoint a Presenting Officer, then the Presenting Officer should not be associated with the investigation of the case. He be appointed within a period of one month from the date of receipt of a copy of the order and thereafter, the enquiry from the stage of recording evidence of witnesses shall proceed and concluded within a period of four months thereafter. No order as to costs.


(M.P. SINGH)

MEMBER (A)


(S.L. JAIN)

MEMBER (J)

os/mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.


CONTEMPT PETITION NO: 32/2003 IN
ORIGINAL APPLICATION NO: 150/96

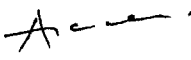
TRIBUNAL'S ORDER

DATED: 29.4.2003

Mrs. S.D. Gulhane for Shri G.K. Masand counsel
for the applicant. Shri V.D. Vadhavkar with Shri M.I.
Sethna counsel for the respondents.

It is pointed out by Shri Vadhavkar counsel for the
respondents that Hon'ble High Court has admitted the Writ
Petition against the order passed in the OA and has also
stayed the operation of the order in the OA. The learned
counsel for the applicant confirms that Hon'ble High
Court has stayed the order passed in the OA. In view of
the position, the C.P. does not survive at this
juncture. We cannot visualise whether the Hon'ble High
Court would dismiss the Writ Petition or modify the order
passed in the OA. Hence at this juncture C.P. cannot be
proceeded further. The same is therefore disposed of with
liberty to the applicant to move a fresh C.P. if at all
need arises. Notice issued on C.P. is discharged.


(Shankar Prasad)
Member(A)


(A.S. Sanghvi)
Member(J)

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