

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 186/96

Date of Decision : 27th June 2001

P.D.Dhure

Applicant

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.G.Rege

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ? Yes
- (ii) Whether it needs to be circulated to other ~~40~~ Benches of the Tribunal ?
- (iii) Library Yes

f.s.j -
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.186/96

Dated this the 27th day of June 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt. Shanta Shastry, Member (A)

P.D.Dhure,
Superintendent,
Central Excise & Customs,
Pune V Division,
Pune.

...Applicant

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Dept. of Revenue,
Govt. of India,
North Block, New Delhi.

2. Commissioner of Central
Excise & Customs,
P.M.C's Commercial Bldg.,
Tilak Road, Pune.

3. Assistant Commissioner of
Central Excise,
Pune V Division,
Pune.

4. The Additional Commissioner (P&V),
Central Excise & Customs,
P.M.C's Commercial Building,
Heera Baug, Tilak Road,
Pune.

5. The Union Public Service
Commission,
Dholpur House,
Shahjahan Road,
New Delhi.

...Respondents

By Advocate Shri V.G.Rege

2/-

..2/-

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 for the declaration that there was no misconduct on the part of the applicant for the purpose of initiation of the proceedings against the applicant under CCS (CCA) RULES, 1965, as done by issuing chargesheet dated 26.7.1991, to quash and set aside the chargesheet dated 26.7.1991, the penalty order dated 11.5.1994 Annexure-'A', the appellate order dated 14.9.1995 Annexure-'B', the direction contained in the letter dated 13.2.1996 Annexure-'C' with a direction to the respondents to grant all the increments in the scale of Rs.2000-60-2300-E.B.-75-3200-100-3500 above the 'Efficiency Bar' as due from 1.9.1992 onwards and pay the applicants the consequential arrears.

2. The applicant was served with a major penalty charge-sheet dated 26.7.1991 by the Collector of Central Excise and Customs, Pune Annexure-'D', the applicant by letter dated 16.9.1991 requested for supply of certain documents vide Annexure-'E' which was turned down vide letter dated 14.10.1991 Annexure-'F'. An enquiry was conducted, the report of the enquiry officer dated 15.10.1993 was served on the applicant, to which the applicant represented vide representation dated 22.11.1993, thereafter, the disciplinary authority vide order dated 11.5.1994 awarded "the penalty of reduction of pay by two stages from Rs.2300/- to Rs.2180/- in the time scale of

Rs.2000-60-23-E.B.-75-3200-100- 3500 for a period of one year with a further direction that the applicant would not earn increment during the period of reduction and that on the expiry of the period of one year, the reduction will have the effect of postponing his further increment of pay". The applicant preferred an appeal against the said order which is rejected vide order dated 14.9.1995, conveyed vide order dated 15.12.1995. The respondents did not give effect to the penalty order till 12.2.1996. Vide order dated 13.2.1996 Annexure 'C' the Additional Commissioner (P&V) Central Excise and Customs, Pune directed the Assistant Commissioner, Pune V Division to implement the Penalty Order dated 11.5.1994 and carry out recovery on or before 24.2.1996.

3. The grievance of the applicant is that (1) the act of the applicant, as alleged by the respondents vide the chargesheet, was a private incident which took place, if at all, outside the normal hours of duty and had no connection whatsoever with the duties and functions of the office held by the applicant, hence it cannot be treated as misconduct for the purpose of taking action under CCS (CCA) Rules. (2) The respondents failed to supply the documents asked for. (3) There is no evidence to arrive to a conclusion that the applicant is guilty of the charge levelled against him. (4) The penalty order was not given effect to on 11.8.1994, hence, now it cannot be given effect. (5) The respondents have failed to fix his pay allowing cross-Efficiency Bar at the proper stages. Hence, this OA. for the above said reliefs.

S.Yu -

4. The respondents have denied the said allegations and alleged that the documents asked for were not relevant to the enquiry, the act constitutes the misconduct, the applicant was not cleared for 'Efficiency Bar' in view of the fact that the chargesheet was served and the proceedings were pending against the applicant, he was considered by the D.P.Cs. on 1.9.1992 & 1.9.1993 and thereafter the result was kept in a Sealed cover, the penalty order was not given effect due to mistake which was later on detected by the audit and thereafter it was acted upon, the conclusion of guilt arrived ^{at} by the disciplinary authority and appellate authority is based on facts available on record. Hence, prayed for dismissal of OA. along with costs.

We agree with the defence raised by the respondents in respect of crossing of E.B. which is as under :-

"As per settled law unless and until by a specific order passed by the competent authority an employee is allowed to cross E.B., he is not entitled automatically to draw pay at the next stage after the stage of crossing E.B. In case of the applicant it is on record that his claim for crossing E.B. was duly considered by the D.P.C.s on due dates i.e. 1.9.1992 and 1.9.1993, but in view of the service of chargesheet on 26.7.1991, the DPC's decision was kept in sealed cover as per the rules/standing orders."

5. The perusal of the averment of the respondents makes it clear that the applicant in the garb of the relief in respect of giving effect to the penalty order ^{is} also seeking a relief for consideration of the crossing of Efficiency Bar which cannot be allowed in view of Rule 10 of C.A.T. (Procedure) Rules, 1987, being a separate cause of action and not consequential one. Hence, we refrain ourselves to consider the said grievance.

J.M. /

6. The answer to the first grievance of the applicant is as rightly relied by the respondents is contained in A.I.R.1967 S.C. 1724, S.Govind Menon vs. Union of India.

7. On the request made by the applicant for furnishing him copies of the report/statement of Shri V.N.Nalavade, Inspector and XT-1 diary and log book of Govt. Jeep No.M.H.12 E-4 we are of the considered opinion that as the said documents were not relied upon by the respondents, ^{were} not taken into consideration in the departmental proceedings, and were not relevant to the issue in question, hence refusal of the respondents to supply the copies of the said documents does not amount to denial of reasonable opportunity of being heard and principles of natural justice is being ~~not~~ violated.

8. We have perused the record of the Disciplinary Proceedings and after a careful consideration of the same, we are of the considered opinion that it is not a case of no evidence, as tried to be made out by the applicant. There is evidence on record to arrive to a conclusion of finding of guilt against the applicant.

9. The failure, by mistake, in not giving effect to the penalty order dated 11.5.1994 immediately thereafter, cannot be a ground which can be raised by the applicant, if the said order is being acted upon by the respondents, after the mistake is being detected by the Audit.

J.U.M.

10. In para 22 of written statement at page 74 of the OA., the respondents have stated how they have fixed the pay of the applicant after implementing the order of penalty dated 11.5.1994 which is as under :-

" It is submitted that the Applicant's pay was reduced from Rs.2300/- to Rs.2180/- by the order dated 11.5.1994 for a period of one year with further direction that he would not be entitled to get increment during the said period of reduction and that it would have effect on the future increments. In view thereof the applicant would be entitled to get a pay @ Rs.2180/- not only during the period of one year but he will start getting pay at said rate Rs.2180/- from 11.5.1995 also for a period upto 11.5.1996 and would be entitled to receive increments raising his pay Rs.2240/- from 11.5.1996. He will be reaching the stage of Rs.2300/- again only after a year on or about on 11.5.1997 if in between no order withholding increment comes into existence in his case he will be entitled to cross E.B. only on 11.5.1997."

11. We do not find any fault with the said fixation of pay of the applicant by the respondents.

12. In the result, there is no merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

Shanta S
(SMT. SHANTA SHASTRY)

MEMBER (A)

S.L.Jain
(S.L.JAIN)

MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

OPEN COURT/ PRE DELIVERY JUDGEMENT IN OA. 186/96.

Hon'ble ~~Vice~~ Chairman / Member (J) /
Member (A) may kindly see the above judgement for
approval / signature.

(Signature)
~~V.C.~~ / Member (J) / Member (A)

~~Hon'ble Vice Chairman~~

~~Hon'ble Member (J)~~

Hon'ble Member (A)

I agree
Li P
26/6

NS