

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 951/96

Date of Decision : 18.1.2002

A.V.J.Mudilar _____ Applicant

Shri R.K.Shrivastava _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri Govind Mishra _____ 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 ? No
- (ii) Whether it needs to be circulated to other Ho.
Benches of the Tribunal ?
- (iii) Library No

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

CAMP : NAGPUR

OA.NO.951/96

Friday this the 18th day of January, 2002.

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

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

A.V.J.Mudliar,
Inspector of Central Excise,
O/o Superintendent,
Customs & Central Excise,
Range Mouda, Bhandara.

...Applicant

By Advocate Shri R.K.Shrivastava

vs.

1. Commissioner of Customs
& Central Excise,
Post Box No.81,
Kendriya Utpad Sulka
Bhavan, Civil Lines,
Nagpur.

2. Addl. Commissioner of
Customs & Central Excise,
Post Box No.81,
Kendriya Utpad Sulka
Bhavan, Civil Lines,
Nagpur.

3. Shri Sunil Uke,
then Deputy Collector,
Customs & Central Excise,
B-171, Mount Kailash,
New Delhi.

4. Union of India
through Revenue Secretary,
Ministry of Finance,
North Block, New Delhi.

...Respondents

By Advocate Shri Govind Mishra

..2/-

Pray

O R D E R (ORAL)

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking the reliefs mentioned in para 8 (a),(b),(c),(d),(e) which are as under :-

"8. (a) The charge sheet issued by the then Respondent No.3, Shri R.K.Audim was under the influence and pressure of the then Respondent No.1, Shri Kashmira Singh who harboured animosity, prejudice and bias in his mind against the applicant for his participation in the Trade Union activities against him. Since the allegations and charges were neither proved nor true and they were levelled against the applicant to demolish his career for no valid reasons, it is prayed that the charge sheet should be vacated or held as illegal and ab initio void.

(b) It is humbly prayed and submitted that the charges levelled against the applicant violated Rule 14(3) of the Central Civil Services (CCA) Rules,1965, in as much as they were not definite and distinct in their substance/contents.

(c) It is humbly prayed that the inquiry proceedings may be held as vitiated, inasmuch as they were not conducted in accordance with the Rule 14 of the Central Civil Services (CCA) Rules,1965.

(d) It is humbly prayed and submitted that the inquiry report was dated 23.12.1985 but it was given to the applicant on 13.3.1992, as a result of the order of the Hon'ble Tribunal. So much delay causing so much agony to the applicant may kindly be considered in ordering proper compensation to the applicant, while deciding the cost of this application.

(e) It is humbly prayed and submitted that the order of punishment passed by the Respondent No.3 on 10.4.1995 may kindly be vacated for the reason that the said authority did not comply with the directions of the Hon'ble Tribunal to give a notice of dis-agreement before taking up the disciplinary proceedings."

2. The applicant was served with a chargesheet under Rule 14 of CCS (CCA) Rules, 1965. After enquiry the applicant was held guilty. Thereafter, he preferred an appeal. The said appeal was rejected. Being aggrieved with the said decisions, the applicant filed the OA.No.411/87 before this Tribunal which was decided on 14.11.1991 vide order Annexure-'A-7'.

3. After the said decision of the OA., the matter went to the disciplinary authority. The applicant was served with the enquiry report. The disciplinary authority passed the order. The applicant appealed against the said order and the appellate authority remanded back the case with the clear directions to comply with the specific direction of the order passed by this Bench. Thereafter, the matter went to the disciplinary authority. The order of the appellate authority was passed on 2.2.1993 and after waiting for more than 2 years, the applicant intimated the disciplinary authority by his application dated 10.4.1995 in a desparate state of mind that without serving the disagreement note, the disciplinary authority can pass the order. The disciplinary authority passed the order. Thereafter, the applicant preferred an appeal which was decided by the impugned order.

4. The facts are not in dispute. It is true that the punishment awarded by the disciplinary authority has been modified by the appellate authority. It is not only the question of lenient punishment or modifying the punishment.

10/-

..4/-

5. First question which is to be decided is whether the applicant is guilty or not. As the applicant was served with four charges, out of which Charge No.1 was partly proved, Charge No.4 was proved and Charge No. 2 & 3 were not proved. In such circumstances, to hold the applicant guilty for all the charges without serving the disagreement note and that too after passing of the order by this Bench and the Appellate Authority cannot be justified by any reasons.

6. The charged employee cannot be compelled to wait for years together and if in a frustrated state of mind which is amply made out by Annexure-4, he submits an application, it cannot be said to be a waiver of right. His right is recognised by law and there cannot be any estoppel against law. As such, we are constrained to state that the disciplinary authority was not at all justifying in sitting over the file for more than 2 years and not complying the orders of the Tribunal as well as Appellate Authority.

7. Keeping in view that the matter is long pending, the disciplinary authority appears to be reluctant in complying the orders. In such circumstances, we are constrained to make a scheduled for action by the respondents :-

(i) The matter shall go to disciplinary authority. The disciplinary authority shall serve dis-agreement note within one month from the receipt of the copy of the order. In case of

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failure to serve the disagreement note within the stipulated period, the disciplinary authority shall not take into consideration the charges which the enquiry officer has held to be not proved.

(ii) In case a dis-agreement note is served, then applicant shall be afforded an opportunity to reply to the same within one month. Thereafter, within one month the disciplinary authority shall pass the order in accordance with law after considering the reply, if any, of the applicant.

(iii) If the applicant is held guilty and appeal is preferred against the said order, the appellate authority shall pass the appellate order within three month from the date of receipt of the appeal.

8. In the result, OA. is allowed as stated above. The order of the appellate authority Annexure-'A-1' is quashed and set aside. The matter shall go to the disciplinary authority for compliance strictly in accordance with the above directions. No extension of time will be granted. No order as to costs.

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(ii) In case a dis-agreement note is served, then applicant shall be afforded an opportunity to reply to the same within one month. Thereafter, within one month the disciplinary authority shall pass the order in accordance with law after considering the reply, if any, of the applicant.

(iii) If the applicant is held guilty and appeal is preferred against the said order, the appellate authority shall pass the appellate order within three month from the date of receipt of the appeal.

8. In the result, OA. is allowed as stated above. The order of the appellate authority Annexure-'A-1' is quashed and set aside. The matter shall go to the disciplinary authority for compliance strictly in accordance with the above directions. No extension of time will be granted. No order as to costs.

Shanta

(SMT.SHANTA SHAstry)

MEMBER (A)

S.L.Jain

(S.L.JAIN)

MEMBER (J)

mrj.