

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 93/2000

DATE OF DECISION: 11/04/2001

Shri C.A.B.Rebello

Applicant

Shri M.S.Ramamurthy

-----Advocate for
Applicant.

Versus

Union of India & 3 Ors.

-----Respondents.

Shri V.D.Vadhavkar for Shri M.I.Sethna Advocate for
-----Respondents.

Coram:

Hon'ble Shri S.L.Jain, Member(J)
Hon'ble Smt. Shanta Shastry, Member (A).

1. To be referred to the Reporter or not? /s
2. Whether it needs to be circulated to
other Benches of the Tribunal?
3. Library. ✓

Shanta Shastry

(SHANTA SHASTRY)
MEMBER(A)

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 93/2000
DATED THE 1st DAY OF APR. 2001**

**CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)**

C.A.B.Rebello,
working as Appraiser,
in the Mumbai Custom and
presently working at Nava Sheva
Custom House, Dist.Raigad
and residing at Flat No.2,
Fantasia, Sherly Rajan Road,
Bandra (W), Mumbai - 400 050.

... Applicant

By Advocate Shri M.S.Ramamurthy

V/s.

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 011.
2. The Secretary,
Central Board of Excise & Custom,
Ministry of Finance,
North Block,
New Delhi - 110 011.
3. The Commissioner of Custom(G),
New Custom House,
Ballard Estate,
Mumbai 400 001.
4. Mr.S.Birswas
formerly Commissioner of
Custom (General),
Mumbai and presently
Member (Administrative),
Central Administrative Tribunal,
Allahabad Bench,
U.P.

... Respondents.

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

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(ORDER)

Per Smt. Shanta Shastry, Member(A)

This is a peculiar case where the applicant who was the presenting officer in two departmental enquiries has been charge sheeted vide memorandum dated 6/8/99. The article of charge reads as follows:-

ARTICLE OF CHARGE

Shri C.A.B. Rebello, AO while functioning as Presenting Officer in the disciplinary proceedings under Rule 14 of CCS (CCA) Rules, 1965 initiated against Shri R.C. Nyanirgune, Preventive Officer and Shri R.R. Rathod, Cashier has shown gross negligence and lack of devotion to duty by holding the charges against S/Shri R.C. Nyanirgune and R.R. Rathod as not proved.

There is total dereliction of duty on the part of Shri C.A.B. Rebello and he has exhibited a high degree of irresponsibility by stating that prosecution had no unimpeachable evidence which could be mustered to prove the charges against S/Shri R.C. Nyanirgune and R.R. Rathod either substantially or even by preponderance of probability inspite of the strong evidence against both the charged officials. Hence Shri C.A.B. Rebello has not diligently discharged his duties as a Presenting Officer.

Thus by the above acts Shri C.A.B. Rebello has shown lack of devotion to duty and behaved in a manner unbecoming of a Government servant thereby contravening Rule 3(1) (ii) and (iii) of CCS (Conduct) Rules, 1964.

2. The detailed statement of Imputation in support of article of charge is given at Annexure-2 page-19 of the OA. The applicant has approached this Tribunal for the following reliefs:-

8a. that this Hon'ble Tribunal be pleased to hold and declare that the Applicant has not committed any misconduct and the very issue of the charge sheet dated 6/8/1999 to the Applicant, is arbitrary, malafide and bad in law and the same is liable to be quashed and set aside.

...3.

8b. that this Hon'ble Tribunal be pleased to permanently restrain the Respondents from taking any further action against the Applicant pursuant to the Chargesheet dated 6/8/1999.

8c. that this Hon'ble Tribunal be pleased to quash and set aside the Chargesheet Memorandum dated 6/8/1999.

8d. that such other and further order ^{or} orders be passed as the facts and circumstances of the case may require.

8e. that costs of this applicant be provided for.

3. The grounds advanced in support of this prayer by the applicant are

1) he has not committed any misconduct. He has brought on record all the listed documents and examined the listed witnesses on behalf of the statement. His brief as the presenting officer was based on the assessment of the evidence and the opinion of law expressed thereon cannot be called in question. He has performed his duties diligently. There is no duty list in existence for Presenting Officers.

4..... The respondents submit that the applicant was appointed as presenting officer in the disciplinary proceedings initiated against S/Shri Nyayanirgune, Preventive Officer and R.R.Rathod Cashier to present the case on behalf of the department before the enquiry officer. Since the burden to prove lies with the prosecution, it is the primary duty of the presenting officer to prove the guilt on the basis of documentary and oral evidence. The applicant has been very negligent and careless in presenting the case. He has not analysed the corroborative and circumstantial evidence on record before reaching to the conclusion that the charges cannot be

proved. There were clear unimpeachable evidences, as shown in Annexure II of the Memo dated 6/8/99 to prove the charges against the charged officers. However, there is gross dereliction of duty on the part of the applicant and by presenting the case in such a manner, the applicant mischievously diluted the hard evidence against the charged officers. Hence, he has shown lack of devotion to duty and acted in a manner unbecoming of a Government servant.

5. The respondents have also given brief description of the functions of the presenting officer. According to them the function of the presenting officer is to show why the charges should be deemed to be established if not beyond reasonable doubt, then atleast on the basis of preponderance of probabilities by leading oral and documentary evidences (direct and circumstantial) and by drawing logical inferences therefrom. He should present the case in an understandable and orderly manner with precision, clarity and logic. It is the duty of the presenting officer to present the case on behalf of the prosecution as efficiently as possible highlighting all the evidence against the Charged Officer and destroying the lines of defence of the other side so that the charges could be proved. At no stage he is expected to expose the lacunae of the investigation and hollowness of the case. The respondents have also denied that the CBI had advised them to initiate action against ^{the applicant} ~~them~~. It is an independent decision of the Disciplinary authority. The learned counsel for the applicant vehemently

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argued that the applicant has performed his duty. The applicant's stand is vindicated by the fact that the Enquiry Officer exonerated both the charged officers. Shri S.Biswas who issued the charge sheet to the applicant, himself held the delinquents not guilty while deciding their appeal on 27/8/99 and set aside the order of the disciplinary authority. While exonerating charged officer No.1, he considerably reduced the penalty imposed by the Disciplinary authority on the charged officer No.2 i.e. Shri R.R.Rathod. The conclusion reached by the applicant cannot be treated as dereliction of duty. There is no charge for neglecting his duty for extraneous consideration. The charge is based on the reappraisal of evidence by higher authority which has come to its own conclusion. It cannot be the basis for initiating departmental enquiry against any employee. According to the learned counsel for the applicant, the Commissioner of Customs has acted vindictively and malafide in that he appointed the enquiry officer and presenting officer in the applicant's case without even considering the reply of the applicant. Further, the appointment was made on 8/11/99 after the Commissioner of Customs had retired on 1/11/99.

6. Further the applicant is the General Secretary of the All India Customs Appraising Officers Federation. The applicant alleges that the charge sheet has been issued for a collateral purpose to curtail Union activities of the applicant. Also the appointment of Mr.Hans as Presenting Officer exhibits the sadistic attitude of the Respondents as Mr.Hans is the President of the All India Customs Appraising Officers Federation. Finally

...6.

the applicant pleads that the departmental enquiry will result in serious loss and damage to the career of the applicant.

7. The learned counsel for the applicant also asserted that since the applicant was performing his duty he could not be charge sheeted. He is relying on the judgement of the Madras High Court in the case of G.Anandan V/s. Tamil Nadu Electricity Board (1999 LAB. I.C.144). In this case it was held that disciplinary action against enquiry officer was not proper. Petitioner had been charged with misconduct in the conducting of enquiries against employees of the Electricity Board. Enquiry Officer had given his finding as per the assessment of evidence. However, he was charged with neglect of duty as his finding turned out to be different than the conclusion reached by the disciplinary authority. The Hon. High Court held that the mere fact that the disciplinary authority reached a different conclusion would not mean neglect of duty by petitioner. There was no allegation against him of any corrupt practice in holding the delinquent not guilty. The disciplinary proceedings were held illegal and arbitrary and were therefore quashed and set aside. The learned counsel submits that the applicant also discharged his duty and after he gave his frank independent view, that should not be treated as dereliction of duty or negligence in the performance of his duties and therefore the impugned charge sheet is liable to be quashed and set aside.

8. The learned counsel also relied on 1993(24) ATC - 74, 1999 SCC (L&S) 1299, 1997(1) SCSLJ 259.

9. We have heard the learned counsel for the applicant as well as the respondents. We find that the applicant in his capacity as presenting officer gave his brief after duly considering the various documents, the available oral evidence, and after he came to the conclusion that the charges could not be proved, he cannot be blamed for expressing his frank view in the matter.

10. ~~However~~^h, it is not for us to interfere at the stage of issue of chargesheet. ~~However~~^h In our considered view, the applicant cannot be faulted in this matter particularly when even the appellate authority found that the charges could not be proved. The charge sheet of 6/8/99 which has been impugned is therefore liable to be quashed and set aside and we order accordingly. The OA is therefore allowed. No costs.

Shanta S
(SHANTA SHASTRY)
MEMBER(A)

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