

Central Administrative Tribunal
Mumbai Bench

OA No.86/2000

Mumbai this the 18th day of June, 2003.

Hon'ble Mr. V.K. Majotra, Member (Admn)
Hon'ble Mr. Shanker Raju, Member (Judl)

Yeshwant Anand Bhadekar,
R/o 318/23, Shiv Sadan,
Nanda Patkar Road, Vile,
Parle (E), Mumbai-400 057.

-Applicant

(By Advocate Shri S.P. Inamdar)

-Versus-

1. Union of India, through
Secretary to Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Chairman, Central Board of
Excise and Customs, North Block,
New Delhi-110 001.
3. The Commissioner of Custom,
New Custom House, S.V. Road,
Mumbai 400 038.

-Respondents

(By Advocate Shri R.R. Shetty)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 19.8.99 imposing upon him a punishment of compulsory retirement from service. He has sought quashment of the same with all consequential benefits.

2. Applicant who was working as a Preventive Officer was issued a major penalty chargesheet under Rule 14 of the CCS (CCA) Rules, 1965 on the allegation of extracting an illegal graft from a passenger to clear his unaccompanied baggage upto the tune of Rs.10,460/- Enquiry Officer on his finding did not prove the charge. The aforesaid order was agreed to by the disciplinary authority (DA), i.e., Deputy Commissioner of Customs by

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his order dated 8.1.96 exonerating applicant from the charge as well as dropping the enquiry. Simultaneously with the disciplinary proceedings criminal prosecution under Prevention of Corruption Act was instituted in the Court of Special Judge at Mumbai in case No.11/97. By a judgment dated 13.1.97 applicant was convicted and sentence to suffer RI for a period of one year with a fine of Rs.5,000/- and also sentence to one year under 420 IPC. All sentences were ordered to run concurrently. Applicant approached the appellate side of the High Court of Judicature at Bombay in Criminal Appeal No.124/97 whereby an order dated 11.3.97 bail was granted and sentence was suspended. The President, in exercise of powers under Rule 29 (1) of the Rules suo moto reviewed the order of the OA dated 8.1.96 and issued a show cause notice to applicant for imposition of suitable penalty.

3. Aforesaid notice was challenged before this Court in OA-107/98, wherein by an order dated 23.1.98 OA was disposed of with liberty to applicant to file reply to the show cause notice and thereafter consideration of representation.

4. Accordingly, show cause notice was replied on 12.2.98 and on the same after consultation with the Union Public Service Commission (UPSC) and agreeing with the advice the impugned punishment was imposed upon applicant, giving rise to the present OA.

5. Learned counsel for applicant impugns the punishment on the following legal grounds:

5.1 By drawing attention to the decision of the Principal Bench of this Tribunal in S.K. Pandey v. Union of India, ATJ 2003 (1) CAT 538 it is contended that as the DA exonerated applicant and there was no punishment imposed, imposition of punishment by the DA on the advice of UPSC which recommended penalty of compulsory retirement in view of the disagreement and variance from the earlier order of the DA it was incumbent upon the President to have served applicant prior to imposition of punishment along with show cause notice copy of the advice of the UPSC.

5.2 It is further stated by resorting to decision of the Mumbai Bench of the Tribunal in K.S. Mahalingam v. Union of India, ATJ 1998 (8) CAT 678 that under Rule 29 of the Rules ibid provision for review by the President cannot be invoked against the order of a subordinate authority. According to applicant Rule 29 can be invoked only if new facts or material have come-forth and as applicant was convicted for an offence appropriate provision to be resorted was Rule 19 of the Rules ibid and as punishment has been inflicted under Rule 29 (1) the order passed is without jurisdiction.

5.3 It is further contended that as the judgment of the trial court has been stayed, it cannot be taken into consideration to the detriment of applicant. It is also contended that on the stale event of 1986 applicant has been punished after a gap of about 10 years and the advice of the UPSC is unfounded, lacking in material in particular.

6. On the other hand, respondents' counsel Sh. R.R. Shetty, rebutted the contentions and stated that action of the President is in consonance with Rule 29 of the Rules and as prior consultation of the UPSC is mandated the same has been resorted to.

7. Shri Shetty further stated that case of applicant cannot be compared with that of original order of punishment, as the President has provisionally decided to impose the penalty of compulsory retirement upon applicant on the advice of the UPSC agreed with it and there is no question of disagreement and furnishing a copy of the advice prior to imposition of punishment.

8. It is further stated that as applicant is convicted unless the conviction is obliterated by acquittal in appeal applicant cannot seek re-instatement or quashment of the punishment and in the event of finality arrived at in appeal on exoneration of ^W applicant, law shall take its own course.

9. We have carefully considered the rival contentions of the parties and perused the material on record. Rule 29 of the Rules *ibid* provides that President by any time on his own motion may call for the record of an enquiry and revise any order from which no appeal has been preferred to enhance the penalty imposed or to impose penalty where no penalty is imposed but in such event while imposing punishment it is to be ensured that the due process for a major penalty has been

followed and UPSC is to be consulted. In furtherance of the above and in compliance of it a show cause notice was served upon applicant, as after his exoneration from the charges in the disciplinary proceedings the decision of the trial court convicted him of the offence. It is true that Rule 19 of the Rules could have been resorted to where the only safeguard is issuance of a show cause notice and an opportunity. Under Rule 19 consultation of the UPSC is also mandated. However, on conviction a reasonable opportunity by way of a show cause notice was afforded to applicant and after consideration of his reply as applicant was convicted by the criminal court and the fact that suspension of sentence would not have an effect of obliteration of the criminal offence and the charges alleged against applicant of a gravest misconduct of acceptance of bribe which ~~was~~ proved, the President compulsorily retired applicant from service. In our considered view the decision in Pandey's case (supra) would have no application in such an eventuality. The President has not acted as a DA but on suo moto review revised the orders of the DA. Necessity of furnishing advice of the UPSC prior to the imposition of the punishment arises only when the DA passed and order and there is a disagreement between the findings arrived at by the DA and the advice tendered by the UPSC. We find from the record that President has provisionally decided to impose penalty of dismissal upon applicant but on the advice of the UPSC a lesser punishment of compulsory retirement, which was agreed to by the President, was imposed. This, to our considered view, is not a case of disagreement arrived at by the

President acting under Rule 29. As such non-supply of the advice of the UPSC prior to imposition of the penalty cannot vitiate the order. However, we note that the advice was served upon applicant along with copy of the penalty order.

10. In so far as the plea that President has no jurisdiction to invoke Rule 29 (1) against an order of the subordinate authority, the decision in Mahalingam's case (supra) is distinguishable on the ground that there the issue was of exhaustion of remedy and the orders of President under Rule 29 (1) has not been scrutinised.

11. As applicant has been convicted of an offence of corruption by the trial court mere suspension of execution of sentence would not have an effect of obliteration of applicant from criminal charges, and this does not loose its efficacy merely because execution of the sentence is suspended by the trial court. However, in case applicant is exonerated of the charge, law shall take its own course. We are fortified in this view of ours by the decision of the Apex Court in Union of India v. Ramesh Kumar, 1997 SCC (L&S) 774.

12. Having regard to the above, finding no infirmity in the order passed by the President OA is found bereft of merit and is accordingly dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

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V.K. Majotra

(V.K. Majotra)
Member (A)