

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:563.2000

DATE OF DECISION: 15-7.2003

Shri Nelson Marian Nunes

Applicant.

Shri S.S. Karkera

Advocate for
Applicant.

Verses

Union of India and others

Respondents.

Shri V.S.Masurkar

Advocate for

CORAM

Hon'ble Shri Justice R.R.K.Trivedi Vice Chairman


Hon'ble Shri Shankar Prasad - Member (A)

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

(3) Library.

no


(Shankar Prasad)
Member (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 563/2000

the 15 day of JULY 2003

CORAM: Hon'ble Shri Justice R.R.K. Trivedi - Vice Chairman
Hon'ble Shri Shankar Prasad - Member (A)

Nelson Marian Nunes
Residing at 204,
Sohan Apartments,
Bahadur Shaikh Naka,
Chiplun.

...Applicant.

By Advocate Shri S.S.Karkera.

V/s

1. The Union of India through
The Secretary,
Government of India, Ministry
of Finance, Dept. of Revenue,
New Delhi.
2. The Member (P&V)
Central Board of Excise &
Customs, Ministry of Finance
Dept. of Revenue, New Delhi.
3. The Commissioner,
Central Excise, Mumbai -III
O/O The Commissioner of Central
Excise, Mumbai -III, Nav Prabhat
Chambers, Ranade Road, Dadar(W)
Mumbai.
4. The Dy. Commissioner (P&V)
O/o The Commissioner of Central
Excise, Mumbai II, 9th Floor,
Piramal Chambers, Lalbaugh,
Parel, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

O R D E R

{Per Shankar Prasad, Member (A)}

The applicant has challenged the order of Disciplinary
Authority dated 19.6.1997, imposing the penalty mentioned *in*

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therein, the order of Appellate Authority and the order of Revisional Authority by this OA. He has sought for the following relief:

(A) This Hon'ble Tribunal be pleased to call for the entire records of the case of the Applicant and after examining the legality and propriety thereof be pleased to quash and set aside the impugned orders dated 19.6.97, 5.5.98 and 21.2.2000 (Ex. A, B and C)

(B) This Hon'ble Tribunal be further pleased to hold and declare that the applicant is entitled for promotion to the post of Supdt. from Sept. 1996.

(C) This Hon'ble Tribunal be further pleased to direct the respondents to open the seal cover and grant promotion to the post of Supdt. with effect from Sept. 1996 with all consequential benefits such as pay fixation and arrears thereof.

2. The case of the applicant in [✓]brief is that major penalty charge sheet was issued to him for the [^]charges mentioned therein, charge sheet was also issued to the then Assistant Commissioner, Superintendent and his successor in this regard. The case of the applicant is that the Superintendent had only asked him to check the plan submitted by M/s Shakti Acquaculture Farms Ltd. and he had checked accordingly. He had filled the check list in Annexure I as per the direction of the Superintendent and in any case the permission for setting up of Private Bonded Warehouse under Section 58 of the Customs Act 1962 is granted by the Assistant Commissioner. He did not accept the charges (Exhibit D). Thereafter the Enquiry Officer was appointed The Enquiry Officer after conducting the enquiry held the charges as not proved. The Disciplinary Authority thereafter issued a show [^]

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cause notice indicating therein that he was of the view that the report of the Enquiry Officer is not correct. He submitted the reply and thereafter the impugned order was passed. He submitted an appeal petition and his; penalty was reduced. He thereafter submitted a Revision Petition. During the pendency of Revision Petition the Revisional Authority also issued a show cause notice to enhance the punishment but the same was subsequently dropped. The Revisional Authority passed final order.

It is vehemently argued by the applicant that in view of the finding of the Enquiry Officer, The Disciplinary Authority who was much junior in rank should not have held him guilty. The Disciplinary Authority has not complied with the requirement as laid down in Punjab National Bank V/s Shri Kunj Behari Misra 1998(2) SC SLJ 117.

Even though the applicant has urged number of grounds in this OA, he had confined his argument to these only.

3. The respondents have filed their reply. They have indicated therein that the case of the applicant was dealt with by another Commissionerate from where the applicant was presently transferred. The Disciplinary Authority had given reasons for the show cause notice for its disagreement with the Enquiry Officer's report and that the action of the Disciplinary Authority was in accordance with law. The Revisional Authority had issued a cause notice for enhancement of punishment as he had found that the order of the Appellate Authority suffered from some procedural lapses. It was ^{later} found that major penalty was imposed in appeal also and no review was warranted. *St*

4. We have heard counsel for the parties.

4. The applicant at the relevant point of time was working as Inspector, Central Excise Divn. X under Mumbai Collectorate. He was Range Officer of that particular division. The plan submitted by one M/s. Shakti Acquaculture Farm Ltd. 100% E.O.U (Export Oriented Unit) was sent to him. This was in connection with declaring their place as Private Bonded Warehouse under Section 58 of Customs Act 1962. It may be noted that under the 100% E.O.U Scheme, the unit is entitled to import /procure domestically without payment of customs/excise duty capital goods, Raw material etc. They also have an export obligation. With a view to safeguarding the revenue proper arrangement have to be made for bonding of premises. Before they can be so bonded the village has to be declared a warehousing station. It appears that when the first consignment of prawn feed was imported and cleared by Bombay Port, it was found that there was no Warehouse to store the same. Accordingly the charge sheet was issued.

5. It further appears that a preliminary enquiry had been held and that during the course of preliminary enquiry the applicant had stated as follows:

".....Now I have been shown the checklist dated 24.8.1992 as per Annexure-I signed by the Superintendent Shri Shenava wherein it is entered Not Applicable (NA) from Column No.1 to 6. How did you recommend for the licence for the private bonded warehouse on these conditions? I have to state that --- This entry in the Annexure - I were made by me as per Supdt's directions. And the same was forwarded by the Supdt. to the A.C." *JS*

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The then Assistant Commissioner, Supdt. and the successor Inspector also examined during the preliminary enquiry and all these statements are also relied upon documents.

6. The Enquiry Officer however held that the charges were not proved. The Disciplinary Authority issued a show cause notice. The relevant portion is as follows:

3. After perusing the Inquiry Officer's report and the records of the case, the undersigned is tentatively of the view that the report of the Inquiry Officer holding the charges as not proved, is incorrect inasmuch as it is seen that the purpose of ground plan for the grant of private warehouse for storage of non-duty paid goods was clearly to verify the suitability of premises for secured storage. Absence of a secured warehouse should have been indicated/ reported by Shri Nelson M. Nunes, Inspector, and the ground plan should have been rejected indicating the shortcomings as safeguards for revenue were not available.

The applicant thereafter submitted a report quoting extensively from the Enquiry Officer's report and also stating that in view of the decision of the Apex Court in Hindustan Steel V/s State of Orissa, penalty could not be imposed for failure to carry out statutory obligation.

7. The Apex Court in the case of Punjab National Bank and others Vs. Shri Kunj Behari Mishra, 1998 (2) SC SLJ 117 a who was considering the case of applicant who was working as Assistant Manager. On physical verification of the currency chest a shortage of Rs. One lakh currency notes was found. The Enquiry Officer found him guilty only of one charge and *h*

exonerated him of the 5 charges. The Regional Manager disagreed with the findings of the Enquiry Officer and passed an order holding that it was an undisputed position that Mishra being Assistant Manager was in the joint custody of the keys of the currency chest and he had personal responsibility towards the safe custody of the cash and that no material had been placed during the enquiry proceedings to establish that he had discharged his duties in the manner expected of him. The Disciplinary Authority held Mishra to be responsible for the shortage in question and held that a minor penalty of proportionate recovery was imposed. The Apex Court took note of the earlier decision of Apex Court including Karunakar's case and held as follows:

"18. Under Regulation 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (supra)."

8. We find in the instant case that the Disciplinary Authority has issued a show cause notice indicating therein that officers did not indicate/report in the verification report that there was no warehouse for non-duty paid goods. This observation has to be seen in the context of Annexure-I to the question to be filled by the Officer inspecting the premises and the admission of the applicant himself during preliminary enquiry. Annexure A -I is as follows:

- 1) Nature of Walls : N.A.
- 2) Nature of Roof : N.A.
- 3) Lightning : N.A.
- 4) Are all windows and ventilation spaces properly located & secured with strong shutters that can be fastened firmly from inside. : N.A.
5. Arrangements for locking doors in particular, are all heaps and staples so secured that they cannot be unscrewed or otherwise easily withdrawn from outside. : At present N.A.
6. Are all the doorways other than those which customs locks are to be affixed brocked up or otherwise blocked more securely than by bolting or locking the doors. : - do -
7. Declaration against fire. : The party has been instructed to provide fire-extinguisher before any goods are warehoused."

9. It is clear that the Disciplinary Authority has issued a speaking show cause notice which was based on the material

already on record. It can accordingly be held that principle enunciated in the case of Punjab National Bank & others Vs. Shri Kunj Behari Mishra (supra) have been followed in the instant case.

10. The applicant has strenuously argued that he did so on the dictates of the Superintendent. It is evident that each of the officer has his own responsibility and he cannot escape his responsibility by saying that he acted on the direction of his superior. We may note in this context that the CCS (Conduct) Rules was specifically amended after emergency to take care of the oral directions of the superior and the manner in which such direction should be complied with. Thus the petitioner cannot escape from his responsibility of pointing out that premises were not available for storage.

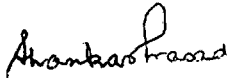
11. The other ground that Commissioner of Departmental Enquiries was a senior officer to disciplinary authority has no legs to stand upon. The report of Enquiry Officer is not binding on disciplinary authority.


12. Thus no case for interference with the orders of disciplinary authority is made out.

13. We also note that the initial orders passed for reduction of two stages in the time scale of Rs.1640-2900/- for a period of 2

two years with further condition that he will not earn increment during this period and that the reduction will have the effect of postponing the future increment. The Appellate Authority however modified the punishment to the extent that the reduction will not have the effect of postponing future increments. It was perhaps in this background that notice for enhancement of penalty was issued under the the impression that the same was not a major penalty.

14. Since ^{these} ~~these~~ ^{were} the only grounds urged at the time of arguments, we find that there is no merit in the OA. As such the same is dismissed. No order as to costs.


(Shankar Prasad)
Member (A)


(R.R.K. Trivedi)
Vice Chairman

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