

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 215/2000

Date of Decision : 3-9-04

B.N.Kawale

Applicant

Shri S.P.Kulkarni

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri V.S.Masurkar


Advocate for the
Respondents

CORAM :

The Hon'ble Shri A.K.Agarwal, Vice Chairman

The Hon'ble Shri S.G.Deshmukh, Member (J)

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


(A.K.AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.215/2000

Dated this the 8th day of September 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri S.G.Deshmukh, Member (J)

Balkrishna Narsappa Kawale,
R/at 1/1 Chandrodaya Housing
Society, C.S.T.Road, Mumbai,
P.O.Chembur, Mumbai.

...Applicant

By Advocate Shri S.P.Kulkarni

vs.

1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
Govt. of India,
North Block, New Delhi.
2. The Deputy Secretary,
Union Public Service Commission,
Dholpur House, Shahjahan Road,
P.O. New Delhi.
3. The Under Secretary,
Govt. of India,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
4. The Director of Vigilance,
Customs and Central Excise,
North Block, New Delhi.

...Respondents

By Advocate Shri V.S.Masurkar

..2/-



O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

This OA. has been filed by the applicant under Section 19 of the A.T. Act for quashing and setting aside the punishment order dated 4.3.1999 imposing on him a penalty of 10% cut in monthly pension for a period of five years. The applicant has also sought a declaration to the effect that quasi-judicial powers exercised by him cannot be called in question merely on the basis of suspicion.

2. The facts of the case in brief are as follows. The applicant retired on 30.4.1995 as Assistant Collector of Customs. Only a few days before retirement, he was served with a chargesheet dated 26.4.1995 alleging that during the year 1990-91 he allowed the products of M/s. Noble Synthetics Ltd. at a concessional rate of 20% duty while as per the classification the rate of duty was 40% and the fresh classification list lowering the rate of Central Excise duty from 40% to 20% was approved without considering necessary details. The applicant was not competent to lower the rates approved earlier and by such action he caused a revenue loss of Rs.9,95,928/-.

3. The applicant has contended that he was served with the charge memo on 27.4.1995 while the event related to the year 1990-91. Further, the approval of classification list is a quasi-judicial function and therefore cannot become a subject matter of a disciplinary action. The report of the enquiry

officer was furnished to the applicant on 31.1.1997 and reply was submitted on 21.6.1997. The disciplinary authority under Rule 9 of CCS (Pension) Rules passed an order of 10% cut in monthly pension for a period of five years vide order dated 4.3.1999. In passing this order, the disciplinary authority instead of applying his own mind heavily relied on the advice given by the UPSC. It is the contention of the applicant that the UPSC's advice alone cannot form the basis of the findings. There has to be some independent evaluation of the case by the disciplinary authority along with the reasons. Besides this, the disciplinary authority has also ignored the fact that the earlier rate of 40% was purely provisional. The applicant has also challenged the impugned order on the basis of absence of evidence.

4. The learned counsel for applicant mentioned that the entire order of the disciplinary authority is based on conjectures and surmises. It is not based on an impartial assessment of evidence. Even in the statement of imputations it has been mentioned that there was a meeting planned by the assessee and the Assistant Collector who colluded in the case. He said that a question mark has been raised even on the disposal of the matter within a period of seven days. When there is no minimum time limit prescribed for giving any notice or for any assess, a quicker decision should always be appreciated.

..4/-



5. The learned counsel for the applicant mentioned that on the one hand the entire order of the disciplinary authority is based on the advice of the UPSC and on the other hand, the advice of the UPSC was not furnished to the applicant before passing of the final order. This advice was received by the applicant only along with the final order dated 4.3.1999. The learned counsel for the applicant mentioned that as per the ratio laid down by the Apex Court in the case of Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors. 1999 SCC (L&S) 1299, negligence in a quasi-judicial adjudication is not negligence for holding the authority guilty of misconduct. Unless such negligence is deliberate and actuated by malice, it cannot be a ground for misconduct under CCS Rules.

6. The learned counsel for respondents mentioned that the charge memo was delivered to the applicant on 27.4.1995 when he was in service. Therefore, the surmises made by the applicant as what would have happened in case the chargesheet would have been served after his superannuation are not relevant. He also said that the contention of the applicant that the disciplinary authority has not applied its mind and was swayed by UPSC's advice is not correct. As per procedure for Group 'A' officers before awarding them any punishment, seeking of the advice of UPSC is mandatory. The disciplinary authority is expected to give due weightage to such advice and then pass appropriate orders after taking into consideration all other facts of the case. He said that the advice of UPSC was supplied alongwith the

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penalty order since in the procedure laid down for disciplinary action, there is no such mention that commission's advice be given to the charged officer before passing final order. He said that the applicant was chargesheeted not only because of a defective quasi-judicial order passed by him but also on his conduct while dealing with an excise duty matter where he reduced the rates within a shortest possible time. He said that the rules do not speak of giving of UPSC's advice before passing the final order and this has not been challenged by the applicant.

7. The learned counsel for the respondents continuing his averments contended that the Apex Court ruling in Nagarkar's case relied upon by the counsel for the applicant will not be applicable to the facts of this case. On the other hand, he has relied upon the decision of the Apex Court in the case of Union of India vs. A.N.Saxena, 1992 (21) ATC 670. This was a case of an Income Tax Officer and the Apex Court has held that even when he was performing quasi-judicial function, disciplinary proceedings can be initiated. The relevant portion of the judgement of the Apex Court is as follows :-

"In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. -----There is a need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions ----- But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

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8. We have heard both the counsels and perused the material placed on record. The learned counsel for the applicant has relied upon the following judicial pronouncements :-

(i) Charanjit Singh Khurana vs. Union of India
1994 (27) ATC 378.

(ii) Union of India & Ors. vs. Ms.Dolly Saxena
2001 (3) A.I.SLJ 490 (Delhi High Court).

9. The ruling of the Delhi High Court in Union of India vs. Ms.Dolly Saxena relied upon by the learned counsel for the applicant is essentially based upon the principles laid down by the Apex Court in Nagarkar vs. Union of India, 1997 (7) SCC 409, wherein it has been held that mere negligence or recklessness unaccompanied by charges of favour or quid pro quo in quasi judicial matters cannot be a subject matter of chargesheet. The functions of an Assistant Collector of Customs for fixing the rates of Central Excise duty is strictly speaking not a quasi judicial functions where verdict is given by hearing both the parties. Even considering it as a quasi judicial act, the lowering of duty in a record time is certainly a question of propriety and as held in the case of Union of India vs. A.N.Saxena (supra), disciplinary action can be taken against the applicant. Here, it is more important to see the reply of the delinquent to the charges as well as the evidence available. If that proves misconduct, then the question whether or not disciplinary action could be initiated recedes to background.

..7/-



10. After going through the material placed on record, we are convinced that there is enough evidence on record to prove the misconduct of the applicant. This is certainly not a case of no evidence. The punishment imposed by the disciplinary authority is also not excessive keeping in view all relevant issues of the case. Further, keeping in view the facts of the case, we feel that non furnishing of advice of UPSC before passing the order has not caused any prejudice to the applicant in this case.

11. We, therefore, hold that the OA. is devoid of merit and deserves to be dismissed. The OA. is dismissed accordingly. No order as to costs.


(S.G. DESHMUKH)

MEMBER (J)


(A.K. AGARWAL)

VICE CHAIRMAN

mrj.