

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 287/2000

Date of Decision: 08.08.2003

Dinanath Shukla.

Applicant

Shri M.S. Ramamurthy. Advocate for Applicant(s).

Versus

Union of India & ors.

Respondents

Shri V.S. Masurkar. Advocate for Respondents.

CORAM: HON'BLE SHRI A.S. SANGHVI.
HON'BLE SHRI SHANKER PRASAD

MEMBER (J)
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. ✓

A.S.
(A.S. SANGHVI)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.287/2000

THIS THE 8 TH DAY OF AUGUST, 2003

CORAM: HON'BLE SHRI A.S. SANGHVI. MEMBER (J)
HON'BLE SHRI SHANKAR PRASAD MEMBER (A)

Dinanath Shukla,
formerly Customs Appraiser,
employed in the New custom House,
Ballard Estate,
Mumbai-400 001. Applicant

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India
through the Secretary in the
Ministry of Finance,
Department of Revenue,
Central Board of Excise & Customs,
Government of India,
North Block, New Delhi-110 001.
2. The Commissioner of Customs (General)
Vigilance Section, New Custom
House, Ballard Estate, Mumbai-400 001.
3. The Appellate Authority,
(Hon'ble Finance Minister),
Ministry of Finance,
Department of Revenue,
New Delhi-110 001.
4. The Chief Vigilance Officer,
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance,
New Delhi-110 001. Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Shri A.S. Sanghvi. Member (J)

The applicant who was working as appraiser in
the Customs department was served with a charge sheet on
01.02.1996 and on his denying the charges levelled
against him an inquiry was conducted. The inquiry

officer on completion of the inquiry, submitted his report on 31.8.1998 wherein the charges levelled against the applicant were held to be proved. Copy of the report was furnished to the applicant and after inviting representation from the applicant on the inquiry report, the Disciplinary Authority after consulting the CVC and UPSC imposed the penalty of removal from service on the applicant. The applicant challenged the order before the Tribunal by filing OA 318/99 without exhausting the remedy of preferring appeal. The OA had come to be disposed of at the admission stage with liberty to the applicant to exhaust the statutory remedy before the Appellate Authority. The applicant therefore filed a writ petition No.1160/99 before the Hon'ble High Court of Bombay, but the High Court also rejected the writ petition holding that the applicant should file the statutory appeal before challenging the order in the Tribunal. The applicant there upon filed an appeal dated 11.5.99, but the appeal has come to be rejected vide order dated 27.7.99. Since the appeal was rejected without giving any personal hearing to the applicant, the applicant moved a contempt petition before the Hon'ble High Court. Subsequently the personal hearing was given on 04.01.2000 and order dated 11.01.2000 came to be passed by the Appellate Authority confirming the earlier order dated 27.7.99. The applicant has therefore, moved the present OA challenging the orders of the disciplinary Authority as well as Appellate

Authority. The main ground on which the impugned orders are challenged are that there is absolutely no evidence on record before the Inquiry Officer to hold that the charges levelled against him are proved. The witnesses by whom the charges are held to be established were not examined at the inquiry and those who were examined in the inquiry had no personal knowledge about the examination of goods conducted by him or the note or the report given by him or the quality of the goods which were exported. No Panchas or other material witnesses were examined. The Inquiry Officer as well as the Disciplinary Authority relied on the statement of some person but did not examine them as witness and did not offer them for cross examination. This has clearly vitiated the whole inquiry as the statement relied upon by them were recorded in the absence the applicant and the inquiry had proceeded in utter violation of the principles of natural justice and as such the inquiry deserves to be quashed and set aside. According to the applicant the report of the Inquiry Officer is only based on the statement of three persons namely Mohandas Kishanchand Karnani, Shally Thapar and Vijay Devji Pujara, Local Supplier, Shipping agent and customs house agent respectively, but none of them is examined as witness before the inquiry officer. There is therefore absolutely no evidence on record that the charges were proved. The statement of these witnesses were not admissible in evidence as they were not examined and

were not offered for cross examination. This has resulted into serious prejudice to the case of the applicant and as such the whole inquiry deserves to be quashed and set aside.

4. The respondents on the other hand have maintained that the inquiry has proceeded as per rules and regulations and there was no violation of principles of natural justice. They have maintained that there was no delay in issuing the charge sheet. The time was taken mainly for carrying out the investigation and since the investigation involved bringing back the goods from foreign destination, the charge sheet could not be served on the applicant immediately. According to them the applicant had given clearance for the sub-standard goods which unduly benefitted the Exporter in form of duty drawback, REP licence etc., and since the investigation in the allegation made against the applicant took some time, the charge sheet was served only after completion of the investigation. It is also contended by the respondents that the evidence recorded under section 108 of the Custom Act is a value evidence and it can be used as evidence in the departmental proceedings as well as in the inquiry. They have asserted that the action of the Inquiry Officer as well as Disciplinary Authority in using the statement of the witness in holding that the charges against the applicant were proved without examining those witnesses

was not illegal or erroneous. According to them the applicant had full liberty to seek cross examination of panchas and the CHA in his defence and at this stage he cannot complain that he was denied any opportunity to do so when he did not ask for the cross examination of these witnesses. They have also denied that the Appellate Authority had not considered any of the points submitted by the applicant and has mechanically dismissed his appeal. The charge against the applicant was that he had not actually verified the goods before giving clearance certificate and hence the onus was on the charged officer to show that he had verified the goods. He has failed to report and gave false examination report on the basis of which clearance of cheap quality and value inflated goods was allowed to export, since he had given a clean report stating the declaration that the shipping bills are correct and certified the over valued goods. The supervisory lapse of the said officer has also dealt with on merit and he has been punished with suitable major penalty. They have further contended that the charges against the applicant were proved. The exported consignment was brought back from the destination and re-examined and the goods were found containing only cheap quality goods different from prime quality goods declared. The applicant had certified that the goods were of prime quality and high value goods. As regards non-examination of the witnesses, whose statement were

relied upon, the respondents have contended that the officer who had recorded the statement of Mr. Karnani was also a witness and was examined. Similarly the investigating officer had recorded the statement of Mr. Shally Thapar and Karnani under section 108 of the Custom Act and they had given their statement voluntarily without any force. The investigating officer had also examined and cross examined the officer, who had recorded the statement of Shally Thapar and Karnani and therefore, there was nothing wrong in relying on the statement of them in the departmental proceedings as well as judicial proceedings. The applicant was at liberty to cross examine them in his defence. He had however not asked for examination of the said persons as defence witness. Since he had not asked for cross examination of witness at the time of inquiry proceedings, the statement recorded under Section 108 of the Custom Act were taken as evidence in the departmental inquiry. The use of these statement by the Inquiry Officer to prove the charges against the applicant therefore cannot be considered as violative of principles of natural justice. They have denied that the findings of the Inquiry officer as well as Disciplinary Authority were based on speculation and conjecture and there was absolutely no evidence on record to arrive at the said finding. They have prayed that the OA be dismissed with costs.

3. We have heard the learned counsel of both the parties and carefully considered the rival contentions.

4. Before we discuss the contentions raised by the applicant, it would be necessary to bring out the salient feature of the case against the applicant, so that the contentions can be properly understood. The applicant, was posted at Sewree Timber Pond at Mumbai on 20.6.1990 and 21.6.1990 as Examiner and it is the allegation of the respondents that while he was posted as such, some goods of M/s Roman Exports were cleared by him for export. It is the allegation of the respondents that inspite of goods being of inferior quality, the same were cleared by the applicant by giving a false report in confirmity with the declaration made by the exporter. This came to light when the goods of M/s Roman Exports i.e. about 300 export consignments were seized and the goods were found to be inferior quality and it was also found that they were over valued. This prompted the investigating officer to look into further 22 export consignments which were already sent by the said company. The goods which were sent to various destinations were found to be not accepted by the consignee at the respective destination and the same were available in the port where they were despatched. The shipping agents were directed to bring back the cargo and as such consignments were brought back. The returned consignments were re-examined and the Panchnama

was prepared. The re-examination revealed that these goods were of sub-standard quality and not prime goods. Further investigation revealed that the goods exported were also sub-standard. It clearly indicated that the Custom Officer entrusted with the examination of the goods had failed to carry out his duty and had given a false report. The applicant was working as Examiner during March 1990 and June 1990 and it was his duty to examine cargo presented on behalf of the Exporter as per the description value and quantity mentioned in the shipping bill invoices and export consignment. Since he had failed to carry out his duty properly and had given false report to the effect that the goods were in confirmity with the declaration made by M/s. Roman Exports, on the basis of this report the Exporter M/s. Roman Exports has gained duty draw back from the Custom department, REP care incentive from the Joint CCI 7 e from Bombay. After a preliminary inquiry, regular disciplinary proceedings under Rule 14 of the CCS (CCA) Rules were initiated against the applicant. It is clearly indicated that the main charge against the applicant was that he had failed to examine the consignment covered under the shipping bill and as per the departmental procedure prescribed by the Custom Department for the examination of the cargo and had submitted a false report to the effect that the goods were in confirmity with the declaration made by the Exporter. The Inquiry Officer had recorded evidence of

15 witnesses but according to Mr. Ramamurthy learned counsel appearing for the applicant, the evidence of the main witnesses were not recorded inspite of the fact that their statement were already recorded by the Custom Officer. The main plank of the submission of the learned counsel for the applicant is that if the statements of Mr. Thapar, Pujara and Karnani are not considered as evidence and not taken into account for proving the charges against the applicant, then nothing remains in evidence to even suggest that applicant was guilty of the charges levelled against him. In support of his submission, he has referred to the observation of the Inquiry Officer as well as the Disciplinary Authority and submitted that both the Inquiry Officer as well as the Disciplinary Authority have after heavily relying on these statements concluded that the charges levelled against the applicant are proved. He has pointed out that none of these persons whose statement have been heavily relied on by the Disciplinary Authority and Inquiry Officer is even cited as witness in the charge sheet and none of them is examined as witness before the Inquiry officer. No opportunity of cross examining these witnesses was also given to the applicant and as such the punishment imposed on the applicant relying on such extraneous evidence or statement deserves to be quashed and set aside.

S. The respondents in their reply have admitted

that none of these persons have been examined as witnesses, but according to them their statements were recorded by the Custom Officer and under Section 108 of the Custom Act 1962. They are very much admissible in evidence and as such the Inquiry officer and the Disciplinary Authority were quite justified in placing reliance thereon. Referring to the position that some of these persons had retracted their statement while giving evidence before criminal court, it is contended by the respondents that these are after thought.

6. Having gone through the report of the Inquiry Officer as well as the Disciplinary Authority order and also through the evidences recorded by the Inquiry Officer during the course of the inquiry, we find ourselves in agreement with the submission made by Mr. Ramamurthy learned counsel appearing for the applicant. A few lines from the order of the Disciplinary Authority will clearly indicate to what extent the Disciplinary Authority has relied on the statement of the persons who were not examined as witnesses and not presented for cross examination. On page 13 of the order, the Disciplinary Authority has observed as under:-

"As against the above denial of the charges, I find that in this case, the exporter (M/s. Roman Exports), the supplier of the goods S/Shri Shaila Thappoar and Shri Karnani as well as the CHA Shri Devji Pujara have admitted that in all the 5 consignments exported by M/s. Roman Exports, the goods were examined by the C.O., the exported contents were substandard seconds and the value highly inflated. Though

all the consignments could not be brought back to the country after 2 yrs of shipment, at least 2 consignments under S/B No. 40305 and 40306 were brought back, reexamined before panchas and the supplier. Shaila Thappoor has confirmed that these are the very goods which he had supplied to M/s. Roman Exports and shipped by them. When all the 32 cartons have been returned of the 2 consignments, in some of the cartons the numbers were found erased still as all the cartons of the 2 consignments have been returned, it follows that the cartons which were examined by the C.O. have also been brought back. If some cartons did not have any number, that only accentuates the incidence of the offence in as much as these cartons could have been deliberately sent unmarked in order to evade detection with the connivance of the exporter. I am unable to accept the contention that as some of the cartons were found without marks, the examined cartons were not there. The C.O. has not denied that this is the same consignment which were exported after examination by him. Nor he has any comments as to how could the examined cartons with prime quality ready made garments be missing, when the entire consignment was brought back. On the contrary, the exporter, supplier of the goods and CHA have confirmed them as the same consignment. That the remaining 3 consignments could not be brought back should similarly contain substandard, cheap quality goods with inflated value. This has been confirmed by the evidence of the CHA, the supplier of the goods as well as the exporter. There is no evidence that the C.O. had asked for examination of the panchas."

7. These observations of the Disciplinary Authority clearly indicate that solely relying on the statements of exporter, supplier of the goods and CHA who were not examined as witness in the inquiry, the Disciplinary Authority has held the charges against the applicant as having been proved. It is interesting to note that no panchas were also examined even though panchanamas were prepared of the goods returned from various ports. When the panchas are not examined, we are unable to understand as to how the panchanamas were

treated as proved by the Inquiry Officer as well as the Disciplinary Authority. When the panchanamas had lost their evidentiary value on account of the non examination of the panchas, there was no evidence before the Inquiry Officer or the Disciplinary Authority to suggest that goods of the inferior quality were in the consignment that were received back.

8. So far as the argument advanced by the respondents that the statements were recorded under Section 108 of the custom Act can be used as evidence and can be relied on during the disciplinary proceedings. We are at loss to understand the interpretation placed by the respondents on the ambit of section 108 of the Custom Act. The statement of the persons recorded under Section 108 of the Custom Act can definitely be used against the person whose statement were recorded but not against third party who were not even present when that statement was recorded. In our opinion, relying on the statement of the persons who were not even cited as witness in the inquiry proceeding and not examined as witness is nothing but gross violation of principles of natural justice. The statement of these persons, recorded by the Custom Officer behind the back of the applicant, were not even supplied to the applicant and still the Disciplinary Authority as well as the Inquiry officer used those statement as most material evidence against the

applicant. In the case of Kashinath Dixit Vs. Union of India (AIR 1986 SC 2118) the delinquent had requested for the supply of copies of the statement made by the witness on pre-inquiry as such also the copies of document on which reliance was placed levelled against him. But request was turned down observing that this was gross violation of principle of natural justice, the Supreme Court in para 10 of the judgment has held as under:

"And such a stance was adopted in relation to an inquiry whereat as many as 38 witnesses were examined, and 112 documents running into hundreds of pages were produced to substantiate the charges. In the facts and circumstances of the case we find it impossible to hold that the appellant was afforded reasonable opportunity to meet the charges levelled against him. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employee facing the departmental inquiry depends on the facts of each case. We are not prepared to accede to the submission urged on behalf of the respondents that there was no prejudice caused to the appellant in the facts and circumstances of the case."

9. The Supreme Court further observed in para 11 that it is evident that the appellant was entitled to have an access to the documents and statement throughout the course of the inquiry. He would have needed those documents and statements in order to cross examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also he would have needed the copies of the documents to enable him to effectively cross examine the witnesses with reference

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to the contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an over all view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.

10 These observations of the Supreme Court applies with full force to the facts of the instant case. The applicant in the instant case had also not been supplied with the statement of the aforesaid four persons prior to initiation of the inquiry or during the course of the inquiry and still heavy reliance is placed by the Disciplinary Authority on the statement of these persons. They cannot be called witness also as they were not cited or examined as witness. It was therefore not fair on the part of the Disciplinary Authority to place reliance on the statements and hold that the charges against the applicant stand proved. The significant aspect of the matter is that two of these persons have admittedly retracted their statements and inspite of noting this fact the Disciplinary Authority has not thought it fit to direct the Inquiry Officer to hold a fresh inquiry in the charges against the applicant, but place full reliance on the statement of these persons who had retracted their statements. Further more the panchas were not offered for cross examination by the delinquent. We are unable to appreciate how the panchanamas could have been admitted

in evidence before the Inquiry Officer and could have been relied by the Inquiry Officer or Disciplinary Authority when they were not properly proved. We therefore find that the inquiry conducted by the Inquiry Officer was not conducted as per rules and regulations and the punishment imposed on the applicant by the Disciplinary Authority is vitiated on account of non-observation of principles of natural justice.

iii. Ordinarily we would have like to quash and set aside the order of punishment passed by the Disciplinary Authority as it is violative of principles of natural justice, but considering that the Disciplinary Authority has misdirected himself in relying on the statement of the persons, who were not witnesses before the Inquiry Officer and who were not even offered for cross examination and some of whom even retracted their statements and the reliance on whose statements was not permissible, we would like to give an opportunity to the Disciplinary Authority to decide the inquiry afresh on the basis of evidence recorded by the Inquiry Officer and not on the basis of extraneous statements or considerations. We feel that the Disciplinary Authority is required to be given an opportunity in the interest of justice also to re-assess the evidence on record and arrive at a correct finding as in our opinion the Disciplinary Authority had misdirected himself in believing that he can rely on the statement of the

persons who were not even the witness in the inquiry and thereby having not considered the other evidence adduced during the course of the inquiry. For the aforesaid reasons, we quash and set aside the order of punishment passed on the applicant by the Disciplinary Authority and confirmed by the Appellate Authority and remit back the matter to the Disciplinary Authority to pass appropriate order in the inquiry after taking into consideration the evidence adduced in the inquiry only and not basing his conclusion on any extraneous factors. If the same Disciplinary Authority, who had decided this case is not available then who so ever the Disciplinary Authority shall first give an opportunity of hearing to the applicant prior to passing orders finalising the inquiry. This exercise shall be completed within four months from the date of receipt of copy of this order. The applicant is reinstated in the service, but he would be entitled to backwages and other benefits only if he is exonerated of the charges levelled against ^{him} _{by} the Disciplinary Authority. With this direction, the OA stands disposed of with no order as to costs.

Shankar Prasad

(SHANKAR PRASAD)
MEMBER (A)

A. S. Sanghvi

(A. S. SANGHVI)
MEMBER (J)

Gajan