

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI
ORIGINAL APPLICATION NO.670/2001

Date of Decision: 16.04.2002

Shri N. Rajendran.

Applicant(s)

Shri K.R. Yelwe.

Advocate for applicant/s

Versus

Union of India & others

Respondents

Shri V.D. Vadhavkar.

Advocate for Respondents

CORAM: HON'BLE SHRI BIRENDRA DIKSHIT. VICE CHAIRMAN
HON'BLE SMT. SHANTA SHASTRY. .. 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 ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 670/2001

THIS THE 16TH DAY OF APRIL, 2002

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SMT. SHANTA SHASTRY . MEMBER (A)

Shri N. Rajendran, Aged 45 years,
working as Superintendent of
Customs (Prev), New Custom House,
Ballard Estate, Mumbai-400 038. .. Applicant

By Advocate Shri V.S. Masurkar with Shri K.R. Yelwe.

Versus

1. Union of India through
The Chairman, Central Board of
Custom and Excise,
Ministry of Finance,
Department of Revenue,
New Delhi-110 001.
2. The Chief Commissioner of
customs, New Customs House,
S.V. Road, Ballard Estate,
Mumbai-400 038.
3. The Assistant Commissioner of
Customs, Preventive (General),
JCH J.N. Port, Sheva, District,
Raigad, Maharashtra-400 700. ... Respondents

By Advocate Shri V.D. Vadhavkar.

O R D E R

Hon'ble Smt. Shanta Shastry. Member (A)

This application is made against the memo dated 27.9.1994 with an intention to initiate departmental proceedings against the applicant. The applicant is further aggrieved that the respondents had been evasive in giving a sensitive post and were assigning him only stationary duty from 1994 till date and not considering him for deputation posting to Trivandrum International Airport as per circular dated 07.02.2001.

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2. The applicant was selected by the Staff Selection Commission for the post of Preventive Officer and he joined with effect from 14.11.1983 as a direct recruit. The applicant was posted in the office of Respondent No.3 i.e. Assistant Commissioner of Customs (Preventive) at Nhavasheva port upto 1990. Thereafter, he was transferred to the office of Respondent No.2 i.e. Chief Commissioner of Customs, Mumbai and posted at Air Cargo office, Airport, Mumbai on 27.9.90. The respondent No.3 issued a memo to the applicant on an alleged charge of misappropriating Government money and forging of the Government records. The applicant, immediately replied to the memo. Such a memo was issued actually to 42 Preventive Officers, out of which charge sheets were issued to 16 officers only in March, 1996. No charge sheet was issued to the applicant. On 27.12.1996 the respondents issued a circular inviting application for consideration of posting as ACO at Trivandrum International Airport. The applicant also applied in response on 02.01.1997. He even represented on 17.4.97. The applicant was promoted to the post of Superintendent of Customs vide office order dated 29.8.97. Again circular was issued calling for applications for posting at Air Customs Superintendent at Trivandrum Airport. The applicant applied again on 08.10.97 followed by letters dated 21.10.97 and 17.12.1997. There was no response. The respondents again issued another circular on 01.5.2000 inviting

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applications again for posting as Superintendent of Customs (Preventive) at Trivandrum Airport. The applicant repeated as before by applying and making representations. he also made another representation on 23.8.2000 pointing out the delay in finalising the investigation in regard to the memo dated 27.9.94. Once again circular was issued by the respondents calling for application for posting of Air Customs Superintendent at Trivandrum International Airport, the applicant applied. The interview, according to the applicant was to be held in the last week of September, or first week of October, 2001. However, the applicant was apprehensive that his case may not be considered for the post at Trivandrum.

3. It is the case of the applicant that he has been kept under mental tension from 1994 continuously and his application for postings on deputation basis to his own State at Trivandrum were not considered though one of the similarly placed officer was considered and posted there. Interim relief was granted to the applicant on 25.9.2001 by directing the respondents to consider the case of the applicant by the DPC for being posted in Trivandrum International Airport as Air Customs Superintendent until further orders. Also it was directed that the result of the DPC recommendation shall not be published until further order. The interim orders continued to be in operation. Then the respondents issued a minor penalty charge sheet under

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Rule 16 of the CCS (CCA) Rules, 1965 on 23.01.2001 According to the applicant, this was without seeking liberty of the Tribunal even without filing the written statement in pursuance of the Tribunal's order dated 29.01.2001. The applicant sought permission to amend the OA and was allowed to do the same to bring this development on record. The applicant had submitted further that in pursuance of the Tribunal's order dated 25.9.2001 the applicant was considered along with others and though the respondents were restrained from declaring the result, they declared the result and acting on it, issued the posting orders of one Shri K.V. Somnath , the applicant was not selected.

4. According to the applicant, the respondents have issued him a charge sheet on 23.10.2001 for an incident which took place in October, 1990 after a lapse of 11 years and in respect of a memo calling for explanation which was issued seven years ago i.e. on 27.9.94. Although, in the original memo issued on 27.9.94 the charge was regarding misappropriation of money and forging of record, the present charge sheet of 23.10.2001 is only against negligence. According to the applicant, it does not constitute misconduct. The applicant is relying on the judgment in Union of India Vs. J. Ahmed reported in AIR 1979 SC 1022. The applicant had promptly replied to the earlier memo of 27.9.94 and had also prayed for early disposal of the

matter. Instead of taking a decision on that, the respondents waited for seven years and have now come out with the impugned charge sheet dated 23.10.2001. This is bad in law on the ground of delay and vagueness. The applicant has cited several judgments in support of his contention as follows:

- (i) 1998 III AD (SC) S/O AP Vs. N. Radhakrishnan.
- (ii) (1989) 9 ATC 369 Major Gopal Mukarjee Vs. UOI.
- (iii) (1989) 9 ATC 377 C.L. Verma Vs. UOI.
- (iv) (1989) 9 ATC 509 P.L. Khandelwal Vs. UOI.
- (v) (1988) 6 ATC 246 M.Nagaling Reddy Vs. UOI.
- (vi) (1989) 9 ATC 500 M.N. Qureshi Vs. UOI.
- (vii) (1992) 19 ATC 795 P.K. Panda Vs. UOI.
- (viii) (1992) 19 ATC 795 Chandrashen Thakur Vs. UOI.
- (ix) (1989) 11 ATC 257 E. Devayas Vs. UOI.
- (x) (1991) 16 ATC 514 S/O M P Vs. Bani Singh.
- (xi) 1993 (2) SLR 647 Mrinal K.Chakraborty Vs. UOI.
- (xii) 1993 (1) SLJ 511 Arunkumar Basu Vs. UOI.
- (xiii) (1992) 19 ATC 707 P.A. Natarajan Vs. UOI.
- (xiv) Judgment of Mumbai Bench in the case of V.G. Sane Vs. UOI dated 18.6.93 in OA No.177/93.

5. The applicant has therefore prayed to quash and set aside the memorandum dated 23.10.2001.

6. The respondents submit that the amended OA is premature. The applicant along with 25 other officers

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was served with a memorandum dated 27.9.94 on charges of non-collection of Merchant OT charges C N C Jawahar Nehru Post Trust, Nhava Sheva while he was posted as Gate Officer at CFS Gate, J.N. Port, Nhavasheva. Since officers of Group B are involved, the case was referred to CVC seeking first stage advice. The CVC vide its order dated 11.7.2001 advised initiation of minor penalty against all the 26 officers involved in that case. Accordingly, on the basis of the advice of the CVC charge sheet dated 27.10.2001 was served on the applicant. According to the respondents, investigation procedure had not been completed in the case and further action was pending. On completion of the investigation, the case was referred to CVC seeking first stage advice and after receipt of the advice the impugned charge sheet has been issued to the applicant. At the material period of time, the applicant was in the rank of Preventive Officer. However, later on he was promoted as Superintendent (Preventive) and thus, his case had to be referred to the CVC.

7. The respondents submit that as directed by the Tribunal, the case of the applicant was considered by the DPC on 25.9.2001 and an assessment was made. There was only one vacancy from Mumbai for deputation. The other candidate, who has scored much better marks in the DPC was selected. Therefore, the allegation that the respondents purposely had issued the charge sheet is

perverse allegation without any basis. The respondents have further submitted that the Tribunal had not given any directions regarding non-issuance of any charge sheet. There was no ad-interim order on this. It has been further pointed out that cases of 23 persons to whom charge sheet was issued had already been finalised and the penalty of censure was imposed on them. The delay in the completion of the disciplinary proceedings in respect of the applicant and two others is because the applicant is now a gazetted officer of Group 'B' rank for which the disciplinary authority is the Commissioner of Customs.

8. The pre-charge investigation was conducted by the local commissionerate from 1994-99 and because of the investigation made during this period decision led to the precise charge of negligence of applicant and not of misappropriation for which 16 officers were segregated. It is the result of this time consuming investigation that the charge of negligence could be crystalised and therefore, the charge memo was issued accordingly. The respondents submit that because the applicant was working as Superintendent of Customs in Group 'B' post it was pre-requisite that CVC's advice to be obtained. The CVC took its own time for rendering its advice and made available the same. Ultimately only in August, 2001 advising minor penalty against all the 26 Preventive Officers and that is the reason the charge sheet was served on the applicant in October, 2001.

9. The respondents also raised the point that when 23 out of 26 officers had been issued the charge sheet and action has been taken against them by imposing the penalty of censure, there is no reason why the applicant should be singled out and the charge sheet be dispensed with. Further, the investigations were not completed in March, 1996 as has been alleged by the applicant.

10. The learned counsel for the respondents submits that if an officer is issued with charge sheet his case is kept under sealed cover, but when the charge sheet is not issued, then the promotion is granted. As far as posting at sensitive place is concerned the department has devised a practice that if any investigation is being conducted or if an officer is guilty by way of departmental proceedings being contemplated against the officer, then such officer is not considered for sensitive postings.

11. In view of this, according to the respondents, the charge sheet does not suffer from any infirmity and therefore, it holds good and the respondents are to be allowed to proceed with the same.

12. We have heard the learned counsel on both the sides and have given careful consideration to the arguments advanced. We have also perused the original records. It is seen that a memo was issued to the

applicant on 27.9.94. The applicant was called upon to explain in writing as to why departmental proceedings should not be initiated against him as it appeared that MOT amounting to Rs.2272/- in some cases was collected by the applicant but the amount was not credited to the Treasury by the applicant. This amounted to misappropriation of Government money and forging of Government record. The applicant immediately replied to the same. No action was taken. Seven years thereafter, a charge sheet for minor penalty has been issued to the applicant. There has been a delay of seven years. The respondents have tried to explain that since the applicant has been promoted as Group 'B' officer, CVC advice had to be sought and after receipt of the same, the charge has been issued. Therefore, the respondents' orders cannot be faulted. A perusal of the record shows that the respondents referred the case of the applicant to CVC only in 1999 and not prior to that. The respondents could not explain the silence between the period 27.9.94 and till the reference made to the CVC. No action was taken. This being the position it is difficult to accept the delay that took place in serving the charge sheet on the applicant. The delay is substantial. further, when the first charge memo was issued on 27.9.94 the applicant was a Preventive Officer. He had replied to the charge memo. In spite of the charge memo pending, the applicant was promoted as Superintendent in 1997. Having promoted him, it has to

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be construed that any earlier adverse entries or disciplinary action is deemed to have been washed out by the promotion. The respondents have waited till 1999 to make a reference to CVC. The applicant had replied to the memo in 1994 itself. Nothing prevented them from taking a decision on the same. No charge sheet was issued to the applicant between 27.9.94 till 1997 when he was promoted. In our considered view, issuing the charge sheet to the applicant on a different charge of negligence after his promotion to a higher post is not sustainable. The punishment has to be with reference to the action taken in his earlier capacity as Preventive Officer and not as Superintendent. Had the respondents considered the applicant's case on the basis of the reply filed by him, then there would not have been any need to refer the matter to CVC as the applicant had become a Group 'B' officer only after 1997. In our considered view, therefore, the unexplained delay of five years vitiates the charge sheet issued and that too after granting him promotion, which would mean washing of any previous adverse action of the applicant. The present charge sheet issued on 23.10.2001 deserves to be quashed and set aside. Accordingly, the charge memo dated 27.9.94 and the charge sheet dated 23.10.2001 are quashed and set aside with all consequential benefits.

13. As far as the applicant's prayer for posting as Superintendent (Preventive) at the International

Airport, Trivandrum is concerned, the respondents duly considered him but have not selected as a better candidate was available. We do not therefore consider it necessary to interfere with the same as the respondents have complied with the directions of this Tribunal by calling the applicant for the interview.

14. In the result, the OA is partly allowed. No costs.

Shanta S
(SMT. SHANTA SHASTRY)
MEMBER (A)

B. B. Dikshit
(BIRENDRA DIKSHIT)
VICE CHAIRMAN

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dt 16/4/12
Order/Jud. Patched
to App. Sent (s)
on *24/4/12*

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