

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 403 of 2001

Date of Decision 30/4/2004

N.C.Manglani

- Applicant

Shri G.K.Masand

- Advocate for the
Applicant

Versus

Union of India & others

- Respondents

CORAM:

Hon'ble Shri A.K.Agarwal

- Vice Chairman

Hon'ble Shri S.G.Deshmukh

- Member (J)

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


(A.K.Agarwal)
Vice Chairman

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CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.403/2001

Dated this the 30th day of April 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman
Hon'ble Shri S.G.Deshmukh, Member (J)

N.C.Manglani
R/at A-22 Sukhmani Society,
Ulhasnagar.

...Applicant

By Advocate Shri G.K.Masand

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block,
New Delhi.
2. Chairman,
Central Board of Excise
and Customs,
North Block,
New Delhi.
3. Commissioner of Customs
(Gen.), New Customs House,
Ballard Estate,
Mumbai.

...Respondents

By Advocate Shri R.R.Shetty

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for

O R D E R

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


This OA. has been filed by the applicant N.C.Manglani for quashing and setting aside the order dated 18.12.1998 passed by the disciplinary authority removing him from service and also the order dated 24.4.2000 passed by the appellate authority whereby the decision of the disciplinary authority was upheld.

2. The facts of the case in brief are as follows. The applicant while functioning as Superintendent of Customs was served with a chargesheet dated 26.9.1994 for failure to supervise the examination of goods under Baggage Declaration Form (BDF). The applicant was charged with the failure to supervise the examination of goods under BDF No.415 dated 26.2.1993 which resulted in seizure of electronic goods valued at Rs.18.15 lakhs. On the same date his failure to supervise the examination of goods against BDF No.416 resulted in seizure of electronic goods valued at Rs.8.67 lakhs. Other charges relates to recommendations made by the applicant for the condonation of delay for acceptance of transfer of residence in certain BDF numbers without obtaining written application from the passengers. The enquiry officer submitted his report on 31.10.1997 holding charges against Articles I & II as proved and those against Article III and IV as not proved. The disciplinary authority issued a Memo dated 5.9.1998 to the applicant stating therein that although the enquiry officer has held Article III

and IV of Charges as not proved, but for the reasons given in Memorandum, the disciplinary authority has held these two charges also proved against the applicant. The findings of the disciplinary authority holding that the applicant had violated the laid down procedure with malafide intention and also that Article III and IV charges are proved against the applicant were sent to the applicant along with a copy of the enquiry report and he was asked to submit his representation, if any, within a period of 15 days. The disciplinary authority also gave a personal hearing to the applicant on 7.12.1998 and the applicant based on his discussions held in the personal hearing submitted a clarification vide his letter dated 17.8.1998. After taking all these facts into consideration, the disciplinary authority vide its order dated 22.12.1998 imposed the punishment of removal from service on the applicant which was received by the applicant on 23.12.1998. Appeal made against this order by the applicant was also dismissed by the appellate authority on 24.2.2000.

3. The learned counsel for the applicant initiating his submissions mentioned that the report of the enquiry officer suffers from a number of legal infirmities. Firstly, the enquiry officer in his report has not dealt with the points made in the written brief given by the applicant. Secondly, a number of documents have been taken on record without examining the concerned persons who had written those documents. Thirdly, the enquiry officer arrived at a conclusion that the order of

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detention under COFEPOSA against the applicant was set aside by the Supreme Court merely on technical grounds. He said that the Supreme Court has dealt with the matter in fair detail before coming to the conclusion that the order of the High Court confirming the detention was bad in law. Fourthly, the order of the Commissioner, Customs (Preventive), Mumbai that the applicant has cleared some goods contrary to law and without payment of duty has been set aside by the CEGAT vide its order dated 14.2.2001. He further submitted that the order of the disciplinary authority indicates two things which weighed on his mind. One was the detention of the applicant under COFEPOSA and second the allegation that certain goods were cleared by the applicant without payment of duty. As far as the first issue is concerned, the Supreme Court has set aside the order of detention. The facts relating to the second issue have also not been proved against the applicant as per orders of the CEGAT. The learned counsel for the applicant further submitted that the enquiry officer has mentioned that while the applicant has stated that one Shri Sharma has examined the goods in his supervision but this has been denied by Shri Sharma. The learned counsel mentioned that the applicant was not given the opportunity to cross-examine this witness. He drew our attention towards the following lines reported in the enquiry report :-

"I have considered the allegation of the C.O. that even though the statements were recorded by Customs from different witnesses under Section 108 of the Customs Act, 1962, the same are not tenable for the witnesses were not permitted to be cross examined."

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4. The learned counsel for the applicant submitted that in view of the facts mentioned above, it is very clear that the enquiry officer has drawn his conclusions on the basis of no evidence and only on the basis of conjunctures and surmises. He said the basic purpose of judicial review is to ensure that all procedural safeguards have been followed. The learned counsel for the applicant stated that the four officers were charged in relation to one incident; two Preventive Officers have been given a minor punishment of withholding of increment for one year only. The Assistant Commissioner who was superior to the applicant has been given the punishment of cut in pension by 50%. It is only the applicant who has been singled out for the severe most penalty of removal from service. He said that the applicant has offered himself to be examined as witness but this was not done. Thus, the opportunity as indicated under Rule 14 (18) has been denied. He also brought to our notice the ruling of the Supreme Court given in the case of State Bank of India & Ors. vs. D.C. Agarwal, 1993 (1) SCC 13, wherein it has been held that the advice of CVC must be given to the delinquent officer before taking a final decision. The learned counsel mentioned that in this case the advice of CVC was not given to the applicant. He said that on this very ground the order of removal from service deserves to be set aside. Summing up his arguments, the learned counsel for the applicant mentioned that in this case the number of principles of natural justice have been violated. Firstly, the enquiry officer has relied upon the evidence of witnesses who

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were not allowed to be cross-examined by the applicant. Secondly, as per a ruling of the Supreme Court the advice of CVC should have been given to the applicant but it was not given. Thirdly, there is a discrimination in the penalty because the four persons who were involved in the same incident, only the applicant has been removed from service.

5. The learned counsel for the respondents mentioned that there is enough evidence on record for taking disciplinary action against the applicant and for awarding the punishment which has been given to him. The very fact that other three persons who were involved in the same incident have been punished proves that this is not a case of no evidence. Secondly, whenever disciplinary action is taken, all the persons concerned are not awarded identically same punishment. The punishment is given keeping in view the responsibility assigned to the concerned person, the extent of dereliction of duty and the seriousness of misconduct. In the case of the Assistant Commissioner concerned, Narayan Singh also the Government has taken a serious view and started disciplinary proceedings for major penalty. However, since he retired, therefore only punishment of reduction in pension has been imposed on him and that too 50% cut in pension has been made. The enquiry was conducted by the Commissioner for departmental enquiries under the Central Vigilance Commission. He said that the order of detention passed against the applicant was set aside by the Supreme Court on the ground that order of suspension was not brought to the notice of the detaining authority and the Supreme Court has not gone into the merits of the case.

6. The learned counsel for the respondents submitted that the evidence given by Shri R.S.Singh who was sent by the Commissioner to Nhava Sheva for the raid and the deposition of other officials of the Department before the enquiry officer indicate that there was more than sufficient evidence for initiating departmental action against the applicant. In fact, the report, which is normally given by the Preventive Officers, was found in the handwriting of the applicant only and when controverted with such a document during the enquiry, he stated that he had written such report at the request of the Preventive Officer Shri Krishnan as he was new and wanted to have a proper specification of the report. Another Preventive Officer Shri Pritu Sharma conceded that on BDF 415 and 416 the examination report were prescribed by the applicant who was a superior officer and he carried out the further orders without examination of the baggage. He explained that since Assistant Commissioner had also signed the BDF document, he did not anticipate any wrong doing and gave the examination report as directed. All this is more than enough evidence to indicate prima facie misconduct on the part of the applicant. The applicant during the course of enquiry had also cross-examined the witnesses. Replying to the issue of discrimination in punishment awarded to four different charged officials, the learned counsel for the respondents mentioned that firstly the charges were not identical in all the cases, disciplinary authorities were different on account of

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different ranks of the persons concerned. Moreover the responsibilities of Assistant Commissioner, Superintendent and Preventive Officer were of varying degrees. Under such circumstances, it is not necessary to award the same punishment. Secondly, since the Assistant Commissioner had retired, the only punishment of cut in pension could be imposed upon him.

7. The learned counsel for the respondents continuing his submissions mentioned that non-supply of recommendation of CVC has not caused any prejudice to the applicant. In support of his contention, he placed reliance on a ruling of the Apex Court given in the case of Syed Rahimuddin vs. Director General, C.S.I.R & Ors. 2001 (2) S.C.SLJ 132. He also brought to our notice a ruling of the Apex Court in the case of Sunil Kumar Banerjee vs. State of West Bengal & Ors. AIR 1980 SC 1170, wherein it has been held that :-

"We do not see any justification for the insistent request made by the appellant to the disciplinary authority that the report of the Vigilance Commissioner should be made available to him. In the preliminary findings of the disciplinary authority which were communicated to the appellant there was no reference to the views of the Vigilance Commissioner. The findings which were communicated to the appellant were those of the disciplinary authority and it was wholly unnecessary for the disciplinary authority to furnish the appellant with a copy of the report of the Vigilance Commissioner when the findings communicated to the appellant were those of the disciplinary authority and not of the Vigilance Commission. That the preliminary findings of the disciplinary authority happened to coincide with the views of the Vigilance Commission is neither here nor there."

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8. The learned counsel for the applicant in reply mentioned that the ratio of the Apex Court in the case of Syed Rahimuddin is not relevant in this case since that ruling is on documents. The case of the applicant is that the statement of witnesses on whom the enquiry officer is relying was not taken in the presence of the applicant. Further he mentioned that in this case virtually a common enquiry was held against the applicant and the Assistant Commissioner Narayan Singh. The cross-examination of the witnesses was done by the Defence Assistant on behalf of both the officers, namely, Shri Narayan Singh and Shri N.C. Manglani. He said that in the absence of any specific order for a common enquiry, the entire proceedings got vitiated.

9. In the case of S.K.Banerjee vs. State of West Bengal, the Apex Court has laid down another important ratio relating to service jurisprudence. It has been held that even failure to examine the delinquent does not vitiate the enquiry unless the delinquent officer is able to establish prejudice.

10. As far as some violation of some procedural norms in departmental proceedings are concerned, to arrive at a conclusion whether it has led to vitiation of the proceedings, one has to apply a test of prejudice as laid down by the Apex Court in State Bank of Patiala vs. S.K.Sharma, 1996 SC SLJ 440. It has been held by the Apex Court that :-

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"The complaint of violation has to be examined from the standpoint of substantial compliance, be that as it may, the order passed in violation of such a provision can be set aside only where such violation has occasioned prejudice to the delinquent employee."

11. In the case mentioned above, it has been further held that :-

"Justice means justice between both the parties. The interests of justice equally demand that the guilty should be punished and that technicalities and irregularities which do not occasion failure of justice are not allowed to defeat the ends of justice. Principles of natural justice are but the means to achieve the ends of justice. They cannot be perverted to achieve the very opposite end."

12. In view of the ratio laid down by the Supreme Court cited above, we are of the view that holding of a joint enquiry against the Assistant Commissioner and the applicant does not cause any prejudice to the applicant. Similarly, placing reliance on the evidence of different persons does not cause a prejudice to the applicant because they had only narrated simple undisputed facts.

13. After going through the record of the case and submissions made by both the counsels, we are of the view that the initiation of disciplinary action against the applicant was totally justified as there was more than sufficient evidence available on record for doing the same. We also hold that the imposition of different penalties in this type of case involving officers of different level having different responsibilities is quite natural and justified. Certain remarks made by the enquiry

officer in his report like the order of detention under COFEPOSA was set aside by the Supreme Court on technical grounds does not vitiate the proceedings. The Supreme Court judgement indicates that order of the High Court was set aside essentially on the ground that the fact of complainant being placed under suspension was not brought to the notice of detaining officer. As far as furnishing of report of CVC to the applicant is concerned, the learned counsel for the respondents has relied on a ruling of three Judge Bench of Supreme Court while the ruling cited by the learned counsel for the applicant is of two Judges.

14. Keeping in view the facts of the case and various rulings of the Apex Court cited by both the learned counsel, we are of the view that this case does not call for any judicial intervention. The disciplinary authority as well as the appellate authority both have followed the due procedure and there has been neither any violation of the principles of natural justice nor any prejudice has been caused to the applicant. 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.