

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 225 of 2001

Dated this the 31st day of July, 2003.

Gul Kishinchand Bhatia

Applicant

Shri G.K.Masand

Advocate for the
Applicant

VERSUS

Union of India & Others,

Respondents.

Shri V.K.Masurkar ,

Advocate for the
Respondents.

CORAM : Hon'ble Shri A.S.Sanghvi - Member (J)

Hon'ble Shri Shankar Prasad - Member (A)

- (i) To be referred to the Reporter or not ?
 - (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
 - (iii) Library.
- } NO


(Shankar Prasad)
MEMBER (A).

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this the 3rd day of ^{July} ~~August~~, 2003

Coram: Hon'ble Mr.A.S.Sanghvi - Member (J)
Hon'ble Mr.Shankar Prasad - Member (A)

O.A.225 of 2001

Gul Kishinchand Bhatia,
Preventive Officer,
Mumbai Customs House,
R/o Block No.A-176, Room No.352,
Ulhasnagar - 4 District Thane.
(By Advocate Shri G.K.Masand with
Advocate Ms.S.R.Gode)

- Applicant

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Member (P & V),
Central Board of Excise & Customs,
North Block, New Delhi.
3. Commissioner of Customs (Gen.),
New Customs House,
Ballard Estate,
Mumbai - 400 038.
4. Additional Commissioner of
Customs (Vigilance Section),
New Customs House,
Ballard Estate,
Mumbai 400 038.
(By Advocate Shri V.S.Masurkar) - Respondents

O R D E R

By Hon'ble Mr.Shankar Prasad, Member (A) -

Aggrieved by the order dated 26.7.1997 of disciplinary authority imposing the penalty of stoppage of two increments with cummulative effect, the order of appellate authority dated 10.11.1998 modifying the penalty to stoppage of one increment with cummulative effect and the order dated 21.3.2000 of the revisional authority not interfering with the order of the appellate authority the applicant has preferred the present OA. *A*

2. The case of applicant in brief is that while he was on duty at Sahar Airport he was instructed by his Superintendent to attend to three persons whose passport had been scrutinised by the Superintendent. The three passengers gave declaration, which was witnessed by the Superintendent also. The goods were superficially examined as there was no alert against them.

The applicant was subsequently charge sheeted. The Enquiry Officer exonerated him of the charges by a detailed reasoned order. The Disciplinary Authority disagreed with the findings of the Enquiry Officer and imposed the penalty. The appeal and revision also failed.

The further case of the applicant is that during the course of the enquiry the then Superintendent had accepted that he was responsible for acceptance of declaration forms and the Enquiry Officer had also found him guilty. Yet he was only cautioned. The Disciplinary Authority has disagreed with the detailed reasoning of the Enquiry Officer without assigning adequate reasons. The Bay Superintendent was only responsible for accepting the declaration.

In an identical case the penalty imposed on another Air Custom Officer Mrs.D'Sa was set aside by the Appellate Authority. In any case, even if the charges are held to be true, the penalty is excessive. *Ar*

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3. The case of respondents in brief is that in his very first voluntary statement dated 18.4.1990 the applicant had accepted the fact that in the circumstances of the case the applicant had no other option but to accept the declaration of three persons, who claimed to be cousin brothers. It is also clear from the said statement that the applicant had not bothered to find out how three persons having different surnames could be family members. The said statement is a relied upon document in the charge sheet.

The Superintendent that day was holding three charges and he was mainly posted for RE counters.

The case of Mrs. De Sa was clearly distinguishable.

4. We have heard the learned lawyer on behalf of both the parties.

5. It was specifically argued on behalf of the respondents that the applicant at the time of preliminary enquiry had admitted his guilt. The said document was an annexure to the charge sheet. It was not denied by the applicant. To our specific query the learned lawyer on behalf of the applicant informed that the reply submitted to the charge sheet was one of plain denial. *A*

6. The scope of preliminary enquiry has been explained by the Constitution Bench of the Apex Court in Chimanlal Shah Vs. Union of India, AIR 1964 SC 1854. It held -

" A preliminary enquiry is usually held to determine whether a *prima facie* case for a formal departmental enquiry is made out, and it is very necessary that the two should not be confused. Even where government does not intend to take action by way of punishment against a temporary servant on a report of bad work or misconduct a preliminary enquiry is usually held to satisfy government that there is reason to dispense with the services of a temporary employee or to revert him to his substantive post, for government does not usually take action of this kind without any reason. Therefore when a preliminary enquiry of this nature is held in the case of a temporary employee or a government servant holding a higher rank temporarily it must not be confused with the regular departmental enquiry (which usually follows such a preliminary enquiry) when the government decides to frame charges and get a departmental enquiry made in order that one of the three major punishments already indicated may be inflicted on the government servant. Therefore, so far as the preliminary enquiry is concerned there is no question of its being governed by Art.311 (2) for that enquiry is really for the satisfaction of government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary government servant or a servant holding higher rank temporarily to which he has no right. Such a preliminary enquiry may even be held *ex parte*, though usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. It is only when the government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the Government servant gets the protection of Art.311 and all the rights that that protection should imply as already indicated above. That is why the motive or the inducing factor which influences the government to take action under the terms of contract of employment or the specific service rule is irrelevant." *A*

7. Rule 9 (9) provides that if charges are not admitted or no written statement is filed, the Enquiry Officer will ask the delinquent if he pleads guilty or has defence to make. The applicant should have at this stage tried to explain his earlier admission.

Rule 9 (10) of CCS (CCA) Rules provides that the Enquiry Officer shall return a finding of guilt in respect of charges which have been admitted.

8. The Apex Court in the case of Orissa Mining Corporation Vs. Ananda Chandra Prusty, 1997 (1) SLR 286 (SC) has held -

" In a disciplinary or departmental enquiry, the question of burden on proof depends upon the nature of charges and the nature of explanation put forward by the delinquent officer.

9. The memorandum under order dated 29.4.1997 under the signature of disciplinary authority shows that he has disagreed with the findings in view of the explanation dated 18.4.1990 furnished by the applicant.

One of the arguments put forward in reply is that if the admission was to be relied on there was no need to conduct the enquiry. It has been contended that once the oral enquiry has commenced the preliminary statements lose their value. These aspects have been considered by the Disciplinary Authority.

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10. As far as the second question is concerned a Constitution Bench of the Apex Court in the case of State of Mysore Vs. S.S. Makapur, AIR 1963 SC 375 has held -

" In respect of taking the evidence in an inquiry before such Tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities; and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged, and he is given an opportunity to cross-examine them."

11. As far as the other question that is whether the admission of the delinquent in preliminary enquiry, can the penalty be imposed straightaway is concerned, the language of CCS (CCA) Rules require issue of charge sheet if major penalty has to be imposed.

12. The Disciplinary Authority can disagree with the report of the Enquiry Officer. The decision in Managing Director ECIL Vs. B. Karunakar, 1993 (4) SCC 727 refers. We find that the Enquiry Officer had not taken the admission of delinquent at the preliminary enquiry into account and that was the reason of interference. There is no illegality in this. *Sk*

13. We find that in the instant case the Disciplinary Authority had indicated in his disagreement note that the voluntary admission of the applicant at the time of preliminary enquiry had not been taken into account by the Enquiry Officer. It was on this ground that the disagreement note was issued to the applicant. The Apex Court in Orissa Mining Corporation Vs. A.C.Prusty (supra) has held that burden of proof depends on the nature of explanation. This admission was a relied upon document and the applicant has not tried to explain it when he had the opportunity. We are accordingly of the view that the findings of Disciplinary Authority based on this admission are legal.

14. As far as the case of Mrs. De Sa is concerned, a perusal of the order in that case indicates that her explanation regarding her inability to differentiate the goods only by screening was accepted as there was no order for detailed examination and the Superintendent had been cautioned. Besides this after issuing a minor penalty charge sheet a major penalty was imposed.

The facts of the present case are clearly distinguishable.

15. Under the circumstances, there is no merit in the Original Application. The same is dismissed. There will be no order as to costs.

Shankar Prasad
(Shankar Prasad)
Member (A)

A.S. Sanghvi
(A.S. Sanghvi)
Member (J)