

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,  
MUMBAI - 400 001.

ORIGINAL APPLICATION NO:905/89.

DATED THE 17TH DAY OF MARCH, 1999.

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman.  
 Hon'ble Shri D.S.Baweja, Member(A).

Shri B.Ram,  
 10, Shah Mansion,  
 College Road,  
 Dadar, Bombay-400 026.

... Applicant.

By Advocate Shri S.Natarajan.

v/s.

1. Collector of Customs,  
 New Custom House, Ballard Estate,  
 Bombay - 400 038.

2. Union of India,  
 through, Secretary,  
 Ministry of Finance,  
 Department of Revenue and Banking,  
 (Revenue Wing),  
 Jeevan Deep Building,  
 Samsed Marg,  
 New Delhi-110 001.

... Respondents.

By Advocate Shri S.S.Karkera for  
 Shri P.M.Pradhan.

I O R D E R I

I Per Shri R.G.Vaidyanatha, Vice Chairman I

This is an application filed under section 19 of Administrative Tribunals Act. Respondents have filed reply opposing the application. We have heard the learned counsels Shri S.Natarajan for Applicant and Shri S.S.Karkera for Shri P.M.Pradhan for Respondents.

2. The applicant at the relevant time was working as Superintendent of Customs. Due to some alleged misconduct a charge sheet dated 28/7/79 was issued against the applicant. The applicant denied the charges. Then a regular enquiry was held and a report was submitted by Enquiry Officer dated 3/3/80 exonerating the applicant. Then the papers were submitted to the Disciplinary Authority. The Disciplinary

Authority by order dated 26/7/80 felt the necessity of examination of two more witnesses; therefore remanded the matter to the Enquiry Officer for examination of those two witnesses and then submit a fresh report. In pursuance of the direction of the Disciplinary Authority, the Enquiry Officer examined the two witnesses and submitted his second report which is dated 30/12/80 again exonerating the applicant. When the papers were placed before the Disciplinary Authority, he by the Impugned order dated 11/4/85 giving reasons dis-agreed with the findings of the Enquiry Officer and held that charges are proved against the applicant and imposed the penalty of dismissal from service. Being aggrieved by this order, the applicant preferred an appeal which came to be dismissed by Appellate Authority. Then the applicant approached this Tribunal by filing OA No. 175/86. This Tribunal by order dated 19/10/87 set aside the order of Appellate Authority and remanded the matter to Appellate Authority for giving a personal hearing to applicant and then to pass appropriate order. It appears, in pursuance of remand order, the Appellate Authority, namely, the concerned Minister of State for Finance gave personal hearing to the applicant and then again UPSC was consulted and then the Impugned order dated 14/2/89 came to be passed by dismissing the appeal of the applicant and confirming the order of Disciplinary Authority. Being aggrieved by this order, the applicant has come up with the present application. The applicant has taken number of grounds in the OA challenging the orders of Disciplinary Authority and Appellate Authority.

3. Respondents in their reply have justified the action taken against the applicant and then they have also pleaded ~~xxxx~~ the facts and circumstances of the case which led to issuing of Charge sheet against the applicant and subsequent orders by Disciplinary Authority and Appellate Authority.

4. At the time of hearing, the learned counsel for applicant pressed many contentions. His foremost contention was that Disciplinary Authority has dis-agreed with the findings of the Enquiry Officer and without giving show cause notice to the applicant he has straightaway proceeded to pass the order dated 11/4/85 imposing the penalty of dismissal from service and this order is contrary to law and in violation of Principles of Natural Justice. On the other hand, the learned counsel for respondents on this point supported the action of the Disciplinary Authority as per the law prevailing at the relevant time.

Though, the applicant has taken number of grounds, in the OA and some grounds were raised at the time of arguments, we find the first ground mentioned above goes to the root of the matter and if that ground is accepted we need not express any opinion on other grounds taken in the OA and now pressed at the time of argument since the matter will have to be remanded to the Disciplinary Authority for consideration.

5. Though there were conflicting opinions on this point, namely whether the Disciplinary Authority, before dis-agreeing with the findings of the Enquiry Officer should give show cause notice to the delinquent officer or not, Now, the matter is cleared by a recent judgement of Supreme Court in the case of [ Punjab National Bank v/s. Kunj Behari Mishra reported in 1998(2)SC SLJ-117. That was also an identical case where the Enquiry Officer had exonerated the delinquent officer but the Disciplinary Authority disagreeing with the report of the Enquiry Officer had imposed the punishment on the Delinquent officer. When the matter was taken to Supreme Court, similar contentions were urged; then the Supreme Court referred to earlier decisions which had taken a contrary view. Then the Supreme Court laid down the guidelines as to how in such a situation, the Disciplinary Authority has to act in

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particular in para-18 of the reported judgement which is mentioned as below:-

"When the Disciplinary Authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed."

Then, the Supreme Court further observed in paras-19 and 20 as follows:-

"19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

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20. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Kisan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's case (supra) do not lay down the correct law."

6. Now, therefore in view of the latest decision as explained by Apex Court, we are constrained to hold that the action taken by the disciplinary authority in straightaway passing the order of penalty without issuing show cause notice to applicant is bad in law and not sustainable. Though this is an old matter, having regard to the gravity of the charges alleged against the applicant, we are not inclined to drop the proceedings at this stage. It is a fit case in which matter should be remanded to the disciplinary authority. He may examine the materials on record and form a tentative opinion whether the charges against the applicant are proved or not. If he forms an opinion to accept the exoneration report of Enquiry Officer he can close the case and nothing more to be done. If he, however, forms a tentative opinion that the reasoning given by Enquiry Officer is not correct and there is sufficient evidence to prove the charges against the applicant, he can record a tentative opinion and issue a show cause notice to applicant to show cause as to why he should not disagree with findings in Enquiry report by giving his tentative reasons as observed by Supreme Court in the above case. Then, after receiving the reply or representation of the applicant to the show cause notice, the disciplinary authority may look into the facts and circumstances of the case including the representation of the applicant and then pass a speaking order holding whether the charges are proved or not and impose punishment accordingly.

7. At this stage we may notice that applicant has

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since attained the age of superannuation on 31/7/85. In view of this development, the disciplinary authority may not be able to impose any of the penalties mentioned under rule-11 of CCS(CA) Rules except withholding of pension either wholly or partly under Rule-9 of CCS(Pension) Rules. Of course, the disciplinary authority cannot straightaway impose withholding of pension wholly or partly under Rule-9 of CCS(Pension) Rules., and in such a case he has to form an opinion and the papers will have to be submitted to President of India, who is the Competent Authority for passing the order for withholding of pension wholly or partly according to rules.

In the view we have taken that the matter should be remanded back to the disciplinary authority, we are not expressing any opinion on the rival contentions taken in the pleading and the contentions taken at the time of argument. We also give liberty to applicant to take up whatever defences open to him in his representation, if and when he receives show cause notice from disciplinary authority. Since the matter is an old matter, we direct the disciplinary authority to dispose of the matter expeditiously preferably within six months from the date of receipt of copy of this order.

The learned counsel for respondents brings to our notice that the Collector was the then Disciplinary Authority and now the designation is changed. Now the Disciplinary Authority is known as Commissioner General. We only observe that the matter should be placed before the Disciplinary Authority irrespective of the designation and if it is for him to apply his mind and pass appropriate orders.

8. In the result, the application is allowed. The impugned orders of the Appellate Authority dated 14/2/89 and the order of Disciplinary Authority dated 11/4/85 are hereby quashed and set aside. The matter is remanded to Disciplinary Authority to pass a fresh order after giving a show cause notice to applicant, etc as per observations made in paras-7 & 8

above. In the circumstances, we direct the Disciplinary Authority to pass a fresh order in the light of the observations made in this order expeditiously preferably within six months from the date of receipt of copy of this order. All the contentions on merits are left open. No costs.

(L.S. BANERJEE)  
MEMBER (A)

(R.G. VAIDYANATHA)  
VICE CHAIRMAN

abp.

Certified true Copy

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Sd/-  
2.3/3/59  
Control & Record,  
Emergency Comm.

True copy of original

*Balm Rajan*  
Advocate