

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.449/01

Dated this, _____ the _____ th day of December, 2001.

Shri T.R.Malik, ... Applicant
(Applicant by Shri G.K.Masand, Advocate)

Versus

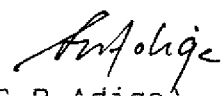
UOI & Ors. ... Respondents

(Respondents by Shri V.D. Vadhavkar, Advocate)

CORAM:

HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

- (1) To be referred to the Reporter or not? *Yes*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *No*
- (3) Library. *Yes*


(S.R.Adige)
Vice Chairman (A)

sj*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Q.A.No.449/2001

Dated this 12th, the Day of December, 2001

CORAM: HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE SHRI S.L.JAIN, MEMBER (J)

Shri T.R. Malik,
son of late Aya Ram,
Jt. Commissioner of Customs (under
suspension), residing at
502, Kakad Apartments, Pali Road,
Bandra. Applicant
(Applicant represented by Shri G.K.Masand, Advocate)

vs.

1. Union of India, through the
Secretary in the Ministry of
Finance, Department of Revenue
North Block, New Delhi.
2. Central Board of Excise & Customs
Ministry of Finance, Department of
Revenue, North Block, New Delhi.
3. Chief Commissioner of Customs
Mumbai Custom House, Ballard
Estate, Mumbai. Respondents
(Respondents represented by Shri V.D. Vadhavkar, Advocate)

O R D E R

[Per: S.R.Adige, Vice Chairman (A)]

Applicant challenges Respondent's order dated 15.12.1999
(Annexure 'A') placing him under suspension.

2. Heard both sides.

3. Pleadings reveal that applicant who was posted as Jt.
Commissioner, Customs, Mumbai at the relevant time was suspended
by the impugned order dated 15.12.1999 as Disciplinary
Proceedings are contemplated against him on the allegation that
he was involved in the smuggling of 1326 mobile phones and
accessories worth over Rs.2 crores by Shri S.R. Chavan, on

..2/-

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5.11.1999 at Sahar International Airport, Mumbai.

4. Applicant was forthwith transferred from his post vide Order dated 29.11.1999 (Exh. B) and was subsequently placed under suspension vide impugned order dated 15.12.1999.

5. The main grounds advanced to challenge the impugned order dated 15.12.1999 are that it has been issued out of *malafide* motives; there are no materials to implicate applicant in the alleged smuggling; he has been suspended only to humiliate him, as he has already been transferred from Sahar Airport, he cannot influence the witnesses and/or tamper with the evidence. It has also been strongly contended that while no doubt Rule 10 (1) of CCS (CCA) Rules permits the authority concerned, to place a Govt. Servant under suspension where a Disciplinary Proceeding is contemplated against him; more than two years have elapsed but no charge sheet has yet been issued and indeed applicant's suspension case has not even been periodically reviewed as required under Govt. instruction from time to time to determine whether his continued suspension is necessary in the public interest. In this connection, reliance is placed on the CAT, Mumbai Bench order dated 21.9.92 in *O.A.No.676/92 Shri Mohinder Singh vs. UOI* wherein the suspension order was quashed *interalia* because more than six months have elapsed from the date of suspension without ^{issue} issue of the Chargesheet. In the present case, it is emphasised that nearly 2 years have elapsed since the date of suspension without issue of chargesheet and therefore that ruling is squarely applicable.

6. We have considered the matter carefully.

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...3/-

7. The allegations in regard to the applicant has been suspended pending initiation of Departmental Proceedings, are very serious. In para 17 (b) of their reply, respondents have stated that the C.B.I. who had *suo moto* has registered a case against applicant on their own, has furnished their report only in November, 2001 and during hearing we were informed that the matter had been referred to the Central Vigilance Commission (C.V.C.) for comments.

8. In this connection, we note that the Hon'ble Supreme Court, in its order dated 10.5.1993 in SLP No.3747/93 filed against the aforementioned CAT, Mumbai Bench Order dated 1.9.1992 modified that order directing that if the investigation was not completed and the report submitted to the Court before 15.8.1993, the Tribunal's order would operate, and the suspension would stand revoked and respondents would be reinstated immediately thereafter. If, however, the investigation revealed the respondent's complicity in the offence alleged and a charge sheet was placed within the time specified, it was open to the Govt. to take further orders as regards continuation of the suspension according to law.

9. In the present case, as the investigation by C.B.I., is reportedly complete, and they have also submitted their report, we dispose of this O.A. with a direction to the respondent to review the question of applicant's continued suspension, by means of a detailed speaking and reasoned order in accordance with the Rules and instructions within six weeks from the date of receipt of a copy of this order, under intimation to applicant. Indeed

..4/-

such a review which was first carried out on 3.5.2000, but which was not carried out thereafter, should have been subsequently carried out much earlier, and over 1 & 1/2 years should not have been allowed to pass before conducting a second review. While carrying out the review, the respondents, shall not lose sight of applicant's assertion that when he filed the O.A. on 25.6.2001 he had only about a year's service left before he retired on superannuation; he already stood transferred from Sahar Airport where the misconduct is alleged to have taken place; and investigation by C.B.I. is complete and the report has been submitted.

10. If applicant is aggrieved by the order passed by respondents pursuant to this direction, it will be open to him to challenge the same through appropriate original proceedings in accordance with law, if so advised.

11. The O.A. is disposed of in terms of paragraphs 9 and 10 above. No costs.

S.L. Jain
(S.L.Jain)
Member (J)

S.R. Adiga
(S.R.Adiga)
Vice Chairman (A)

sj*