

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 712 of 2001.

Dated this Monday, the 25th day of August, 2003.

CORAM : Hon'ble Shri Justice S. R. Singh, Vice-Chairman.

Hon'ble Shri S. K. Agarwal, Member (A).

R. R. Rathod,
Tax Assistant,
New Custom House,
Ballard Estate,
Mumbai 400 001.

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Applicant.

(By Advocate Shri M.S. Ramamurthy)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 001.

2. Member (P & V),
Central Board of Excise &
Customs, Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 001.

3. The Commissioner of Customs (G),
New Custom House,
Ballard Estate,
Mumbai - 400 001.

4. Dy. Commissioner of Customs (Vig.),
Vigilance Section,
New Custom House,
Ballard Estate,
Mumbai - 400 001.

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Respondents.

(By Advocate Shri V. S. Masurkar)

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ORDER (ORAL)

PER : Shri Justice S. R. Singh, Vice-Chairman.

1. While he was working as Tax Assistant in the Mumbai Custom House, Mumbai, the applicant was served with a charge-memo dated 11.10.1996 (Annexure-I) containing the following articles of charge :

"Shri Rajesh Rathod while functioning as Cashier in Custom House, 1st floor, Bombay, during the period from April '94 and May '94, demanded and accepted illegal gratification of Rs. 200/- from Shri Ganpat Mehta, who had come to his counter to pay the difference of price pay and to be paid of Silver Ingots allotted to him from R & I Godown basement, Custom House, Bombay.

Thus, by the above act Shri R. Rathod committed gross misconduct and failed to maintain absolute integrity and acted in a manner which is unbecoming of a Govt. Servant thereby contravening of Rule 3(1)(i)(ii)(iii) of CCS (Conduct) Rules, 1964."

2. According to the statement of imputation of misconduct and misbehaviour as contained in Annexure-II to the charge memo, the applicant was functioning as a Cashier at Counter No. 12 in Cash Section situated in the first floor of New Customs House, Bombay during the period April '94 and May '94 and his job was to collect the difference amount of price paid and to be paid of Silver Ingots from the buyers besides any other cash due to the Government. It is alleged that on 30.05.1995 the applicant demanded a sum of Rs. 200/- from Shri Ganpat Mehta after the difference amount was deposited by Shri G. Mehta. On a complaint by Ganpat Mehta to C.B.I. to the effect a sum of Rs. 200/- had to be paid as bribe to the Cashier for prompt issuance of receipts, a trap was laid by the C.B.I. on 30.05.1994. The cash box of the applicant was checked and two loose notes Rs. 100/- each bearing Nos. 9NA-858034 and JDR 972291 were found which had been received by the applicant as bribe.

(Signature)

3. Enquiry in the case was conducted by Shri V. R. Antrolkar, Assistant Commissioner of Customs, Mumbai, who found the charge against the applicant "Not Proved". The Disciplinary Authority, however, disagreed with the Inquiry Officer and recorded the following reasons of disagreement with the Inquiring Authority and held the charge as "PROVED".

"(i) It is a fact that the complainant Shri Ganpat Mehta did go to the office of the C.B.I. on 30.5.94. In his statement recorded on 31.5.94 by CBI officials Shri Ganpat Mehta confirmed that the complaint shown to him was his. The pre-trap panchanama also states this fact. Shri Ganpat Mehta clearly states in the complaint that Rs. 200/- is to be paid to the cashier to get the receipt promptly. However in his deposition during the oral enquiry proceedings, Shri Ganpat Mehta stated that he had not written the complaint. It is preposterous and unbelievable that any sane person would give a blank signed paper to CBI officials and that too voluntarily without any alleged coercion or pressure. Shri Ganpat Mehta has also stated in his deposition that he had given the blank signed paper to the CBI at the request of his employer Shri Kishore Jain. This Inquiry Officer has not summoned Shri Kishore Jain as court witness to verify Shri Ganpat Mehta's contention and hence it is obvious that Shri Ganpat Mehta's passing the onus to Shri Kishore Jain is only an after thought.

(ii) It is a fact that Shri Ganpat Mehta did receive marked notes amounting to Rs. 2200/- from CBI official and as per their instructions he was to hand over the marked currency notes only on demand to the Custom officials or their collecting agents S/Shri Ambalal Soni or Ganesh Walke. Shri Ganpat Mehta has confirmed this in his statement dt. 31.5.94 and the pre-trap panchanama also states these facts.

(iii) Shri Ganpat Mehta did give the marked notes worth Rs. 200/- to Shri R. R. Rathod as the money was found in the cash drawer of Shri R. R. Rathod. In his statement dt. 31.5.94, Shri Mehta states that Shri Nerurkar and he went to the cashier to pay the differential duty amount and the cashier asked him to pay Rs. 200/- extra and he (Shri G. Mehta) gave the marked notes of Rs. 200/-. This fact has also been confirmed in the Post-Trap panchanama.

(iv) Two marked notes of Rs. 100/- each were recovered from the cash drawer of Shri R.R. Rathod. Shri Rathod is unable to explain how these marked currency notes found their way into his cash drawer. In his statement dt. 30.05.94, Shri Rathod tries to explain this by stating "the party has played mischief on me."

(v) Both the panch witness Shri Arun Nerurkar and Shri Ajit Patil have stated that both the pre-trap panchanama and post-trap panchanama are true and correctly recorded in their presence. Shri Ganpat Mehta has also not challenged the veracity of the pre-trap panchanama.

(vi) In the cross-examination by the Defence Assistant, Panch witness Shri Arun Nerurkar stated that the two marked notes of Rs. 100/- each were given to the cashier by Mr. Mehta and these two marked notes were recovered from the cash box of Shri R. R. Rathod.

(vii) The IO Report states that Shri Ganpat Mehta did not name the cashier in the complaint filed by him. The cashier does not wear a name plate and any person making an official payments is not bound to ask the cashier his name. So it is not obligatory on the part of Ganpat Mehta to know the name of the cashier.

(viii) Shri Ganpat Mehta had stated in his deposition in the Oral Inquiry Proceedings that he had given the entire marked currency amounting to Rs. 2200/- as a loan to Shri Ambalal Soni whereas only Rs. 2000/- was recovered from Shri Ambalal Soni and two marked notes of Rs. 100/- each were found in the cash drawer of Shri R. R. Rathod. This proves that Shri Ganpat Mehta has not stated the truth in his deposition."

The reasons aforesated were furnished to the applicant who was required to give his explanation in the matter. The applicant submitted his reply to the Disciplinary Authority and the latter, after careful consideration of the record and written/oral submissions made by the applicant, held that the applicant's case of the recovery of notes from his cash box was planted, lacked incredibility and found that the charge against the applicant was proved. But having regard to the fact that there was no evidence of direct demand of money by the charged officer and also the fact that there was no evidence to show that

on the particular day the complainant had purchased any consignment for which the charged officer was to issue the cash receipt, the Disciplinary Authority awarded the following punishment.

"Shri R.R. Rathod, Tax Assistant, is reduced to the post of Upper Division Clerk, from the date of issue of this order, until he is found fit after a period of five years from the date of this order to be restored to the higher post of Tax Assistant. He will not regain his original seniority which he has been assigned prior to imposition of this penalty. His pay will be reduced to the stage of Rs. 4000/- in the pay scale of Rs. 4000-100-6000. It is further directed that Shri R. R. Rathod will not earn increments in the lower post during the period of reduction and on the enquiry of this period of five years, the reduction will have the effect of postponing his further increments on restoration."

4. The applicant preferred an appeal against the aforesated order of punishment. The Appellate Authority held that "a benefit of doubt could have been extended to the applicant had the currency (Rs. 200/-) not been numbered and cash box not been in his custody and control". The Appellate Authority, therefore, upheld the order passed by the Disciplinary Authority subject to the modification that the applicant would be restored to the post of Tax Assistant but "he will not regain his original seniority and he will be placed at the junior most position in the seniority list of Tax Assistant from the date of the order" and further that his pay would be fixed in the minimum of the time scale of Tax Assistant i.e. Rs. 4500/- from 01.09.1999. It was further ordered by the Appellate Authority that the applicant would not earn increments for the period of five years with cumulative effect.

(Signature)

5. On representation, the Revisional Authority, vide its order dated 26.06.2001 (Annexure A-3), modified the penalty imposed by the Appellate Authority as under :

"Shri R. R. Rathod is restored to the post of Tax Assistant with his original seniority and his pay will be fixed in the minimum of time scale of Tax Assistant i.e. Rs. 4,500/- from 01.09.1999 for a period of three years. During this period, he will not earn increments and that, on the expiry of this period, the reduction will have the effect of postponing his future increments of pay."

6. We have heard Shri M. S. Ramamurthy, Learned Counsel appearing for the applicant and Shri V. S. Masurkar, Learned Standing Counsel representing the respondents and perused the pleadings. The Learned Counsel for the applicant has submitted firstly that this was a case of no evidence and, therefore, the punishment imposed on the applicant is liable to be set aside; and secondly one Shri R. C. Nyaynirguni involved in the same incident was completely exonerated by the Appellate Authority and, therefore, the applicant ought not to have been treated differently. Shri V. S. Masurkar, Learned Standing Counsel for respondents has submitted that the applicant's case that the recovery of notes from his cash box had been planted by the C.B.I. has been disbelief by the departmental authorities on valid grounds and further that this was not a case which may be categorised as one based on no evidence. It has also been submitted by Shri V.S. Masurkar that Shri R. C. Nyaynirguni stood on a different footing in that no money was recovered from his custody.

(Signature)

7. We have given our careful consideration to the arguments made across the bar. It is well settled that the scope of judicial review by the Tribunal in a disciplinary matter is limited to the grounds of 'illegality'; 'irrationality'; 'procedural impropriety' and 'malafides'. It is also well settled that the Tribunal does not sit in appeal over the decision taken by the departmental authority. In *Union of India & Another V/s. G. Ganayutham*, 1997 (T) SCC 463, the following proposition, among others, has been laid down :

"(2) The Court would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational- in the sense that it was in outrageous defiance of logic or moral standard. The possibility of other tests, including proportionality being brought into English administrative law in future is not ruled out. These are the CCSU (1985 AC 374) principles."

In *Regional Manager, UPSRTC V/s. Hoti Lal*, AIR 2003 SC 1462, the Supreme Court has quoted the following proposition laid down in *B.C. Chaturvedi V/s. Union of India & others*, 1995 (6) SCC 749 :

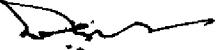
"A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities, have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

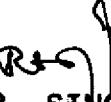
It has been found as a fact by the Departmental Authorities that the tainted notes worth Rs. 200/- were recovered from the cash box of the applicant to which no one else had any access. The complainant no doubt resiled from the earlier statement but on the basis of the recovery of notes worth Rs. 200/- which were numbered by the C.B.I. the departmental authorities, in our opinion, were justified in holding the charge against the applicant as proved, particularly in view of the fact that the applicant failed to establish that the recovery of tainted notes was planted by the C.B.I. The currency notes recovered from the cash box of the applicant was numbered and the cash box was in the custody and control of the applicant. This circumstance alone, in our opinion, was sufficient to hold the applicant guilty and so long as there is a single evidence to sustain the charge against the applicant, it would not be possible for the Tribunal to interfere with the order of punishment imposed against the applicant.

8. So far as the case of Shri R. C. Nyaynirguni is concerned, suffice is to say that nothing was recovered from his custody. The fact that the Appellate Authority has exonerated Shri R. C. Nyaynirguni, is, therefore, no ground to hold the applicant not guilty nor is that a ground to hold that the Appellate Authority applied different standard in the two cases. The order passed by the Appellate Authority in favour of Shri R.C. Nyaynirguni was rendered on consideration of facts and circumstances which are not applicable to the facts and circumstances of the present case.



9. In view of the above discussions, we find no merit in the case and the O.A. is dismissed without any order as to costs.


(S.K. AGARWAL)
MEMBER (A).


(S. R. SINGH)
VICE-CHAIRMAN

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