

9

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

---

Original Application No: 426/91

Transfer Application No:

DATE OF DECISION: 25.1.1995

Purushottam Sadashiv Kakirde Petitioner

Shri D.V.Gangal Advocate for the Petitioner

Versus

---

Union of India and others Respondent

Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM :

---

The Hon'ble Shri B.S. Hegde, Member (J)

The Hon'ble Shri M.R.Kolhatkar, Member (A)

1. To be referred to the Reporter or not ?
2. Whether it needs to be circulated to other Benches of the Tribunal ?

  
(B.S.Hegde)  
Member (J)

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 426/91

Purushottam Sadashiv Kakirde

... Applicant.

V/s.

Union of India through  
Secretary, Ministry of  
Finance, Department of  
Revenue, North Block  
New Delhi.

The Chairman,  
The Central Board of  
Central Excise &  
Customs, New Delhi.

The Collector, Central Excise  
Bombay II, 9th Floor,  
Piramal Chamber, Jiji Bhoy Lane,  
Parel, Bombay

... Respondents.

CORAM : Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri M.R. Kolhatkar, Member (A)

Appearance:

Shri D.V.Gangal, counsel  
for the applicant.

Shri P.M.Pradhan, counsel  
for the respondents.

JUDGEMENT

Dated: 25.1.1995

{ Per Shri B.S. Hegde, Member (J) }

The brief facts are as follows:

2. The applicant was appointed as L.D.C. in Central Excise in the year 1950 and thereafter he was promoted as U.D.C and then as Superintendent, Central Excise in the year 1978. The applicant retired on superannuation as Superintendent, Central Excise on 30.6.89. However, while working as Superintendent Central Excise, he was issued a charge-sheet on 12.5.87, which reads as follows:

" ARTICLE - I

That the said Shri P.S. Kikirde, Supdt. While functioning as Supdt. of C.Ex. in charge of Range - VI of Dn. IX of

....2...

Bombay -II Collectorate is alleged to have exhibited gross negligence, lack of devotion to duty and behaved in a manner unbecoming of a Government servant in as much as he failed:

- (i) to ensure that the particulars of all units, both duty paying and exempted, were collected from the relevant range records of the earlier Palghar Range, at the time of formation of Range VI in July '82.
- (ii) to locate M/s. Nav Bharat Industries, a factory in his Range jurisdiction, which was manufacturing and clearing 'Glass Wool' without C.Ex. licence and without payment of duty, which resulted in loss of revenue of Rs. 77,160.60 during the period 5.1.83 to 16.3.83.
- (iii) to ensure that the papers received in his Range office were properly accounted and attended to.
- (iv) to supervise the work of his subordinates, posted in his Range, who did not bring to his notice the manufacturing activities of M/s. Nav Bharat Industries.

Shri P.S. Kakirde, by his above acts has exhibited gross negligence, lack of devotion to duty and has behaved in a manner unbecoming of a Government Servant. He has thus contravened the provisions of Rule 3(1) (ii) & (iii) of the C.C.S. (Conduct) Rules, 1964.

3. A statement of imputation of mis-conduct or mis-behaviour in support of the articles of charge framed against the applicant which reads as follows:

" The applicant was posted as incharge of Range-VI from 16.7.82. The Range - VI was formed on 16.7.82. Prior to that the area of this range was in the jurisdiction of

Palghar Range. When Range -VI was formed, it was applicant's duty to ensure that the particulars of all units both duty paying and exempted, located within the jurisdiction of the newly formed Range VI, were collected from the relevant Range records of Palghar Range. He failed to take such action and thus was not aware that M/s. Nav Bharat Industries manufacturing Glass Wool was situated in his jurisdiction and that it was availing exemption from payment of duty though they were not legally entitled to the said exemption. He had himself opened the headings of the exemption Register for 1983 under notification No. 111/78 for the Range, but did not direct the Inspector under him to obtain the particulars of exempted units in his range from the parent range of Palghar. If he had done so, certainly the case of Nav Bharat could have been detected in 1982 itself. The applicant did not allot the exempted units to the respective Inspectors, ~~thus~~ failed to bring M/s. Nav Bharat Industries, a factory manufacturing Glass Wool, within the excise control.

Further the applicant failed to ensure that the declaration papers filed by the said units in the Range office and received by Shri Bapardekar, Inspector were attended to properly. His failure to bring M/s. Nav Bharat Industries under excise control and to recover appropriate Central ~~Excise~~ duty on the products manufactured and cleared by the said unit, resulted in loss of Govt. revenue of Rs. 77,160/- from 5.1.83 to 16.8.83.

By his above acts, the applicant exhibited gross negligence and lack of devotion ~~to~~ duty and behaved in a manner unbecoming of a Government servant.

4. Though the applicant denied the charges and ~~pleaded~~ not guilty to the memorandum of charges, enquiry was conducted on the basis of oral and documentary evidence produced ~~dur~~ing the enquiry and the Enquiry Officer came to the conclusion that the charges 1 and 2 against the applicant not conclusively established and in so far as charges 3 and 4 are concerned, though the applicant did not issue specific instructions regarding allocation of office work in his range to a particular Inspector working under ~~him~~ when he had issued an office order in regard to the formation of sectors as per the Assistant Collector's orders and treated as a minor lapse and stated that the charges though proved are not of a serious nature.

5. The Disciplinary Authority disagreed with the findings of the Enquiry Officer on charge ~~(ii)~~ and also charges ~~(iii)~~ and (iv) stating these lapses are not of minor nature and imposed a penalty of pay reduction from Rs. 3050 per month to Rs. 2975/- in the time scale of Rs. 2000 - 3500 for a period of 9 months with effect from 1.10.88 and he will not earn increment of pay during the period of reduction ~~vide~~ order dated 22.9.88. Against which he preferred an appeal. The appellate authority rejected his appeal on 13.6.90. Aggrieved by the aforesaid two impugned orders he filed this O.A.

6. The entire allegation against the applicant ~~that~~ he was negligent; and not a mis-conduct. The learned counsel for the applicant urged that during the pendency of enquiry several juniors were promoted as Assistant Collectors and the applicant was not promoted. The main grievance of the applicant is that charge sheet was issued in 1987 for the alleged negligence that took place in 1982-83 and therefore

the reduction in the time scale by one stage is bad in law. Further, though the Enquiry Officer has exonerated the applicant, the Disciplinary authority reversing the same without any show cause notice is not justified. It is further contended that the allegation is based on the assumptions on the ground that the declaration of M/s. Nav Bharat Industries under notification No. 111/78, the letters dated 15.12.82 and 31.12.82 were received in the Range office respectively, but declaration dated 31.12.82 was non-existent and no evidence has been produced by the Presenting Officer saying that the said letters were in fact received in the Range office. Since the receipt of letters are doubtful, the question of attending to them hardly arises.

7. The question that arises for consideration is whether the letters referred to above have been received in the Range Office. During the enquiry it is made out that the declaration was received by Shri Bapurdekar, Inspector in charge with pre-dated acknowledgement. Both the seller and purchaser claimed to have sent a letter dated 15.12.82 to the Inspector Central Excise but they were unable to produce any acknowledgement received for submission of their declaration. During the course of enquiry, the applicant has sought for certain documents for perusal, but the same were turn down by the Enquiry Officer on the ground of non-relevancy. The normal procedure is that the manufacturers are required to obtain license from the Excise Department, if they want any exemption then they have to apply in the prescribed form, the same has to be renewed every year. The responsibility to pay excise duty is fixed upon the manufacturer the superintendent is assisted by

field staff and ~~he~~ possesses the information received from Inspectors. If an Inspector commits an irregularity in not supplying necessary information, the applicant should not be held directly responsible for acts of commission of his Inspector. Similarly, if Assistant Collector exempts a unit manufacture from excise duty he should inform to the Superintendent under him. Likewise, on formation of Range VI if the erstwhile Range V failed to supply necessary information or documents to Range VI, the applicant cannot do anything in the matter. Admittedly, in the instant case, M/s. Nav-Bharat Industries failed to apply when they took over the unit from the previous owner and failed to renew on or before 15.4.83, the request for exemption to obtain the licence. However, as soon as the unit was detected, the duty has been recovered from them by the preventive wing of the department, therefore non-recovery of the amount from 5.1.83 to 16.8.83 cannot be treated as misconduct though negligence to certain extent of the applicant. The exemption certificate never filed by M/s. Nav-Bharat Industries. The Inspector Shri Bapurdekar during the enquiry stated that the letter dated 31.12.82 does not bear the signature of the manufacturer making declaration. In fact the Nav-Bharat Industries have filed the declaration subsequent to 6.9.83, after reply filed by Nav-Bharat Industries to show cause notice. Similarly that no entries relating to exempted units falling upon that jurisdiction of Bassin Range. No declaration of the Nav-Bharat Industries have been filed in 31.12.82. Shri Yadav Inspector has confirmed before he proceeded on leave i.e. 25.12.82, he was in charge of that section and not received any declaration of the ~~seller~~

(15)

alleged to have sent on 15.12.82. Likewise, Mr. Gupta of M/s. Maharashtra Wire Industries had ~~deposited~~ before the enquiry, stating that he ~~did~~ not file any declaration under notification, in August 82, but submitted a letter in plain sheet of paper informing the Superintendent, Vasai that he sold out the factory in August 82, received the payment in December 82, but he did not write any letter to the Range Superintendent in December 82.

Shri Khanduva of Nav-Bharat Industries stated that he was under the impression that this product is under exemption, and duty is not required to be paid, he stated to have filed declaration in December 82, however, ~~not~~ produced any proof of acknowledgement on this score. The exemption certificate has never been filed by M/s. Nav-Bharat Industries. In view of para 43(viii) of Manual instructions, ~~it~~ is not incumbent upon the applicant to go on visits to factories, unless he receives specific information or where there is a reason to believe that the unit is evading excise duty. No such exigency exists in this case. Further, Shri Khanduva M/s. Nav-Bharat Industries have stated that the only ~~violation in~~ relation to the goods manufactured by them without a licence, on the impression that no such licence was required and they paid the excise duty as payable under law once he was asked to do so.

9. The respondents in their reply negatived most of the contentions of the applicant and contended that the Disciplinary Authority has passed the order after taking into consideration the proceedings of the case and the defence submitted by the applicant. The charges against the applicant is not only of negligence but also of lack of devotion to duties and behaved in a manner unbecoming of a Government servant.

*ph*

10. We have heard the learned counsel for the parties and perused the documents. The short question for consideration is whether the charges levelled against the applicant have been established in this case. In so far as the documents for perusal of the applicant i.e. serial No. 5, 6, 7, and 8, are concerned the learned counsel for the respondents in support of his contention stated that denial of the aforesaid documents by the Enquiry officer is justified and he relies upon the judgement of the Supreme Court in the case of Chandrama Tiwari V/s. Union of India AIR 1988 SC 117. Wherein it was held that:

"If findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well settled by a catena of decisions of this Court. We need not refer to them. However, it is not necessary that each and every document must be supplied to the delinquent government servant facing the charges instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order. If the document is not used against the party charges the ground of violation of principles of natural justice cannot successfully be raised."

(7)

Therefore, he submits in the light of the above, refusal of some documents by the Presenting Officer or Inquiry Officer, if it is no relevancy to the facts of this case does not entail the order of the Disciplinary Authority, while passing the impugned order.

11. On perusal of the documents, we are of the view, that the contention of the learned counsel for the respondents is not tenable, since the documents claimed are relevant for the purpose, to show as to whether the letter sent by the parties have been received by the Range office in time. Therefore, it is necessary that documents as referred to above are required to be supplied to the delinquent employee especially when they are listed in the list of documents ~~and~~ thus denial is against the principle of rules of natural justice. It is seen from the records of Palghar Range that the documents are totally blank indicating that there was no unit enjoying the exemption from excise duty, hence para 43 of the basic Manual of the department instructions cannot and does not arise. As a matter of fact the Disciplinary Authority ought to have placed reliance on para 43 of the Basic Manual while framing the chargesheet and ought to have mentioned in the list of documents. Having not done this, it is not open to him to bring out new issues at the time of issuing the impugned order which is not only bad in law but untenable.

12. Whereas the learned counsel for the applicant relies upon the decision of the Supreme Court in the case of Union of India V/s J. Ahmed (AIR 1979 SC 1022), it has been held by the Supreme Court quoting Stroud's Judicial Dictionary that " misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgement or innocent mistakes do not constitute such misconduct. " In the instant case, it is only if at all errors of judgement or mistake which cannot be treated

as misconduct in the context of the above. The learned counsel for the applicant also relies upon the decision of the Supreme Court in the case of Narayan Misra V/s. State of Orissa 1969 SLR SC 657 as regards to the impugned order passed by the Disciplinary authority in that decision it was held that .....

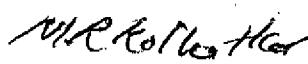
" If the conservator of the Forests wanted to use them, he should have appraised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the conservator of Forests modified by the State Government cannot be upheld. We accordingly set aside the order and remit the case to the Conservator of Forests for dealing with it in accordance with law."

13. On a reading of the charge-sheet framed against the applicant, we find, that it was alleged that he had committed gross misconduct under section 3 of the Conduct Rules having negligent and careless while exercising his power in supervisory cadre. The basis of the said allegation is that he had not exercised his proper supervisory powers over his subordinate staff and the unit in question. Even if it is accepted that the applicant was negligent and careless as alleged by the respondents that would not constitute a misconduct. In the case before us, all that is alleged in the charge-sheet is that the applicant was negligent and careless in proper discharge of his duty as a supervisory officer. It is curious to note that it is nowhere mentioned as to what was the resultant damage caused because of such negligence or carelessness. From the averment in the charge-sheet the degree of culpability as observed by the Supreme Court cannot be assessed. In the absence of that, we are constrained to hold that the allegations made against the applicant would not

(19)

constitute misconduct so as to initiate a disciplinary enquiry against the Government servant. Judging the case from that stand point, we hold that the charge-sheet and the disciplinary enquiry started against the applicant cannot be allowed to stand.

14. The applicant has already retired from service in 1989 and admittedly except this charge-sheet, he had an un-blemished record of service. In the circumstances, normally, we do not interfere with the findings of the disciplinary authority, however since the applicant has already retired from service, no further enquiry can be initiated against him and no ill-motive or negligence on his part can be attributed except error in judgement, which cannot be construed as misconduct in the light of the ratio laid down by the Supreme Court referred to above. Accordingly, we allow the O.A. and quash the impugned orders i.e. 22.9.88 and 13.6.90 respectively. In the circumstances we hereby, direct the respondents to consider the applicant's salary on the date of retirement as Rs. 3050/- instead of Rs. 2975/- and recalculate the pensionary benefits in the scale of pay in which he was drawing at the time of retirement i.e. Rs. 3050/- p.m. and make necessary payment to the applicant in accordance with the rules within a period of three months from the date of receipt of this order. No order as to costs.



(M.R. Kolhatkar)  
Member (A)



(B.S. Hegde)  
Member (J)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

(20)

R.P. 58/95 in OA 426/91

Shri P.S. Kakirde ... ... Applicant  
v/s

Union of India & Others ... ... Respondents

CORAM : 1) Hon'ble Shri B.S. Hegde, Member (J)  
2) Hon'ble Shri M.R. Kolhatkar, Member (A)

Tribunal's orders (by circulation) Date: 14.7.95  
(Per: Hon'ble Shri B.S. Hegde, M(J)).

1. This Review Application has been filed by the Applicant seeking review of the judgement dated 21-1-1995 in O.A. 426/91.
2. We have seen the Review Petition and we are satisfied that the Review Application can be disposed of by circulation under Rule 17 (iii) of the CAT (Procedure) Rules, 1987 and we propose to do so.
3. In this connection, it is relevant to narrate the undisputed factors, that had been taken into consideration while deciding the O.A. The Applicant states that there is a clerical error crept in the Tribunal's orders at para 14 of the judgement. Admittedly, the Applicant as on 1-10-1988 was drawing a (pay) of Rs. 3050/- which was reduced by the Disciplinary Authority's orders dated 22-9-1988 stating that the pay of the Applicant has been reduced by one stage i.e. from Rs. 3050/- to 2975/-, in the time scale of Rs. 2000-3500 for a period of nine months w.e.f. 1-10-1988. Since the said order has been quashed by the Tribunal; thereby the Applicant

2

60

From pre-page:

is entitled for his increment on due date i.e. on 1-3-1989 and admittedly the date of retirement is 30-6-1989 subsequent to the accrual of the increment. Pursuant to the judgement, the Applicant made representation to the Collector of Central Excise who in turn forwarded the same to the Ministry stating that his request is under consideration for further action. However, the Respondents by their order dated 25-4-1995 without being considered his request for increment due on 1-3-1989, fixed his pay till his retirement as Rs. 3050/-.

4. It is true, on perusal of the records, we find that we have quashed the reduction of pay for the reasons as stated in the judgement but by unintentional mistake the word 'retirement' is used and the pay to be paid as Rs. 3050/-. If he is otherwise eligible to draw increment as on 1-3-1989, his pay should be fixed accordingly. In the circumstances, the word 'retirement' used in the judgement is deleted and his pay be fixed in accordance with the rules. Rs. 3050/- to be fixed not on the date of retirement, but with effect from 1-10-1988.

5. Though there is some delay in filing the Review Application, considering his representation to the Authority and their reply, the Court vacation etc., the delay hereby is condoned.

6. In the circumstances, the Review Application *except for (a)(ii)* is allowed. In para 14 of the judgement, it is *l. b/s* stated that "the respondents to consider the applicant's

From prepage:

salary on the date of retirement as Rs. 3050/- instead of Rs. 2975/- and recalculate the pensionary benefits in the scale of pay in which he was drawing at the time of retirement i.e. Rs. 3050/- p.m. and make necessary payment to the applicant in accordance with the rules."

The salary by the Applicant of Rs. 3050/- should be read as with effect from 1-10-1988 and not as on the date of retirement as mentioned in para 14 of the judgement.

7. ~~Revised~~ copy of the orders be furnished to the Applicant as soon as possible. The Review Application is disposed of accordingly.

M.R.Kolhatkar

(M.R. Kolhatkar)  
Member (A)

B.S. Hegde

(B.S. Hegde)  
Member (J)

ssp.