

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 1049/92
DATED THE 14th DAY OF JULY, 2001
SEPTEMBER

CORAM: HON'BLE SHRI S.L.JAIN, MEMBER(J)
HON'BLE SMT.SHANTA SHAstry, MEMBER(A)

By Advocate Shri G.S.Walia

v/s.

1. Union of India, served through
Secretary, Ministry of Finance,
Department of Revenue,
New Delhi.
2. Collector of Customs,
Bombay, New Customs House,
Ballard Estate,
Bombay - 400 038. Respondents

(ORDER)

Per Smt. Shanta Shastry, Member(A)

The relief sought in the OA is to quash and set aside the impugned order dated 19/11/91 and to declare that the applicant continues to be in service w.e.f. 19/11/91 with all consequential benefits of promotion, seniority, increment, etc., further to hold and declare that the period of deemed suspension w.e.f. 6/5/1985 to 22/3/1991 is illegal, arbitrary and wrong and to pay 18% interest on the arrears of his salary from 6/5/1985 to the the date the Impugned order is set aside and applicant is reinstated. Costs also have been prayed for.

2. The applicant was proceeded against departmentally by issuing a charge sheet on 28/8/84 with the following articles of charge:-

ARTICLES OF CHARGE

- 1) Shri M.B.Kadam, Supdt(P) while functioning as a Supdt(P) and who was posted for patrolling Area-I in the Docks from 6.00 PM to 6.00 AM on 2/3.4.83, had remained absent without taking any prior permission or intimation to the Control Room, as such deserted his duties without making any alternative arrangements.
- 2) Shri M.B.Kadam, Supdt(P) had entered the baggage hall at Sahar Airport with intention to clear the baggage of two old lady passengers who were well acquainted with him and who had arrived by flight No.AI-910 on 2/3.4.83 by misusing his official position and influencing the officers of the Department.
- 3) Shri M.B.Kadam, Supdt(P) had entered the baggage hall premises by misusing his official position and by misinterpreting the facts to his superior officers and also disobeying the order of superior authority of the Department at Air Port and by deserting his usual posting of duty for effecting the clearance of dutiable and restricted goods brought by two known lady passengers. On examination it was revealed that these ladies were carrying foods worth Rs.6370/- and Rs.12,240/-(CIF) respectively and were cleared without payment of duty on false declaration with the help of Shri Kadam, Supdt(P) as preplanned which would have caused loss to the Government revenue to the tune of Rs.35,000/- and would have avoided the prosecution of these lady passengers in Court of law."

3. On denial by the applicant of the charges, a regular enquiry was conducted. The Inquiry Officer after carefully examining and analysing the evidence brought on record held that all the three charges against the applicant stood as proved and submitted the report on 27/2/85. The Disciplinary Authority accepted the Inquiry Officer's report and imposed the penalty of removal from service on the applicant vide order dated 6/5/85. The applicant was also given personal hearing by the Disciplinary Authority before passing the said order. The applicant thereafter preferred an appeal to the President. The same was rejected by the President vide order dated 19/12/86. The

applicant filed OA No.387/87 before this Tribuna against the aforesaid order of removal. The Tribunal vide its judgement dated 30/8/90 ordered reinstatement of the applicant on the ground of a short technical point that reasonable opportunity of defence was not given to the applicant as the copy of the Inquiry Officer's report was not furnished to him. The case was remitted to the Disciplinary Authority to proceed furhter for departmental action by giving fresh opportunity to the applicant to represent on the Inquiry Officer's report. This was complied with. The Tribunal also directed that the Disciplinary Authority would be free to treat the applicant under deemed suspension w.e.f. 6/5/85 vide sub rule (4) of Rule-10 of CCS(CC&A) Rules 1965. An order was passed by the Competent Authority to that effect on 20/3/91. The Disciplinary Authority clearly mentioned in the said order that he proposed to adopt the same Inquiry Officer's report. The applicant filed a CP No.20/91 in the Tribunal, the same was discharged vide order dated 22/3/91. Thereafter, the disciplinary authority again issued order dated 19/11/91 imposing the penalty of removal from service on the applicant.

4. Aggrieved by the impugned orders, the applicant has approached this Tribunal. After the filing of the OA on 12/10/92, the applicant expired on 3/12/92. MP-28/93 was filed to bring on record the legal heir of the applicant for pruposes of prosecuting the OA further. The same was allowed and amendment carried out accordingly.

5. It is the contention of the applicant that the report of the Inquiry Officer and the order of Disciplinary Authority are perverse and against facts. He had made a representation on 12/2/92

against the Inquiry Officer's report. According to the applicant, the charges are not definite and clear. No misconduct or misbehaviour has been shown on the part of the applicant. There is no evidence in support of the charges. None of the witnesses has said anything against the applicant in respect of the charges. Prosecution witnesses Shri Ahuja and ^{8u} Advani have categorically stated that the applicant did not tell them to do anything against the rules or influence them. This itself was sufficient to exonerate the applicant. The conclusions of the Inquiry Officer are based on surmises and conjectures. They are not sustainable in law. The applicant is not involved in any act of corrupt practices or had any malafide intention at any time. He did not intend to take any financial benefits out of helping the old ladies. The applicant has further alleged that the Inquiry Officer considered the statement of Smt. Savitri Bhatia, the elder of two ladies caught with dutiable goods, recorded during the preliminary enquiry without calling her during the enquiry. It should not have been taken on record or considered. It is violative of Principles of Natural justice. Further, Shri Ahuja and Advani who assessed the baggage and issued landing certificate as well as clearance of baggage with their signatures have not at all been accused or chargesheeted. Infact, the respondents have proceeded against the applicant only after the retirement of Shri Ahuja who was then Supdt(P). It is discriminatory. Whatever Shri Ahuja and Shri Advani did was their own act of their own volition.

6. While relying on the statement recorded of Smt. Savitri Bhatia in the preliminary enquiry, the Inquiry Officer chose not to rely on the Affidavit filed on 7/4/83 of

Smt.Savitri Bhatia. If he did not want to rely on them, he should have examined all those persons or cross examined. The learned counsel for the applicant submits that the Inquiry Officer was prejudiced and the entire action has been taken without there being an iota of evidence in regard to the charges framed against the applicant.

7. The respondents submit that the applicant has been punished only after following the proper course of law and the prescribed procedure. All the charges were proved by the Inquiry Officer. The Disciplinary Authority passed a speaking order. A personal hearing was granted to the applicant. Thus, the procedure followed cannot be faulted with. All the same, the Inquiry Officer should have insisted on the presence of Smt.Savitri Bhatia on whose statement he relied upon. Thus, according to the applicant the two main grounds on the basis of which the disciplinary proceedings need to be set aside and quashed are that this is a case of no evidence and that the Inquiry Officer relied on a statement recorded by Smt.Savitri Bhatia in the preliminary Inquiry without calling upon her presence during the inquiry to give an opportunity to the applicant to cross examine.

8. We have heard the learned counsel for both the parties and have perused the report of the Inquiry Officer as well as orders passed by Disciplinary Authority and the Appellate Authority. It is seen from the report of the Inquiry Officer that there is nothing to show that the applicant had in any way tried to ~~influence or pressurise~~ ^{influence or pressurise} the concerned officers at the Airport to give clearance to the two old ladies irrespective of the fact that

they possessed contraband goods or not. All that the evidence shows is that the applicant was standing at a short distance from the old ladies when they approached the clearance counter. It is also evident from Shri Ahuja's statement that the applicant had not told him to act against the rules.

9. We are, therefore, of the considered view that this is a case of no evidence. Mere presence of the applicant at a short distance from the old ladies or merely requesting the officers to help passengers cannot be construed as the applicant having been responsible for their being cleared inspite of possessing contraband goods. The statement of Smt. Savitri Bhatia recorded earlier in the preliminary inquiry and the Affidavit filed by her on 7.4.83 cannot be relied upon in absence of her examination during the course of disciplinary proceedings. Smt. Shobha Bhatia, the other lady passenger retracted on her earlier statements recorded on 3.4.83 stating that the statement was obtained under threat and coercion. It is seen from the record that she was not cross examined on this during the enquiry. The two customs officers viz. Shri Ahuja and Shri Advani have nowhere stated that the applicant had in any manner brought pressure on them to clear the goods in

possession of the lady passengers. The applicant did ask the concerned officer to help the old ladies but he did not categorically tell them to help the ladies against the rules, therefore, the inquiry which is based on no evidence requires to be quashed and set aside.

10. We, accordingly quash and set aside the impugned orders dated 19.11.91 of the Disciplinary Authority, 3.1.92 of the Appellate Authority. The applicant shall be entitled to all the consequential benefits thereof. The applicant shall be deemed to be reinstated and treated as in continuous service with effect from 19.11.91. We do not however, direct interest to be paid on the arrears of salary. In the result, the OA is allowed. No costs.

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(SHANTA SHAstry)
MEMBER (A)

S.L. JAIN

(S.L. JAIN)
MEMBER (J)

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Gaja

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

C.P.No.37/2002
in
O.A.No.1049/92.

Tuesday, this the 29th Day of October, 2002.

Coram : Hon'ble Shri Justice Birendra Dikshit, Vice Chairman
Hon'ble Smt. Shanta Shastry, Member (A).

S.M. Kadam,
Widow of
Shri M.B. Kadam,
Ex. Superintendent of
Customs (Preventive),
New Customs House,
Ballard Estate,
Mumbai - 400 038.

.. Petitioner/
Original
Applicant.

(By Advocate Shri R.G. Walia)

Versus

1. Ramesh Ram Chandran,
Commissioner/Collector
of Customs, Bombay,
New Customs House,
Ballard Estate,
Mumbai - 400 038.

.. Proposed
Contemners/
Original
Respondents.

(By Advocate Shri V.D. Vadhavkar).

Order on Contempt Petition
{ Per : Justice Birendra Dikshit, Vice Chairman }

As the order has been stands complied with, we
dropped the proceedings against Ramesh Ram Chandran,
alleged contemner. Notice is discharged. Contempt
Petition stands disposed of, with no order as to costs.

Shanta 9-
(Smt. Shanta Shastry)

Member (A).

B. Dikshit
(Birendra Dikshit)
Vice Chairman.

H.