

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 65/92

Date of Decision: 25.6.1999

Sh.H.J.Mhatre

Applicant.

Sh.P.A.Prabhakaran

Advocate for
Applicant.

Versus

U.O.I. & ors.

Respondent(s)

Shri S.S.Karkera for Sh.P.M.Pradhan

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. JUSTICE K.M.AGARWAL, CHAIRMAN

Hon'ble Shri. R.K.AHOOJA, MEMBER(A)

- (1) To be referred to the Reporter or not? *yes*
- (2) Whether it needs to be circulated to *no* other Benches of the Tribunal?

rk
(R.K.AHOOJA)
MEMBER(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: MUMBAI

O.A. No.65/92

THIS THE 27TH DAY OF JUNE, 1999.

HON'BLE MR.JUSTICE K.M.AGARWAL, CHAIRMAN
HON'BLE MR.R.K.AHOOJA, MEMBER(A)

Shri H.J.Mhatre, working as
Inspector of Central Excise and
Custom, Bombay-400 001.

C/o G.S.Walia, Advocate, High Court
Office No.16, Maharashtra Bhavan,
Bora Masjid Street
Behind Handloom House, Fort,
Bombay.

..... Applicant

(BY ADVOCATE SHRI P.A.Prabhakaran)

vs.

1. Union of India through
Collector of Central Excise,
Bombay-I, M.K.Marg,
Central Excise Building,
Churchgate,
Bombay-400 020
2. Deputy Collector (P&V)
Collectorate, Central Excise
Bombay-I, M.K.Marg, Central
Excise Building, Churchgate
Bombay-400 020
3. Assistant Collector,
Divn. 'H', Bombay Collectorate
I, Madhu Industrial Estate,
2nd Floor, P.B.Marg, Worli,
Bombay-400 013.
4. Shri S.A.Marbali
Assistant Commissioner,
Central Excise (Retired),
16th Shreeniketan,
Pandurang Wadi,
Goregaon (E).
5. Shri S.N.Sejpal,
Makhanji Building,
Bal Govind Road,
Mahim,
Mumbai.
6. Shri B.K.Vadgaonkar
Assistant Commissioner,
Central Excise (Retired)
"Oberoi Palace",
Near Swadeshi Hotel,
Opp. Municipal Stadium,
J.P.Road, Andheri (W)
Mumbai-400 058

(BY ADVOCATE SHRI S.S.KARKERA FOR SH.P.M.PRADHAN)

ORDER

R.K.AHOOJA, MEMBER(A):

The applicant, an Inspector in the Central Excise challenges the penalty order dated 29.1.1990 whereby he has been imposed reduction by two stages from Rs.1940/- to Rs.1820/- in the time scale of pay of Rs.1640-2900 for a period of two years with effect from 1.2.1990. The penalty order also specified that the applicant will not earn increments of pay during the period of reduction and on expiry of this period, the reduction will have the effect of postponing his future increments of pay. The appeal against this order has also been rejected by the appellate authority by its order dated 6.11.1991. The aforesaid orders are the outcome of an enquiry under Rule 14 of the CCS(CC&A) Rules initiated by order dated 17.6.1986 on the following articles of charges:-

- " (i) He has shown utter disregard to the orders of superior officers,
- (ii) He wrote letters to the Assistant Collector Central Excise Dn.'H' and to the Collector Central Excise Bombay-I, using impolite and discourteous language. He also put up notes to his superiors in indecorous language on the files as described in Annexure-II
- (iii) He was doing his work in cursory way. He was not processing files properly.
- (iv) He disobeyed orders of the Supdt. P.I. of Divn.'H', dated 16.3.85 by refusing to sit late after office hours. He also instigated Inspo. in C.L./P.L. Cell of Dn. 'H' not to do assigned work."

2. The contention of the applicant is that the inquiry against him was vitiated and he was deprived of a fair hearing because of certain acts of commission and omission on the part of the inquiry officer. His main contention is that the inquiry officers appointed were prejudiced and his request that they should be changed was not properly considered by the disciplinary authority. He also

contends that the charges against him were of small nature and a small incident was blown out of proportion. He also submits that certain documents asked for by him were not supplied and that certain prosecution witnesses were produced and examined even though they were not cited in the memorandum of charges. He also states that a copy of the brief prepared by the inquiry officer was not given to him. It is also his allegation that a copy of the inquiry report was not furnished to him before the disciplinary authority arrived at its conclusion. Finally in regard to the order of the Appellate authority, he states that no personal hearing was afforded to him.

3. The respondents deny the aforesaid allegations. They only admit that a copy of the inquiry report was not furnished to the applicant with the show cause notice but in fact sent along with the order of the disciplinary authority. In regard to non-furnishing of the inquiry report at a pre-decisional stage by the disciplinary authority, the learned counsel for the respondents pointed out that the order of the disciplinary authority is dated 29.1.1990. He argued that the ruling of the Supreme Court in Union of India v. Mohd Ramzan Khan, 1991 SCC (L&S) 612 in regard to supply of a copy of the inquiry report to the charged officer is dated 20.11.1990. He submitted that it has been clarified by the Supreme Court in Managing Director, ECIL, Hyderabad vs. B. Karunakar, 1993 that the ruling in Mohd. Ramzan's case would be applicable prospectively from the date of the decision and accordingly no order of punishment passed before 20.11.1990 is challengeable on the basis of Mohd. Ramzan Khan's case.

Dr.

4. We are in agreement with the above reasoning of the learned counsel for the respondents. The impugned penalty order has been issued on a date prior to the orders of the Supreme Court in Mohd. Ramzan Khan's case(supra). The applicant has not shown as to when the non-supply of the inquiry report to him prior to the orders of the disciplinary authority has prejudiced his case. The applicant had in any case the inquiry report available with him at the time of filing his appeal. We, therefore, do not find that the ground taken by the learned counsel for the applicant is sufficient to set aside the impugned order.

5. In regard to the change of the Inquiry Officer, we find that at least two of these Inquiry Officers were changed at the behest of the applicant. One of the officer had to be changed because he had sought voluntary retirement. The applicant contends that the Inquiry Officers were part of the conspiracy against him since he had raised the propriety of the Inspectorial staff working against Ministerial jobs. We do not find any merit in this contention. The Inquiry Officer has to be appointed from within the staff of the department. The point that everybody is prejudiced against him is to say that no enquiry can be conducted against him. It is easy to allege mala fides but it is another thing to establish the ^{allegation of} irregularity. We find no material on record to show that the allegations of prejudice and mala fide against the Inquiry Officers carry any substance.

6. We also do not find that the incidents leading to the chargesheet/minor in nature or that there was no evidence against the applicant. The order of the disciplinary authority is very detailed and a speaking order and includes the extracts from the notes recorded by the applicant which clearly smacked of insubordination and resistance to the orders given by his superiors.

7. The learned counsel for the applicant also argued that the penalty imposing reduction by two stages in the time scale of pay with cumulative effect is disproportionate/the alleged misdemeanour which consisted/ of representing to his seniors that he had been given an assignment which was not part of his normal duties. Normally the tribunal is not expected to interfere with the quantum of punishment unless it is patently disproportionate in a manner that it is shocking to the conscience. This is not the situation here. We, therefore, find no reason to modify the punishment awarded to the applicant.

8. In the result finding the O.A. to be without any merit, the same is dismissed. No costs.

For
(K.M.AGARWAL)
CHAIRMAN

Reckha
(R.K.AHOOJA)
MEMBER(A)