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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, CAMP AT PANAJI.

Original Application No.763/92.

S.D.Kamble

..... Applicant.

V/s.

Union of India & Others.

..... Respondents.

Goram: Hon'ble Shri M.S.Deshpande, Vice-Chairman,
Hon'ble Shri M.R.Kolhatkar, Member(A).

Appearances:-

Applicant by Shri H.K.Maingi.
Respondents by Shri G.R.Sharma.

Oral Judgment:-

[Per Shri M.S.Deshpande, Vice-Chairman] Dt. 16.6.1994.

The applicant ^{who} was working as a Preventive Officer was charged on 24.6.1986 on three heads of charges in respect of an incident where he had endorsed on the T.B.R.E. certificate without signing it ^{that} the goods were certified for export. He ^{was} found to be not guilty in respect of the first and third head of charges, but the Enquiry Officer found that the applicant functioning as Air Customs Officer on 16.5.1984, had admitted to have made an endorsement on T.B.R.E. of the passenger K.K.A. Unnikrishnan certifying the export of T.B.R.E. goods viz. one Fisher Radio Cassette 2 way Speaker System in his own hand writing without signing the same. The applicant had certified the re-export of the T.B.R.E. item, inspite of the fact that the Radio Cassette Recorder ^{was not produced} for re-export and ^{had} instead wanted ^{him} to pay duty thereon. He had also deliberately avoided signing on the said T.B.R.E. form, after making the endorsement of re-export of T.B.R.E. item, with the intent to hide his misconduct. This finding was affirmed by the Disciplinary Authority which imposed ~~the~~ penalty of depriving the applicant of three annual increments without cumulative effect.

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8

2. Though the learned counsel for the applicant addressed us on the merits of the evidence, we will not enter into the merits because one of the points urged was that the applicant had not been examined generally by the Enquiry Officer as required under Rule 14(18) of the CCS (CCA) Rules. That sub-rule requires that:

"the inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him".

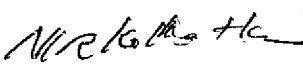
The learned counsel for the applicant stated that he had several explanations to offer, some of which he had mentioned in the defence brief and even otherwise an opportunity should have been afforded to the applicant in view of the mandatory statutory provisions to explain the circumstances to which the witnesses had deposed and in support of which documents had been produced. That the provision is mandatory and its non-compliance would vitiate the inquiry is clear and (a) Division Bench of this Tribunal in M.S.Dasan V/s. Union of India and Others (1993) 24 ATC 43] pointed out that the entire disciplinary proceedings are vitiated by non-observance of the principles of natural justice.

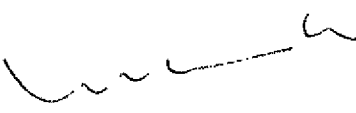
3. Shri G.R.Sharma, learned counsel for the Respondents urged that if we were to reach the conclusion that the inquiry was vitiated due to non-examination of the applicant under Rule 14(18) of the Rules, an opportunity should be afforded to the Respondents to examine the applicant generally upon the circumstances appearing in evidence against the applicant. We find that in the

9

present circumstances the charge against the applicant is serious viz. permitting the goods to be exported without production of the goods. The applicant had admitted in the inquiry proceedings that the endorsement was in his hand writing. We therefore, hold that it would be only proper if a mere technical lacuna is not allowed to stand in the way of the inquiry and that the applicant should be allowed to be examined under Rule 14(18) of the Rules.

4. We therefore, set aside the orders passed by the Disciplinary Authority and the Appellate Authority and direct the Disciplinary Authority to have the applicant examined under Rule 14(18) of the CCS (CCA) Rules. The applicant would be entitled to examine such defence witnesses which he may wish to examine at the inquiry which is to be re-opened. The Enquiry Officer shall complete the entire proceedings within three months from the date of receipt of the communication of this order. The application is disposed of with these directions.


(M.R. KOLHATKAR)
MEMBER (A)


(M.S. DESHPANDE)
VICE-CHAIRMAN

B.