

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO: 970/1993

DATE OF DECISION: 3 /01/2001

Shri Vithal Dhaku Kharat

Applicant.

Shri P.A.Prabhakaran

Advocate for
Applicant.

Versus

Union of India & 2 Ors.

Respondents.

Shri V.D.Vadhavkar for
Shri M.I.Sethna

Advocate for
Respondents.

CORAM:

Hon'ble Smt. Shanta Shastri Member(A)

1. To be referred to the Reporter or not?

2. Whether it needs to be circulated to
other Benches of the Tribunal?

/NO

3. Library. yes.

Shanta S
(SHANTA SHASTRY)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:970/1993
DATED THE 3rd DAY OF JAN.2001

CORAM: HON'BLE SMT.SHANTA SHASTRY, MEMBER(A)

Shri Vithal Dhaku Kharat,
52/2135/VII, C.G.S.Colony,
Antop Hill,
Bombay - 400 037.

... Applicant

By Advocate Shri P.A.Prabhakaran

V/s.

1. Union of India, through
the Secretary,
Department of Revenue,
Ministry of Finance,
New Delhi.
2. The Collector,
Central Excise, Bombay-II,
Piramal Chambers, 9th Floor,
Jijibhai Lane, Lalbaug,
Parel, Bombay - 400 012.
3. Dy.Collector, P&V,
Central Excise, Bombay-II,
Piramal Chambers, 9th Floor,
Jijibhai Lane, Lalbaug,
Parel, Bombay - 400 012.

... Respondents

By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The applicant in this OA has sought to (a) quash and set aside the charge sheet dated 23/31.8.1988, order of the disciplinary authority dated 15/11/91, order of the appellate authority dated 15/9/92 with all consequential benefits. (b) to direct the respondents to consider the representation and pass appropriate orders on merits and in accordance with law. (c) to award costs.

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2. The applicant is working as Driver with Respondent No.2 and is the President of the Central Excise and Customs Collectorate Class III Drivers' Association.

3. On 8/7/87, a raid and seizure were carried out by the Assistant Collector of Customs. The applicant drove the vehicle used by Assistant Collector. After successful seizure as per practice advance rewards were sanctioned to persons who participated in the said raid. The orders were passed on 20/1/1988. However, the applicant's name did not figure in the list of the officials who were proposed to be rewarded. Aggrieved by this, the applicant made a representation to the Collector of Customs i.e. Respondent No.2 on 27/1/88. He made allegations against senior officers for sanctioning advance rewards to those who were not physically present on the seizure spot., at the same time excluding the names of officers who were physically present through out including the applicant. He also alleged that the reward proposal was fabricated by the Assistant Collector(P), Deputy Collector (P) to favour some officials ^{thus} stresses the applicant by misleading the Collector in fabricating such reward. The applicant was asked vide letter dated 19/2/88 to produce the evidence to substantiate his allegations that the reward has been sanctioned to officials who were not physically present on the spot so that the matter can be investigated further. He was also warned, that if he failed to substantiate his allegations, appropriate action may be initiated against him for making false allegations against Sr.Officers. He was asked to submit his reply by 22/2/88. The applicant submitted his letter on 22/2/88 stating that he could not give any evidence since the order is passed by the Office of the Collector and any

evidence put forth by him would be tampered with. The applicant was served with another letter on 22/3/88. It was stated that he had failed to mention names of Officers^W whom the reward had been allegedly sanctioned by the Collector although they had not participated in the seizure. He was also informed that his submission that he could not mention the names even to the Collector who is the Head of Department for fear of being tampered with amounts to unbecoming conduct of the applicant. He was given one more chance to submit the names latest by 24/2/88. On his failure to submit the names as per his allegations, a charge memo was issued to the applicant on 31/8/88 under Rule 14 of the CCS(CCA) Rules 1965 for acting in a manner unbecoming of a Government servant and thus contravened the provisions of rule 3(1)(iii) of CCS (Conduct) Rules, 1964. The articles of charge reads as follows:-

ARTICLE-I

Shri V.D.Kharat while working as Driver, C.Ex.H.Q. (Prev) Bombay-II has behaved in a manner unbecoming of a Government servant in as much as he had made false allegations against D.C.(P) and A.C.(P) that they have fabricated the sanction of advance reward proposal to the staff in the seizure of 417 valves and 19 couplings of foreign origin worth Rs.18,18,900/- in such a manner that it included the names of officers who were not physically present during the course of seizure and excluded his name and the names of officers who were physically present on the spot. In spite of repeated request, Shri V.D.Kharat failed to substantiate his allegations or to produce any documentary proof in his support. Shri V.D.Kharat refused to divulge to the Collector of Central Excise, Bombay-II the names of the officers to whom the advance rewards were alleged to have been sanctioned wrongly. The Collector, Central Excise, Bombay-II being the Head of the Department is legally and procedurally competent to look into any irregularities and refusing to reveal the basis of the allegation to him is highly objectionable. Not submitting the evidence for the fear of it being tampered with also amounts to distrust of the Head of the Department, on the part of Shri V.D.Kharat.

By his above act Shri V.D.Kharat has acted in a manner unbecoming of a Government servant and thus contravened the provisions of rule 3(1)(iii) of C.C.S.(Conduct) Rules, 1964.

4. An Inquiry Officer was appointed. The Inquiry Officer after following the due process and considering the submissions of the charged officer and the presenting officer submitted his report on 23/10/90 to the disciplinary authority. The Disciplinary authority after careful consideration of the report of the Inquiry Officer and after giving personal hearing to the applicant has passed order dated 15/11/91 imposing the penalty of reducing the pay of the applicant by two stages for a period of two years w.e.f. 1/12/91 and that he would not earn increments of pay during the period of reduction. The reduction will not have the effect of postponing his future increments of pay. The applicant preferred appeal against the said order on 7/2/92 and the Appellate Authority confirmed the penalty imposed on 15/9/92.

5. The learned counsel for applicant submitted that the representation for reward given on 27/1/88 was taken in an adverse sense as allegations against the superiors and the applicant was proceeded against. The only intention of the applicant was to seek reward for himself as he had been present through out the raid/seizure. It is a further contention of the applicant that during the course of the inquiry, he had insisted on the production of log book which would show that the applicant was present with the A.C.(P) through out the seizure and raid. However, the log book and XT-1 Diary could not be produced during the inquiry. The Inquiry Officer therefore had concluded that the charge regarding the allegation against superiors could not be conclusively proved. The other charge regarding misconduct however was proved. Yet the disciplinary authority held the

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charges to be proved and penalised him. The disciplinary authority should have given a notice to him before imposing the penalty of reduction in pay for two years by two stages. The learned counsel elaborately explained the background to making the representation. The applicant also could not have given the names as the entire record was with Respondent No.2. The applicant's prayer for inclusion of his name in the advance reward list has been totally ignored and he has unnecessarily been dragged into disciplinary case. The authorities totally misinterpreted the word 'fabricated'. According to him generally the word fabricated among lower class means 'erroneous' and is not to be taken in the dictionary meaning. After all the applicant being a Driver could not be expected to use sophisticated language. He had shown his willingness to show his evidence before Competent Authority. By Competent Authority he meant higher authority than the Collector. However, no competent authority demanded or gave an opportunity to submit and produce the documentary evidence in respect of the allegations made by him. Thus, he was not given any opportunity to produce the evidence. It is further submitted that the disciplinary authority, is subordinate in rank to the Collector and is within the control of Collector. And therefore a person under the direct control of the Collector could not pass a fair order with free mind and hence the order of the Disciplinary Authority needs to be quashed and set aside. The applicant has relied upon the judgements in the case of K.N.Jayachander V/s. Union of India & Ors. in OA-893/95 decided by the Bangalore Bench of this Tribunal (1996 (32) ATC 262). In this case it was held that this was a case in which the maxim "justice should not only be done but also must appear to be done" was thrown to the winds.

The authority having decided to punish the official was merely going through the act of issuing show cause notice although it already foreclosed the doors to which the applicant was being consigned to. Therefore the impugned order was quashed. Since the Collector himself was the Chairman of the Rewards Committee, it is the contention of the applicant that he could not have disclosed the names of the officials who were proposed to be rewarded though they had not been present during the raid and seizure. The applicant has further relied on another judgement in the case of C.S.Manral V/s. Union of India & Ors., T-706/85 decided by the Principal Bench reported at 1986 ATC 587, wherein it was held that imposition of penalty by disciplinary authority for using abusive language against itself was against the principles of natural justice. The disciplinary authority should have requested a higher authority to act as disciplinary authority in such a case. The learned counsel submits that the ratio is applicable in the applicant's case also because since the Chairman of the Rewards Committee was the Collector, he should not have sat over in judgement on the representation made by the applicant. The representation should have been passed over to higher authorities.

6. The applicant has therefore prayed that the impugned order should be quashed and set aside and his original representation of 27/1/88 for considering him for reward should be decided.

7. The learned counsel for the respondents submits that due opportunity was given to the applicant to disclose the names of the officials who had been sanctioned the advance reward although they had not been present at the raid/seizure. The applicant

failed to produce any evidence or to disclose the names of such officials. He went beyond his limits by expressing distrust in the Collector to whom he had addressed the representation by refusing to give the names for fear of being tampered with. After giving him a warning that in case of his failure to substantiate his allegation against his superior officers he would be proceeded against, the respondents had to issue him charge sheet and had to conduct the enquiry. It is seen from the inquiry report two documents namely log book and XT-1 Diary were not available during the inquiry. However, the inquiry officer gave the benefit of doubt and concluded that the charge regarding allegations and fabrication were not conclusively proved. Thus, the non availability of the documents did not really come in the way of the applicant. On the contrary, he benefitted. It is seen from the order of the disciplinary authority that it is a detailed, well reasoned speaking order. At the time the disciplinary authority passed the orders, the log book had become available and the applicant was shown the same. He was heard not once but twice in person and thereafter the disciplinary authority came to the conclusion of the charges having been proved., though no notice was given for disagreeing with the report of the Inquiry Officer.

8. The disciplinary authority gave ample opportunity to the applicant to defend himself. The Inquiry report had been made available to the applicant. Further, the Appellate Authority, also has passed a detailed speaking order. The evidence has been taken into account and after careful consideration, the appellate authority has confirmed the punishment. The judgements cited by the applicant cannot be said to be applicable in this case. The

applicant could not substantiate his allegations. The fact that he was present with the Assistant Collector as his Driver throughout the raid and the seizure to the extent he was present was noted by the disciplinary authority as well as by the appellate authority. The applicant's interpretation of fabrication and that he had not used the proper language because of his being only a Driver have also been considered by the Appellate Authority. It has been only an after thought. Infact all the points made by applicant in his appeal were considered by appellate authority.

9. I have given careful consideration to the pleadings of both the applicant as well as the respondents. I find that the action of the respondents is in accordance with the rules and they gave full opportunity to the applicant to defend himself. This Tribunal cannot act as an Appellate Authority. What is to be seen is whether the respondents have followed the procedure as laid down. Even though the log book could not be produced during the enquiry, the Disciplinary Authority before imposing the penalty obtained the log book and gave personal hearing to the applicant. He has not denied that the applicant was on duty with the Assistant Collector (P) and the disciplinary authority noted the applicant's role in the said raid/seizure. Thus due cognisance was taken of this fact and therefore merely because the log book was not available during the enquiry has not caused any prejudice to the applicant.

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10. I therefore do not find any infirmity in the orders of the respondents. i am therefore unable to quash or set aside the impugned orders. In my view, the OA is devoid of merits. The OA is therefore dismissed. No costs.

Shanta Sr
(SHANTA SHASTRY)
MEMBER(A)

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