

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 390/93

DATE OF DECISION: 16/01/2001

Shri Jamana Prasad Sharma.

Applicant.

Shri G.K.Masand

Advocate for
Applicant.

Versus

Union of India & 2 Ors

Respondents.

Shri M.I.Sethna

Advocate for
Respondents.

CORAM:

Hon'ble Shri Kuldip Singh Member (J)

Hon'ble Smt. Shanta Shastry Member (A)

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

Shanta S.
(SHANTA SHAstry)
MEMBER(A)

abp

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO: 390/93
DATED THE 16th OF JAN. 2001

**CORAM: HON'BLE SHRI KULDIP SINGH, MEMBER (J)
HON'BLE SMT. SHANTA SHAstry, MEMBER (A)**

Jamana Prasad Sharma,
Inspector, Central Excise,
Bombay - II.

... Applicant

By Advocate Shri G.K. Rasand

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1. Member (Personnel & Vigilance),
Central Board of Excise & Customs,
2. Collector, Central Excise,
Bombay -II.
3. Additional Collector (P&V),
Central Excise, Bombay-II. Respondents

By Advocate Shri N. S. Sethna

{ ORDER }

Per Smt. Shanta Shastri, Member (A).

By filing this DA, the applicant has prayed to quash and set aside the impugned orders dated 7/11/90, 17/6/91 and 29/4/92 after calling for the records and proceedings of the case and after going through the legality, validity and propriety of the same.

2. The brief facts are that the applicant who was working as Inspector Customs(P) Shriwardhan, N&P Wing of Customs, Preventive Collectorate, Bombay was served with a memorandum of charge sheet under rule 14 of the CCS (CCA) Rules 1965 for major penalty on 18/5/1987. The articles of charge were as under:-

Art-1 That Shri J.P.Sharma, Inspector Customs(Prev.) Shrivardhan, M&P Wing of Customs (Prev.) Collectorate, Bombay while he was on duty advised Shri Hassan Bedruddin Janjirkar alias Babu Janjirkar of Mhasla, a smuggler's agent who was standing near the contraband loaded truck No.MHL-2754 which was

seized under the Customs Act, 1962 on 1/5/1985, near Kurwade in Shriwardhan Taluka, to disappear from the scene so that he can escape the arrest under the Customs Act, 1962.

Art-II As the Customs Officer duly employed for the prevention and detection of smuggling and apprehending smugglers, Shri J.P.Sharma, Inspector, Customs Shriwardhan instead of apprehending and arresting the said Babu Janjirkar advised him to run away from the spot. Shri J.P.Sharma knew that Shri Bapu Janjirkar who was smugglers' agent and was concerned with the contraband goods loaded in the truck MHL-2745 near which he was standing was likely to be arrested if he continued to remain near the truck. Shri Sharma not only failed to arrest him but he himself advised him to disappear.

3. The applicant denied all the charges and asked for oral enquiry. Accordingly, Inquiry Officer and Presenting Officers were appointed on 27/7/1987. After conducting the inquiry, the inquiry officer submitted his report on 18/12/1987 which was received by the Disciplinary authority in March, 1988. The Inquiry Officer opined that the charges have been proved. The disciplinary authority after going through the report and considering the facts accepted the findings of the inquiry officer and imposed the penalty of removal of the applicant by order dated 3/8/1989. The applicant preferred an appeal on 16/8/89 before the Collector of Central Excise, Bombay-II. The Appellate Authority remitted the case back to the disciplinary authority vide his order dated 26/12/89 to comply with the requirements of law as the Inquiry Officer's report had not been given to the charged office before deciding the case thus denying him the opportunity to represent against the same.

4. Thereafter, the report was made available to the charged officer on 28/7/90. He filed his representation on 25/7/90. The same was considered and the disciplinary authority passed the impugned order dated 7/11/90 by imposing the penalty of reducing the pay of the charged officer by three stages from Rs.1940 to 1760 in the timescale of pay of Rs.1640-2900, for a period of

three years w.e.f. 1/12/90. It was further directed that he will not earn increment of pay during the period of reduction and on expiry of the period, the reduction will have the effect of postponing his future increments of pay. By the same order the period between his removal and reinstatement was treated as duty for all purposes..

5. The applicant preferred an appeal on 22/11/90, against the aforesaid penalty order. It was rejected on 17/6/91 by the Appellate Authority confirming the penalty imposed by the disciplinary authority. The applicant further filed a revision application on 15/7/91. That too was rejected on 29/4/92.

6. It is the contention of the applicant that this is a case of no evidence. There was no direct evidence or otherwise to prove the charge. The Inquiry Officer himself had admitted as much. The disciplinary authority did not apply his mind and merely reproduced the findings of the inquiry officer without giving any reasons or without applying his mind. The punishment imposed is a double punishment causing great hardship to the applicant. Even the order of the Appellate Authority has disregarded the various submissions made and the contentions raised by the applicant. The Appellate Authority came to the erroneous conclusion that the disciplinary authority's order is based on facts. He failed to look into the perversity of the findings of the inquiry officer and conspicuously remained silent on important aspects of the matter in respect of evidence led before the W.E.B. The Revision authority also failed to appreciate the basic principles of law that Shri Janjirkar's statement could not have been relied upon. The respondents relied on the sole testimony of Shri Kharat who was also charge

sheeted in this case and who made confusing statements. According to the applicant the orders of the disciplinary authority, appellate authority and the revision authority are based merely on assumptions, presumptions and surmises and the uncorroborated evidence of Shri Kharat.

7. It is the case of the respondents that the inquiry was conducted as per law and the applicant was given full opportunity at every stage to defend himself. It is not correct to say that the disciplinary authority did not apply her mind before passing the impugned order dated 7.11.90. The disciplinary authority as well as the appellate authority have discussed the evidence at length and then came to the conclusion that the charge is proved. The orders make it very clear that the disciplinary authority and the appellate authority debated on whether to rely upon the evidence of Shri Kharat or not. They have found Shri Kharat's statement having been corroborated sufficiently. The applicant was also given a personal hearing on 12/2/91 by the appellate authority. It is not that it is a case of no evidence, there is evidence in the form of statement of Shri Kharat, it has been further corroborated sufficiently.

8. We have heard the learned counsel for the applicant as well as the respondents. The learned counsel for the applicant has vehemently argued that the applicant had not seen Shri Janjirkar who was a smuggler's agent at the sight near the Truck which was being looted as none of the prosecution witnesses could establish that the applicant knew Shri Janjirkar and that the applicant had asked Shri Janjirkar to disappear from the scene. The respondents on the other hand have come to the clear conclusion that the applicant had seen Shri Janjirkar and had

asked him to disappear. We have given careful consideration to the pleadings and have also gone through the material available on record. It is not for us to re-appreciate the evidence in a judicial review. In disciplinary proceedings, it is enough if there is even an iota of evidence available. In the present case it is not that no evidence is available at all. The orders of the disciplinary authority and the appellate authority have analysed the available evidence in depth. Therefore we cannot accept that this is a case of no evidence. We also find that the orders of the disciplinary authority, appellate authority and the revision authority are well reasoned speaking orders. There is no procedural flaw in the disciplinary proceedings. We therefore are not inclined to interfere with the impugned orders challenged by the applicant.

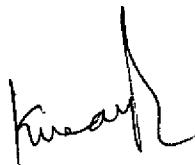
9. The applicant has also argued that the punishment meted out is double punishment. In our view this cannot be said to be a double punishment at all. According to rule 11(v) of the CCS (CCA) Rules, reduction to a lower grade for a specified period, with further directions as to whether or not the government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments, has been described as a major penalty. Therefore it cannot be said to be double punishment. Even otherwise, there is no bar to impose more than one punishment for the same wrong. Therefore, we cannot find any fault with this punishment.

10. In the facts and circumstances of the case, the application being devoid of merit is dismissed. We however do not order any costs.

Kanta

(SHANTA SHAstry)
MEMBER(A)

abp



(KULDIP SINGH)
MEMBER(J)