IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1466/95.

Date of Decision: 8/3/2000

G.S.Shinde .. Applicant

Mr.S.S.Karkera .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Mr.V.G.Rege .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,

The Hon'ble Shri B.N.Bahadur, Member (A).

(1) To be referred to the Reporter or not ? Yes

(2) Whether it needs to be circulated to other Benches of the Tribunal ? No

(3) Library? Yes

(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1466/95.

Pronounced, this the 8th day of MARCH 2000.

Coram : Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

G.S.Shinde,
704, Vaidehi Apartments,
Sajjanwadi,
Mithanagar Road,
Mulund (E),
Bombay - 400 081. ...Applicant.

(By Advocate Mr.S.S.Karkera)

Vs.

1. Union of India, through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi - 110 001.

2. The Member (P & V),
CBEC, Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

3. The Collector,
Central Excise,
Bombay - I,
Excise Building,
M.K.Road,
Opp. Churchgate Station,
Bombay - 400 020.

4. The Additional Collector (P&V),
Central Excise Bombay - I,
Excise Building,
M.K.Road,
Opp. Churchgate Station,
Bombay - 400 020. ...Respondents.

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. Respondents have filed reply. We have heard Mr.S.S.Karkera, the learned counsel for the applicant and Mr.V.G.Rege, the learned counsel for the respondents.

2. The applicant was working as Air Customs Officer at

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Sahar Airport during 1987. In connection with an alleged demand of corruption from one passenger, the department lodged a complaint with the CBI against the applicant. After some investigation, the CBI informed the department that it is a fit case for holding departmental enquiry. On that basis, the Disciplinary Authority issued a major penalty charge sheet against the applicant dt. 10.3.1988. The applicant filed a statement denying the allegations in the charge sheet. An Enquiry Officer was appointed. During the enquiry six witnesses were examined on behalf of the prosecution. The applicant entered on his defence and examined defence witnesses on his behalf. He was represented by defence assistant and the administration was represented by a Presenting Officer. Both the sides submitted their written briefs. Then, the Enquiry Officer prepared a report holding that the charge is proved against the applicant. Copy of the enquiry report was sent to the applicant, who in turn sent a detailed representation against the enquiry report and pleaded that heis innocent and he may be exonerated. On consideration of the entire materials, the Disciplinary Authority by order dt. 29.12.1992 held that the charge is proved against the applicant and accepted the enquiry report and imposed a penalty of removal from service. Being aggrieved by that order, the applicant preferred an appeal taking number of grounds. The Appellate Authority by order dt. 14.10.1994 discussed the evidence and confirmed the order of the Disciplinary Authority and dismissed the appeal. The applicant sent a Revision Petition to the next higher authority. Even the Revisionary Authority by order dt. 24.8.1995 held that the charge is proved against the applicant and rejected the revision petition. Being aggrieved by these orders, the applicant has preferred the present application.

3. The applicant's case is that he is innocent and he

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had not demanded any bribe from any passenger. He has been falsely implicated in the case. His contention is that the enquiry has not been done according to law. Applicant was not supplied the documents required by him. Applicant's request to engage an Advocate has been rejected, which has prejudiced the applicant's case. That all prosecution witnesses were not examined and tendered for cross-examination by the applicant, but only six witnesses were examined. On merits, it is contended that the findings of the respective authorities is based on surmises, that there is no sufficient evidence to prove the charge ~~sheet~~ against the applicant. It is therefore, stated that the orders of the respective authorities are liable to be quashed. Alternatively, it is stated that the penalty is harsh and requires modification.

4. Respondents in their reply, have narrated the facts of the case and they have stated that the enquiry has been done as per rules and the applicant has been furnished all the documents required by him. The applicant's request for engaging Advocate has been considered and rejected by the Disciplinary Authority since the Presenting Officer was not a legal practitioner. On merits, it is stated that there is more than sufficient evidence to prove the charges against the applicant. That no case is made out for interfering with the impugned orders.

5. The learned counsel for the applicant has raised some contentions before us which are controverted by the learned counsel by the learned counsel for the respondents. We, therefore, proceed to consider the contentions urged by the learned counsel for the applicant, one by one.

6. The first submission of the learned counsel for the applicant is that applicant's name is not shown in the F.I.R. We have perused the copy of the F.I.R. which is available in the enquiry file which was produced by the learned counsel for the respondents. One Mohd. Farukh Dossa is the complainant. He arrived at Sahara Airport, Bombay from an International Flight from Dubai. When he came near the Customs couter, one of the Officers at the counter called him and then bargained with him for payment of bribe etc. The complainant is a stranger to the applicant. He is a passenger coming from Dubai. Therefore, he is not aware of the name of the Customs Officer who demanded the bribe. That is why, in the complaint he has shown the accused as an unknown Customs Officer in the Airport. Then, he has narrated the incident which took place, in which the Customs Officer demanded bribe, this was on 12.10.1987. Since the complainant was not willing to pay bribe, he approached the CBI Police and lodged a complaint on 13.10.1987. A trap was laid on 14.10.1987, the complainant came with the Police and Panchas and those persons took position in different places. Then, complainant went and talked with the applicant who again demanded bribe and received bribe money from him, when he was trapped. Therefore, though the name of the applicant is not shown in the F.I.R. he has been identified as the Customs Officer who demanded the bribe on 12.10.1987 and accepted the bribe on 14.10.1987. Therefore, non-mentioning of the name of the applicant in the F.I.R. is not fatal when applicant is a stranger to the complainant and therefore, he could not have shown his name at all. But, he has identified the applicant on 14.10.1987 when he offered the bribe money to the applicant and the bribe money was seized from the applicant when the trap was laid. Hence, nothing much turns out on the fact that the name of the applicant is not mentioned in the F.I.R.

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7. The next submission of the applicant's counsel is that the copy of Panchanama was not given to the applicant at the spot. This is a matter if at all it is necessary for decision in the criminal case. The Disciplinary Authority is in no way responsible for the delivery of copy of the Panchanama from the Police to the applicant. The entire criminal case records are not before us. Therefore, we cannot say whether the copy of the Panchanama was given to the applicant or not on 14.10.1987. But, there is no dispute that the applicant has been supplied with the copy of the Panchanama during the disciplinary enquiry. Hence, applicant knows as to what case he has to meet and had the assistance of a Defence Assistant who has cross-examined 9 Prosecution Witnesses and applicant has examined 5 Defence Witnesses on his behalf. It is also not shown as to how non-delivery of copy of Panchanama at the spot on 14.10.1987, even if true, has prejudiced the case of the applicant.

8. Another contention of the applicant's counsel is that documents sought for by the applicant were not supplied by the Disciplinary Authority and thereby there was violation of principles of natural justice. But, though such an allegation is made in the O.A., no such particulars are given as to what documents the applicant wanted and what documents were not supplied to him. A bald or vague allegation that applicant wanted some documents and they were not furnished cannot be given any weight. Even if it is a case of non-supplying of some documents, it must be further shown that applicant has been prejudiced due to non-supply of certain documents. Since the applicant has not disclosed the particulars of required documents which are not supplied, we cannot even consider the question of prejudice to the applicant.

On the other hand, respondets counsel brought to our

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notice (Ex. 'A' and 'B') annexed to the written statement. Ex.'A' is the copy of order sheet dt.13th September, 1988 prepared by the Enquiry Officer and signed by the applicant to show that preliminary enquiry was held on that day. The order sheet shows that applicant admitted that he has received all the documents except one document viz. Sl.No.2 in Annexure 'B' to the charge sheet. That document is the copy of F.I.R. The Enquiry Officer gave a direction to the Presenting Officer to see that a copy of F.I.R. viz. Sl. No.2 in Annexure 'B' should be supplied to the applicant.

Then, we have the order sheet dt. 19.10.1988 which is Ex. 'B' to the written statement. It clearly shows that the copy of the F.I.R. was delivered to applicant by the Presenting Officer in the presence of the Enquiry Officer. The order sheet is signed by the applicant.

Nothing is brought out on record to show that any other documents were called for by the applicant and they were not produced. A bald or vague allegation cannot be given any weight.

Hence, we are not impressed by the argument of the learned counsel for the applicant about non-supply of certain documents. As already stated, even if some documents are not supplied, we have to be further satisfied that prejudice is caused to the applicant due to non-supply of a particular document.

9. Mr.Karkera, the learned counsel for the applicant, then contended that though charge sheet contains as many as 15 witnesses, only 9 witnesses were examined. He, therefore, argued that the Prosecution has not tendered the remaining 6 witnesses for cross-examination by the applicant. In our view, the argument has no merit. Prosecution has to examine those witnesses who are necessary for proving the case. There is

no rule or law that all witnesses cited in the charge sheet should be examined. If the applicant wanted any witness to be examined as his defence witness he could have called them as his defence witnesses. There is no necessity for the Prosecution to examine other witnesses which it finds not necessary to prove its case. There is also no law about number of witnesses to be examined in any case. A case can be proved on the evidence of a solitary witness. Therefore, the argument that Prosecution should have examined all the witnesses and tender them for cross-examination has no merit.

10. The next submission is that applicant's request for engaging a Legal Practitioner to defend himself in the enquiry case has been rejected by the Disciplinary Authority and this has caused prejudice to the applicant.

It is now well settled that a delinquent has no right to engage an Advocate to defend himself in a disciplinary case. This is clearly provided in Rule 14 (8) of the CCS (CCA) Rules.

But, the applicant's counsel brought to our notice an order of the Government of India dt. 29.8.1972 which says that if the Prosecution is conducted by an Advocate or a Legally trained person, then of course, the delinquent official must be allowed to engage an Advocate.

In this case there is no allegation, much less proof, that Prosecution was conducted by an Advocate or a Legally trained person. May be a CBI Official was appointed as Presenting Officer, but there is no allegation that he was a Law Graduate.

As rightly argued on behalf of the respondents, applicant is also not a layman. He is an Inspector of Customs. He has got powers to register case and prosecute persons violating Law of Customs. In addition to this, the applicant

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was defended by a Defence Assistant Mr.G.R.Bhatt, who was himself a retired Assistant Collector of Customs. Therefore, both the applicant and his Defence Assistant are not lay people and therefore, the applicant has been effectively defended in the enquiry case.

We are also not impressed by the argument of the applicant's counsel that the case involved complicated questions of law or fact. This is a simple case of trap. The complainant has gone and paid the money to the applicant on his demand and he gave a signal and the Police and Panchas rushed to the spot. Therefore, this is a simple case of either accepting the version of the applicant or accepting the evidence of the complainant and the two Panch witnesses. It is not such a case which involves complicated question of facts or examination of proof of documents etc.

11. The learned counsel for the applicant invited our attention to some authorities on this point.

In A.I.R. 1983 SC 109 (Board of Trustees of the Port of Bombay Vs. Dilip Kumar), where, the Supreme Court noticed that the Administration was represented by two Legal Officials Mr.R.K.Shetty and Mr.A.B.Choudhary as Presenting Officers, but the request of the delinquent official to engage a Legal Practitioner was wrongly rejected. We mention here that Mr.R.K.Shetty who was then Law Officer in Bombay Port Trust is now Practising as an Advocate in this Tribunal. In the Rule it is provided that if the Administration is represented by a Legal Practitioner, then the delinquent official also has a right to engage a Legal Practitioner.

In 1992 (2) ATJ 124 (Dr.Radhunathaman Opeh Vs. Union of India & Ors.), the Principal Bench of this Tribunal observed that when the Presenting Officer is a legally trained person having experience in vigilance enquiries, then rejection of

request of the delinquent to engage a Legal Practitioner is not sustainable. The Bench also took into consideration the gravity of that case, since it involved with the death of the former Prime Minister of India Smt.Indira Gandhi. The Commission ~~was~~ headed by Justice Thakkar of the Supreme Court had pointed out certain lapses in rendering medical aid to Smt.Indira Gandhi when she sustained bullet injuries. It is on the basis of the findings of the enquiry commission headed by Supreme Court Judge disciplinary enquiry was ordered against Dr.Raghunathaman, who was the applicant in that case for negligence in giving proper timely medical aid to Smt. Indira Gandhi. It was in those circumstances, the Tribunal came to the conclusion that in all fairness the delinquent official should have been given opportunity to engage a legal practitioner having regard to the gravity of the charge and also in view of the fact that the Presenting Officer was a well trained person in departmental enquiries and vigilance work.

Similarly, in the case of J.K.Agarwal reported in 1991 (2) ATJ 503 (SC), The Supreme Court found that the Presenting Officer was a person with legal attainments and experience and therefore, rejection of the request of the delinquent official to engage a Legal Practitioner was not proper.

In the present case, admittedly the Presenting Officer is not a legal man. We have to read the above decisions on the peculiar facts and circumstances of those cases.

In the present case, applicant himself is a Customs Officer who has powers to lodge complaints and initiate prosecutions etc. He was defended by a retired Assistant

Collector who also will be well aware of the Vigilance enquiries, prosecutions etc.

We have gone through the enquiry file. Applicant has given a detailed brief after the closure of the case which shows that he has taken all grounds and all defences like a legally trained person. He has commented on the discrepancies of evidence, about want of corroboration and about legal aspects in the detailed defence brief. All witnesses have been cross-examined by the applicant's defence assistant. The applicant himself has examined 5 witnesses on his behalf.

We are, therefore, satisfied that the applicant had sufficient and full opportunity to place his defence and to cross-examine the witnesses and since the Presenting Officer is not a Legal Practitioner, the administration was justified in rejecting the applicant's request for engaging a Lawyer and no prejudice has been caused to him if we go through the detailed defence brief and the lengthy cross-examination of witnesses.

12. The next submission is that the impugned order is not sustainable on merits. Applicant's counsel commented on discrepancies in evidence, sufficiency of evidence and reliability of evidence. We are afraid that we cannot go to ~~these~~ this exercise of discussing or re-appreciating the evidence. Judicial Review is not meant to be an appellate power. The judicial review is meant to review the legality of the "decision making process" and not the legality of the actual decision".

In this case, the allegation is that the complainant Mr.Mohd. Farukh Dossa had arrived in the Bombay Airport with certain baggages and applicant demanded him to pay Rs.16,000/- which was later bargained and fixed at Rs.10,000/- which

includes the duty and the amount payable to the applicant. The complainant was not prepared to pay that amount, this was on 12.10.1987 and the very next day the complainant lodged a report with the CBI who recorded the F.I.R. and arranged for a trap. On 14.10.1987 a trap was laid, complainant met the applicant, when applicant gave a note for payment of Rs.7,000/- and odd towards duty. Then, applicant demanded and accepted Rs. 2,800/- from the applicant as bribe money. The applicant kept that amount in his pant pocket. The complainant gave a signal, when the CBI Officers and the Panch witnesses rushed to the spot, immediately, the applicant took out the notes from his pant pocket and kept them on the table. The amount was seized under Pachanama. Applicant's hands were tested with Phenophthalein ~~with~~ solution, which it turned into pink. The applicant's pant pocket was also treated with the Phenophthalein solution and it turned into pink.

The complainant has given evidence as to what had transpired between himself and the applicant on 12.10.1987 and about the demand and acceptance of the bribe on 14.10.1987. The evidence of complainant about trap is corroborated by two Panch witnesses Mr.R.K.Kaura, Executive Engineer and Mr.M.J.Jale, Junior Vigilance Officer, both are from Rashtriya Chemicals and Fertilisers, which is a Public Limited Company. These two witnesses are independent witnesses and they have been secured by the Police Officer to be present at the time of trap. The complainant himself is an utter stranger to the applicant and he did not even know the name of the applicant, then why should the complainant lodge a complaint against an innocent officer if really no such incident had taken place on 12.10.1987.

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13. The enquiry report shows that the Enquiry Officer has taken into consideration the contents of the prosecution brief, contents of the defence brief and then he discussed the evidence of witesses and then has reached the conclusion that the prosecution is proved. The enquiry report runs into 70 pages where details of the evidence given by all the witnesses has been extracted and commented on by the Enquiry Officer.

Similarly, the Disciplinary Authority has again referred to the evidence of witnesses and has written a lengthy order running into 17 pages. We also find that even the Appellate Authority has written a very good reasoned order considering the facts of the case and contentions of the applicant and then coming into the conclusion that the charge is proved and no interference is called for. Similarly, the Revisional Authority has also cofirmed the finding of guilt against the applicant.

Therefore, we find that there are concurrent findings of fact recorded against the applicant by the domestic Tribunal right from the Enquiry Officer up to the Revisional Authority. We are not expected to sit in appeal and review and re-appreciate the evidence and take another view, even if another view is possible. That is not the scope of judicial review.

Though there are many decisions bearing on the point, we are only referring to the latest Judgment of the Supreme Court reportedin 1999 (2) SC SLJ 287 (High Court of Bombay Vs. Shashikant S.Patil and Anr), where the Apex Court has ruled that the Court cannot review the findings of fact recorded by the disciplinary committee. It is pointed out that if there is some legal evidence on which findings

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of fact are based, then adequacy or reliability of evidence is not a matter for canvassing before the High Court.

Therefore, we find that there is some evidence against the applicant, particularly the evidence the complainant and the two Panch witnesses, if believed, is sufficient to support the finding of guilt recorded against the applicant. We cannot go into the question of adequacy of evidence or reliability of evidence. This is not a case of "no evidence".

After perusing the materials on record, we fid that even on merits, no case is made out for interference.

14. The last submission about the quantum of penalty also does not merit acceptance. This is a case of applicant being found guilty of demanding and accepting illegal gratification for showing official favour. Removal from service is a proper punishment in such a case. It cannot be said that for the mis-conduct of taking the bribe, the punishment of removal from service is harsh. Therefore, we do not find any merit in the submission about quantum of penalty.

In our view, none of the contentions urged by the counsel for the applicant merits acceptance. The OA is devoid of merit and liable to be dismissed.

15. In the result, the OA fails and it is hereby dismissed. No order as to costs.

(B.N.BAHADUR)
MEMBER (A)

8/3/2001
(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.