

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 939/97

Date of Decision : 15th June 2002

J.L.Pai

Applicant

Shri S.S.Karkera

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

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

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

The Hon'ble Smt.Shanta Shastry, Member (A)

(i) To be referred to the reporter or not ? *yes*

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

(iii) Library *yes*

SLJ
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.939/97

Dated this the 19th day of June 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Hon'ble Smt.Shanta Shastry, Member (A)

J.L.Pai,
Inspector of Central Excise
Division-III, Mumbai
Commissionerate-II,
Mumbai.

...Applicant

By Advocate Shri S.S.Karkera

vs.

1. Union of India
through the Chief Commissioner,
O/O the Central Excise
Commissionerate Mumbai-I,
New Central Excise Building,
Opp.Churchgate Station,
Mumbai.

2. The Commissioner,
O/O the Commissioner of
Central Excise, Mumbai-II,
9th Floor, Piramal Chambers,
Lalbaug, Parel, Mumbai.

3. The Addl.Commissioner,
Central Excise, Mumbai-II,
9th Floor, Piramal Chambers,
Lalbaug, Parel, Mumbai.

4. The Deputy Collector of Customs,
Marnie & Preventive Wing,
100, Everest Building,
2nd Floor, Opp.Marnie Lines,
Mumbai.

...Respondents

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

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O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the impugned orders dated 16.5.1996 and 8.11.1996 with the direction to the respondents to grant all consequential benefits, such as restoration of his pay, increment, arrears, promotion and seniority in Group 'B'.

2. The applicant was appointed as Lower Division Clerk w.e.f. 13.7.1973, promoted to the post of UDC and to the post of Inspector w.e.f. 2.7.1979 and 16.5.1981 respectively in the Office of Respondent No.1. While he was working in the office of Respondent No.2, he was transferred on deputation w.e.f. 24.3.1992 to the office of the Assistant Collector of Customs, Headquarters, Marine & Preventive Wing, 100, Everest Building, New Marine Lines, Mumbai without any deputation allowance in order to look after the Anti Smuggling cases of Marine & Preventive Wing.

3. In two of Customs cases filed by the State on behalf of Customs, Rummaging & Intelligence (R&I), Bombay being R.A.No.88/93 and 117/93 filed before the Additional Chief Metropolitan Magistrate's 32nd Court, Esplanades, Mumbai, the Addl. Chief Metropolitan Magistrate was pleased to direct Uttan Circle (Office of the Superintendent of Customs, Uttan Circle) to

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verify and report the documents submitted by the four sureties, namely, Jayesh Vinod Chandra Shroff, Yasudas Thomson Nadar, Deepak Bhimji Chawda and Mukesh Chathabhuj Bhatia were already identified by Advocate Shri Suleman. As per the direction given by the aforesaid Court, Shri K.J.Parekh, Advocate High Court, Mumbai came to the Office of the Superintendent of Customs, Uttan Circle for submitting the compliance report. On the said dates 21.5.1993 to 23.5.1993 the Superintendent Shri A.L.Vartak was not available in the office since he was given an additional charge of Versova Division of Marine & Preventive Wing where he was sitting. He being the most senior person in the said office Shri K.J.Parekh, Advocate High Court requested him for verification of the documents of the sureties for releasing the accused in R.A.No.88/93 and 117/93 as bail was already granted by the Additional Chief Metropolitan Magistrate of Esplanade Court, Mumbai subject to verification and identification. As the Superintendent was not available at the relevant time in order to comply the order of the Hon'ble Court and even the threats of Shri K.J.Parekh, Advocate High Court regarding contempt in case of failure to comply with the order of the Court against the applicant, the applicant proceeded to comply the said order. The applicant went for inspection and verification of the genuineness of the documents along with Advocate Shri K.J.Parekh since he was knowing the place for verification of the documents on 23.5.1993 and 24.5.1993 in the Ration Office Bhayandar and District Collector, Thane. He verified the Ration Card, Solvency

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certificate of four sureties in the Ration Office, Bhayandar and in the District Collector's office Thane with the help of Inspector of Ration Office, Bhayandar and Inspector of Talathi Office, Bhayandar and verified as genuine on the basis of record of the office and the affidavit was also filed regarding the genuineness of original documents on 24.5.1993 and 25.5.1993 by the applicant before the Additional Chief Metropolitan Magistrate, Esplanade Court, Mumbai-1.

4. The applicant was placed under suspension by the Deputy Collector (M&P Wing) Customs, Bombay vide his order bearing No.F. No.II/8-31/93/VIG, dated 18.11.1993 on the ground of alleged offence under investigation/inquiry (Ex.'E'). The Deputy Collector of Customs vide his Memo No.F.No.II/8/31/93/VIG/7 dated 5.1.1994 issued the chargesheet under Rule 14 of CCS (CCA) Rules,1965 along with Annexure 1,2,3 & 4 (Ex.'F'). The applicant could not file the reply in view of the fact that the copies of the documents shown in Annexure-III was not supplied, therefore, the applicant vide his letter dated 27.1.1994 requested the disciplinary authority to supply the copies of the documents (Ex.'G'). The disciplinary authority appointed Shri M.V.Nair and Smt.S.V.Desai as Enquiry Officer and Presenting Officer respectively. The Enquiry Officer fixed the preliminary hearing of the case on 28.4.1994. On the said date, the Presenting Officer Smt.S.V.Desai showed the original documents as per the Annexure-III of the chargesheet. On 16.5.1994 the proceeding of the disciplinary case commenced. The applicant made the request

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to summon Shri K.H.Joshi, Rationing Officer, Shri H.V.Patil, Inspector, Talathi Office, Bhayander and Shri K.J.Parekh, Advocate High Court in order to prove whether the documents verified by the applicant was true and correct (Ex.'H'). On the next date, i.e. 13.6.1994 Shri K.M.Kothare and A.L.Vartak were examined and cross-examined as Departmental witnesses. The grievance of the applicant is that the copy of the extract of the daily report proceeding of the cross examination of departmental witnesses were not supplied and kept on the proceeding file as recorded by the Enquiry Officer vide his letter dated 13.6.1994 (Ex.'I'). The applicant preferred representation on 22.6.1994 stating that Shri K.A.Joshi and Shri H.V.Patil were not in a position to attend the inquiry and requested that the other officer of the said office can also be examined and also requested the Enquiry Officer to summon Shri K.J.Parekh, Advocate (Ex.'J'). The Enquiry Officer submitted the enquiry report to the disciplinary authority and the disciplinary authority served the same on the applicant to which the applicant replied vide his representation dated 29.9.1995. Thereafter, after hearing the applicant, the disciplinary authority penalised the applicant to a reduction in time-scale of pay by two stages from Rs.2240/- to Rs.2120/- in the pay scale of Rs.1640-60-2600-EB75-2900 for a period of two years w.e.f. 1.5.1996 with a stipulation that the applicant will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing of his increments of pay. The applicant preferred an appeal against the said order which was also rejected vide order dated 8.11.1996.

5. The grievance of the applicant is that the disciplinary authority as well as the appellate authority has arrived to the conclusion without application of mind, illegally and arbitrarily and penalised the applicant. As such, the order of the disciplinary authority and appellate authority are bad in law. He was due for promotion to the post of Superintendent Gr.B of Central Excise but due to the aforesaid punishment, he was denied the said promotion. The entire action of the respondents was to punish the applicant in order to deny promotion prospects. Hence, this OA. for the above said relief.

6. The claim of the applicant is being resisted by the respondents on the ground that the Additional Chief Metropolitan Magistrate of Esplanade Court, Mumbai granted bail to the applicant subject to the verification and identification of sureties with reference to the prosecution cases RA-88/93 and RA-117/93 launched by the R&I Wing of Customs Preventive Collectorate. The documents which the applicant claims to have verified are extracted below :-

- (i) Individual Solvency Certificates issued by the Sub-Divisional Magistrate, Thane.
- (ii) Agreement for sale of flat.
- (iii) Family Ration Card.
- (iv) Saving Bank Pass Book.
- (v) Shop & Estt. Licence.
- (vi) Income Tax Advance Payment Receipt.
- (vii) Maintenance charges receipt issued by the Society.

(viii) Share Certificate issued by the Society.

(ix) Electric Bill.

(x) Letter from the Society stating that the Surety is a bonafide member of the Society.

The letters sent to the Sureties at the given address by Registered A.D. have been returned by the Postal Authorities with the remarks as 'Not Known', 'Not claimed'. Therefore, further verification was warranted which was conducted by the Superintendent, Uttan Circle on 22.10.1993 which revealed that the Sureties verified by the applicant were found to be not correct. Thereafter, the chargesheet was issued to the applicant. In fact the applicant filed an Affidavit before the Addl.Chief Metropolitan Magistrate, Esplanade Court stating the fact that he visited the premises of the said four Sureties and verified the genuineness of the relevant documents numbering 1 to 10 by verifying the originals which was confirmed again by him vide his letter dated 28.9.1993 addressed to the A.C.(R&I), New Custom House. However, he subsequently changed his stand saying that he verified only the genuineness of the documents and later on stated that he verified the Ration Card and the Solvency Certificate. The applicant was shown the original documents as enlisted in Annexure-III to the Charge Memorandum. As per DGP&T Letter No.20/26/25-Disc. dated 17.9.1966 and para 93 of P & T Manual Vol.III (Ex.-1), C.O. should have made specific request to this effect before recording of such oral statement starts regarding supply of copy of extract of the Daily report proceedings of the cross examination of departmental witnesses.

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In this case, no such request was made by the applicant and hence supply of the copies by the I.O. to the C.O. is out of question. Option of summoning the Rationing Inspector desired by the applicant, afresh examination of Rationing Officer was kept open by the I.O. The applicant could not disclose the relevancy of Shri K.J.Parekh's evidence hence he was not summoned. The applicant should have done independently the work entrusted to him and not under the influence of Shri K.J.Parekh. The report of the Enquiry Officer, the conclusion of the Disciplinary Authority and the order passed by the Appellate Authority are well considered ones wherein the question raised by the applicant has been properly considered. Hence, prayed for dismissal of the OA. along with costs.

7. The first grievance of the applicant ^{vide letter dated 27.1.1994} he requested the disciplinary authority to supply the copies of the documents so as to submit his written statement of his defence has been met out during the course of preliminary hearing on 28.4.1994 by showing the said documents mentioned in Annexure-III to the applicant by Smt.S.V.desai, Presenting Officer before the preliminary enquiry could start. It is true that the respondents ought to have taken such a step before appointment of Shri M.V.Nair and Smt.S.V.Desai as Enquiry Officer and Presenting Officer but failure to do so in no way prejudices the applicant's case. As such, the said grievance of the applicant ^{does not} holds no good. *J.S.R.*

8. Another grievance of the applicant is that the copy of the extract of the daily report proceeding, of the cross examination of departmental witnesses was not supplied and kept on the proceeding file. The defence of the respondents ^{is} that the applicant did not request for the same. Hence, supply of copies to the C.O. by the E.O. is out of question which is based on Ex-'R-1', a letter dated 17.9.1966 issued by DG P&T letter No.20/26/25-Disc. and para 93 of P&T Manual Vol.III.

9. The said grievance of the applicant is to be examined keeping in mind that whether the applicant has raised the said grievance to the Enquiry Officer in his representation to the disciplinary authority and thereafter in his appeal and whether the applicant's case is in any way prejudiced by non supply of the said copies. It is suffice to state that the applicant failed to intimate the Enquiry Officer well in time before start of the examination of the witnesses for such copies, never requested the grievance before the Enquiry Officer to supply the said copies failed to raise in his representation to the Enquiry Officer's report before the Disciplinary Authority and in appeal also. The witnesses were examined in his presence, as such now the applicant cannot agitate the said grievance particularly when the applicant's defence is in no way prejudiced.

10. The other grievance of the applicant is that he was not allowed reasonable opportunity to defend his case by not allowing Shri K.J.Parekh to be cross-examined. It is true that vide Ex.'J' the applicant requested for cross-examination of Shri K.J.Parekh and his request was turned down on the ground that he is not relevant to the enquiry. The relevance of the same is not to be examined with a view to the case of the departmental authorities, but it is also to be examined to establish the defence version.

11. Shri K.J.Parekh, Advocate who has appeared for the accused persons in bail applications in RA.88/93 and 117/93 in our considered opinion was not a material witness for the applicant keeping in view the charge levelled against him. As such, the grievance of the applicant that he was not allowed reasonable opportunity to defend his case by not allowing Shri K.J.Parekh is of no assistance for the reason that the omission on the part of the respondents to do so does not prejudice the applicant's defence in any way.

12. The order passed by the Magistrate in RA.88/93 and 117/93 for verification of sureties is not placed before us for perusal but the acceptance of the surety is being placed before us which is extracted below :-

..... About Mukesh Chatarbhuj Bhatia

"Perused verification report in respect of Jayant L.Pai. He produced his report that solvency certificate of Rs.4,00000/- is genuine as well as other documents. Therefore, this surety is accepted only for Rs.4,00000/-(four lacs)."

Another acceptance of Hussain Ahemed is as noted below :-

"Perused report of Jayant L.Pai. He produced the verification report that is solvency certificate is genuine and other document also genuine, hence surety for Rs.Two lakhs is accepted."

13. It is true that the bail order asking the applicant to verify the solvency certificate or otherwise is not produced before us but acceptance of the surety leads us to conclude that the applicant was to verify only the genuineness of the documents and not, either address of the sureties or to verify the residence of the sureties or anything else.

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14. The charge levelled against the applicant is material and on perusal of the same, we arrive to a conclusion that charge was not only in respect of verifying the genuineness of the documents but it was :-

"as much as he verified two Sureties appearing in the Customs' Prosecution cases RA.88/93 and 117/93 launched by R & I Wing in the seizure of 100 gold bars and 60 gold bars respectively. The letters sent to the said sureties at the given addresses by Regd. Post A.D. returned undelivered by the Postal Authorities with the remarks thereon as 'Not known' and 'Not claimed'. Further enquiry made by Supdt.Uttam Circle revealed that the names of Sureties as well as addresses were fictitious."

Whatsoever order passed by the Metropolitan Court regarding verifying the documents or otherwise, we are not concerned with the said fact. Keeping in view the Articles of the charge, had the Articles of charge been only to the effect that the applicant failed to act upon the order passed by the Metorpolitan Court or pretended to act upon the order passed by the Metropolitan Court or in fact he has not complied the same, the said facts have been relevant in the matter. Even, inspite of it, the applicant's own letters referred by the respondents in which he has stated that he has visited the residence of the said surties, thereafter changed his statement and said that he only verified the genuineness of letters which leads us to the conclusion that now the applicant is taking 'U' turn with some ulterior motive. For

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whatsoever reason, the applicant might have stated that he has verified the premises of the said sureties which in fact he has not verified. As such, we do not find any fault with respect to the report of the enquiry officer, the decision arrived by the disciplinary authority and the appellate authority.

15. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.

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(SMT. SHANTA SHAstry)

MEMBER (A)

S. L. Jain

(S. L. JAIN)

MEMBER (J)

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dt 19/6/2
Order ~~and~~ ~~despatched~~
to Appellant & respondent (s)
on 25/6/2

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