

Central Administrative Tribunal
Mumbai Bench

UA No.966/98

Mumbai this the 17th day of June, 2002.

Hon'ble Mrs. Shanta Shastri, Member (J)
Hon'ble Mr. Shanker Raju, Member (A)

Jagdish K. Pillai,
R/o Plot No.11, Goraswadi
Malad (West), Mumbai-64.

-Applicant

(By Advocate Shri Suresh Kumar)

-Versus-

1. Union of India, through
Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Member (Personnel),
Central Board of Excise and
Customs, North Block, New Delhi.
3. Commissioner, Central Excise
Commissionerate, Mumbai-11,
Piramal Chambers, 9th Floor,
Jijibhai Lane, Parel, Mumbai.
4. Addl. Commissioner (P&V),
Commissionerate, Mumbai-11,
Piramal Chambers, 9th Floor,
Jijibhai, Parel, Mumbai-13.

-Respondents

(By Advocate Shri Bhadavkar, proxy for Sh. M.L. Sethna)

ORDER (ORAL)

Mr. Shanker Raju, Member (J):-

Applicant impugns respondents' original order of penalty dated 23.5.1996, imposing minor penalty of censure as well as an order in revision dated 7.2.97, enhancing the penalty by reduction to one stage in the time scale of pay for a period of two years, without cumulative effect and the appellate order and the appellate order dated 15.1.98, upholding the revised punishment.

2. Applicant, an Inspector in Central Excise was served upon a minor penalty chargesheet for the allegation that on 14.7.95 while conducting the search of vehicle and of

occupants therein he has acted beyond jurisdiction and also failed to inform his superiors and also not included in the punch witnesses and also failed to prepare a punchnama.

3. On reply a minor penalty of censure was inflicted upon the applicant holding that no malafide or lack of integrity has been found on his part in discharge of his duty.

4. Revisional authority suo moto through a memorandum dated 21.8.96 issued a show cause notice to the applicant to enhance the punishment to which a representation was preferred which ultimately culminated into an enhanced punishment by an order dated 1.2.97.

5. On appeal against the enhanced punishment the same has been upheld by an order dated 15.1.98, giving rise to the present UA.

6. Learned counsel for the applicant Shri Ashok Kumar in this UA assailed the order on the ground that although the disciplinary authority has not found any malafide or lack of integrity in discharge of duty yet imposed a minor penalty. The act done was in good faith. The reviewing authority has not considered the contentions of the applicant and the order passed enhancing the punishment is not objective on the basis of evidence. In this backdrop it is stated that as per notification dated 10.12.85 the ^w powers of Central Excise Officers within the jurisdiction of three Commissionerate include the place where incident took place and on secret information he acted within the jurisdiction and as there was no time left to inform the superior officers the raid was conducted where nothing incriminating^h was found as such in absence of any assistance by the public witnesses punchnama

could not be prepared. It is further stated that the incident was reported upon by a co-delinquent in XI-1 diary kept under the departmental rules and no circular or written instructions have been violated. The disciplinary authority has not made any effort to check up XI-1 diary.

7. Applicant alleges discrimination by contending that in case of one Rajesh Luisi Das Vedant differential treatment has been meted out to him, which is contrary to Articles 14 and 16 of the Constitution of India.

8. Lastly, it is stated that the act alleged does not come within the ambit of any misconduct and he has been punished merely on suspicion and surmises.

9. Learned counsel for the respondents Shri ^b~~Madavkar~~^h for Sh. M.L. Sethna stated that no procedural illegality or irregularity has been brought to warrant interference of this court in the proceedings. It is stated that as per Section 42 of the N.D.P.S. Act, 1985 read with notification dated 14.11.85 Inspectors of Central Excise are empowered to exercise the powers and perform the duties specified in Section 42 within the area of their respective jurisdiction. As the area where the raid has been conducted does not come within the jurisdiction of the applicant he acted without jurisdiction and as notification dated 10.12.83 does not cover the Divisional Assistant Commissioner, only Assistant Commissioner (Preventive) and their staff have concurrent jurisdiction.

10. In so far as punchnama is concerned, it is stated that the same has not been prepared in the presence of independent witnesses which prove their misconduct and XI-1 diary is not

written by the applicant but rather reported by another officer Shri A.R. Fernandes and there is nothing in it to indicate that the matter has been referred to further superior officers. Intimation after 28 days after incident and the applicant being an experienced officer and despite knowledge of the relevant provisions has failed to discharge his duty in a responsible manner. For this, the punishment imposed is commensurate with the misconduct and has been rightly enhanced with sufficient reasons on record, which does not warrant any interference of this court in a judicial review.

11. We have carefully considered the rival contentions of the parties and perused the material on record and also perused the official record produced before us by the respondents. At the outset, in a judicial review the scope of interference is limited only in case of no evidence and perverse finding.

12. If one has regard to the facts of the present case although the disciplinary authority imposed a punishment or censure by holding that there is no mala fide intention but the revisional authority in its order recorded reasons and also had given ample opportunity by way of a show cause notice to the applicant. The resort of the applicant to 1983 circular is not well founded as it authorises only Assistant Commissioner (Preventive) and Inspectors (Preventive) working in Mumbai-1 and 11 and Thane Commissionerate to exercise concurrent jurisdiction. Since Assistant Commissioner and the staff thereunder are not covered in view of Section 42 NDPS Act the respective jurisdiction is to be exercised and as Mahim area does not fall within the jurisdiction of the applicant he has acted beyond his jurisdiction, which is against the rules.

13. In so far as not preparing the punchnama is concerned and not joining any public witness even if the raid was a failure it was incumbent upon applicant to have prepared it as per the rules. Moreover having no jurisdiction to act, the raid was not warranted without seeking permission of the superior officers.

14. As regards reporting the matter in XI-1 diary the same is not a valid communication to the superiors as the same has not been done by the applicant himself but rather by one A.R. Fernandes whereas the operation report is to be submitted to the superiors on the next working day and the information in SI-1 is not an information. The XI-1 report does not contain any remarks to the effect that this has been submitted to the Superintendent, i.e., the next superior officer. As the communication was sent after 28 days the same shows negligence on the part of the applicant justified the enhanced punishment upon him.

15. We have also seen the orders passed in revision as well as by the appellate authority. The authorities have recorded detailed reasons, dealing with all the contentions of the applicant which do not suffer from any legal infirmities.

16. In our considered view, applicant has been afforded a reasonable opportunity to show cause before the punishment was enhanced. There is no other legal infirmity pointed out to us by the learned counsel to warrant our interference. We do not find any infirmity in the orders passed by the respondents.

17. In the result, as the UA is found bereft of merit, the same is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

Smt. Shanta

(Smt. Shanta Shastri)
Member (A)

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