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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL APPLICATION NO.654 of 1999

DATE OF JUDGMENT:

8-8-

JULY, 2000

BETWEEN:

N.NEELAKANTESWARA REDDY

.. APPLICANT

AND

1. The Chairman,  
Central Board of Customs & Excise,  
Ministry of Finance,  
Dept. of Revenue,  
New Delhi,
2. The Chief Commissioner of Customs &  
Central Excise,  
Hyderabad Zone,  
Hyderabad,
3. The Additional Commissioner,  
Customs House,  
Visakhapatnam-35.

.. RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr.S.LAXMA REDDY

COUNSEL FOR THE RESPONDENTS: Mr.V.RAJESWARA RAO

CORAM:

HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORDER (PER HON'BLE SRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.S.Laxma Reddy for the applicant and  
Mr.V.Rajeswara Rao for the respondents.

2. The applicant while working on adhoc basis as  
UDC, was issued with a charge sheet bearing NO.S20/17/94-  
CIU, dated 10.10.94 (Annexure-A8 at page 32 to the OA) for  
the following charges:-

"That the said Shri N.N.Reddy, while  
working as an UDC in Visakhapatnam


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Custom House, during May 1993 has received cash of Rs.5,830/- from the Cashier sanctioned for payment towards freight charges for CBR-CUS forms received from the Directorate of Publications, New Delhi, and misappropriated the same for his personal needs with the connivance of Shri Syed Bajuddin."

In Annexure-II of the charge sheet, the statement of imputations of misconduct in support of the article of charge framed against the applicant is given. In Annexure/III, a list of documents by which the article of charge framed against the applicant are proposed to be sustained, is indicated. In Annexure-IV, a list of witnesses by whom the article of charge framed against the applicant are proposed to be sustained, is given. In the Annexure-IV i.e, list of witnesses, there are four witnesses. They are-

1. Shri T.Kesava Rao, DOS, Custom House, Visakhapatnam;
2. Shri Ch.Narayana Murthy, (Cashier), Presently DOS, Custom House, Visakhapatnam.
3. Shri M.S.Madan Kumar, Manager, M/s Bombay Andhra Transport Organisation, Visakhapatnam; and
4. Shri P.V.Reddy, A.O., Vice President, Customs Recreation Club, Visakhapatnam.



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The applicant submits that in view of the charge sheet dated 10.10.94, he was not regularised as UDC and continued as UDC on adhoc basis till 24.3.99, when he was regularised, inspite of his junior viz, Smt.Ch.Rajyalaxmi was regularised in the year 1994 based on the recommendations of the DPC. An inquiry was conducted. Mr.S.S.Lenka, Assistant Collector, Custom House, Visakhapatnam, was appointed as an Inquiry Officer. The applicant states that a record of daily attendance sheet bearing C.NO.20/17/94-C.6.4, dated 6.3.95 (Annexure A-12 at page 43 to the OA) was given to him to state that the Inquiry Officer started the inquiry by questioning him and Mr.S.Bajuddin and that is violative of rules as contained in the CCS (CCA) Rules. The Inquiry Officer submitted his report which is enclosed at page 46 to the OA and it is given to the applicant by memo S.No.20/17/94-CIU, dated 17.7.96 (Annexure A-13 at page 45 to the OA) asking the applicant to submit his defence statement for consideration by the disciplinary authority. The applicant submitted his representation on 2.8.96 (Annexure A-14 at page 54 to the OA). The Disciplinary Authority viz., R-3 herein passed the impugned order F.NO.S.20/17/94-CIU, dated 15.7.97 agreeing with the report of the Inquiry Officer that the charges stand proved and ordered that the pay of the applicant as UDC be reduced by two stages from Rs.1290/- to Rs.1230/- in the time scale of pay of Rs.1200-2040 for a period of two years with effect from 1.8.97. It is further directed that the applicant will earn increments on pay during the period of reduction and that on the expiry of the said period the reduction will not have effect of postponing his future increments of pay. Against that, the

applicant filed an appeal on 23.9.97 addressed to R-2 (Annexure A-16 at page 70 to the OA). That appeal was disposed of by the appellate authority by reducing the punishment by one stage from Rs.1290/- to Rs.1260/- in the time scale of pay of Rs.1200-2040 for a period of one year with effect from 1.8.97 instead of by two stages for two years as originally ordered, without interfering with the remaining aspects of the order dated 15.7.97.

3. This OA is filed for setting aside the impugned order of the appellate authority dated 8.1.98 declaring that the inquiry conducted pursuant to the charge sheet dated 25.10.94 is illegal, arbitrary and contrary to the principles of natural justice and for a consequential direction to the respondents to regularise the applicant's services as UDC with effect from 25.10.94 on par with his juniors with all consequential benefits including arrears of pay and allowances.

4. A reply has been filed in this OA. The respondents try to sustain their case of issuing the charge sheet and awarding punishment to the applicant for violation of the clauses (i), (ii) and (iii) of sub-rule 1 of rule 3 of CCS (Conduct) Rules, 1964.

5. It is evident from the inquiry report and after perusal of the documents produced before us in regard to the processing of the charge sheet of the applicant, that there were no witnesses examined even though four witnesses <sup>d</sup> have been proposed to be examined to sustain the charges mentioned in the charge sheet. The names of the witnesses

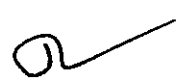
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have already been indicated earlier. There is no reason given why the proposed prosecution witnesses were not examined. The applicant in his representation after perusing the inquiry report raised various contentions for cancelling the charge sheet. It is not necessary to look into those contentions fully except to see whether non production of the prosecution witnesses caused prejudice to the case of the applicant or not.

6. At page 57 to the OA, in the representation dated 2.8.96 addressed to the disciplinary authority, the applicant submits that, although in the departmental proceedings facts need not be established thoroughly as in criminal proceedings, such an important evidence when preferred was not taken by Inquiry Officer for reasons unknown. This proves that the Inquiry Officer was biased which is against the principles of natural justice.

7. The applicant repeatedly submits that the integrity of the evidence of M/s Bombay Andhra Transport Organisation, Visakhapatnam is questioned by him and even though parcels were physically released on 18.5.93, M/s Bombay Andhra Transport Organisation, Visakhapatnam have recorded their release date as 27.5.93 which might have been convenient to them. Hence the delivery receipt cannot be relied upon as a documentary evidence. He further adds that the general practice adopted by the Transport Companies for their personal convenience in maintenance of records is never concrete evidence for implication of an individual. This could have been examined more vividly in the inquiry, had the prosecution witness Mr.M.S.Madan Kumar, Manager, M/s Bombay Andhra Transport Organisation, Visakhapatnam has been called for the inquiry. Even though the said Manager did not indicate who came to his office



for taking delivery of the article, he had stated that he will identify the person. If that be the case, the Inquiry Officer should have summoned Mr. Madan Kumar for interrogation and an opportunity should have been given to the applicant for cross examining him. As there is no material available to come to the conclusion that the said Mr. Madan Kumar, Manager, M/s Bombay Andhra Transport Organisation was inquired during the course of the inquiry without giving an opportunity to the applicant to cross examine him, it has to be held that non production of the said witness is detrimental to the proceedings of the inquiry.

8. The applicant disputes the Cheque No. 570785 dated 21.5.93 signed by Mr. S. Bajuddin. He submits that the Secretary as well as the President/Vice President should have signed that cheque for encashing the same. In that connection, had the prosecution witness No. 4 Mr. P. V. Reddy been called as a witness and examined, the applicant could have cross examined him in regard to the veracity of the contentions made by him and on that basis a concrete evidence could have been collected. But the said witness also had not been called for the inquiry.

9. The applicant also submits that he had directed his colleague Mr. Bajuddin to get the parcels released as his residential locality <sup>was</sup> ~~is~~ away from the place from where he ~~has~~ <sup>had</sup> to receive the parcels. He further adds that right from 11.5.93 i.e., from the date of receipt of the cash to 18.5.93 i.e., the date of release of the bundles, the day to day developments were brought to the notice of the DOS (Records) and the A.O. The money was not remitted to Cash Section on each day of ~~non-release of parcels as this~~




non-release of parcels as this practice was not in vogue. The above contention could have been easily verified by examining Mr.T.Kesava Rao, DOS and Mr.Ch.Narayana Murthy, Cashier. But they were also not called for during the conduct of the inquiry.

10. Considering the above facts, it has to be held that the inquiry was not conducted in accordance with the rules to sustain the case of the applicant. It also, in our opinion, prejudices the applicant as he had no opportunity to cross examine the witnesses to sustain their deposition. The Inquiry Officer or the disciplinary and the appellate authorities have not made any plausible reason for not calling the prosecution witnesses during the time of the inquiry.

11. In view of the above, it has be held that principles of natural justice is not followed while conducting the inquiry. Had the witnesses been called for during the inquiry, the case could have been established fully without any iota of doubt.

12. The applicant relies on the reported judgment of the Supreme Court reported in (1999) 8 SCC 582 (Hardwari Lal v. State of U.P.) to state that, "Inquiry held vitiated being in violation of natural justice". He also relies on the reported judgement in (1999) 2 SCC 10 (Kuldeep Singh v. Commissioner of Police) to state that, "In the service law, examination of prosecution witnesses is essential before arriving at a conclusion".



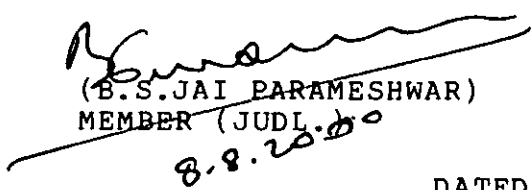
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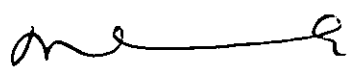
13. We are of the opinion that there is force in the contention of the applicant that there is violation of principles of natural justice. Hence, it is not necessary to go into the other contentions raised by the applicant. In view of the fact that prosecution witnesses were not examined whose depositions, in our opinion, are essential in this case, the finding of the Inquiry Officer cannot be accepted. As the disciplinary and the appellate authorities merely relied on the findings of the Inquiry Officer, those proceedings also cannot be sustained.

14. In that view of the matter, the whole proceedings have to be set-aside and they are accordingly set-aside. A question may arise whether a denovo inquiry has to be conducted in this connection. As the charge sheet was issued in 1994 and already six years are over, it will not be in order if a fresh inquiry proceedings are started now as that will take time which is not desirable. In that view of the matter, we do not propose to order a denovo inquiry.

15. In the result, the OA is allowed. The Inquiry report and the punishment orders of the disciplinary and the appellate authorities are set-aside and the applicant is entitled for promotion in accordance with law from the date his junior was promoted regularly in the year 1994.

16. The OA is ordered accordingly. No order as to costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDL.)

  
(R. RANGARAJAN)  
MEMBER (ADMN.)

8.8.2000  
DATED: 8.8. JULY, 2000



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL HYDERABAD BENCH:HYDERABAD

COPY TO:-

1. HDHND
2. HRN (ADMN) MEMBER
3. HDSJP (JUDL) MEMBER
4. D.P. (ADMN)
5. SPARS
6. ADVOCATE
7. STANDING COUNSEL

~~1ST AND 2ND COURT~~

TYPED BY      CHECKED BY  
COMPARED BY    APPROVED BY

THE HON'BLE MR. JUSTICE DR. NASIR  
VICE-CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN  
MEMBER (ADMN)

THE HON'BLE MR. BS. JAI PARAMESHWAR  
MEMBER (JUDL)

DATE OF ORDER--8/8/2000

MA/PA/CP.NG

IN

CA.NL. 654/99

ADMITTED AND INTERIM DIRECTIONS  
ISSUED

ALLOWED

C.P. CLOSED

R.A. CLOSED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

~~ORDER/REJECTED~~

~~NO ORDER AS TO COSTS~~

