

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A.No.....71..... of 1998.

DATE OF DECISION.....15.2.2000....

Shri Anil Chandra Dey

PETITIONER(S)

S/Shri J.L.Sarkar, M.Chanda Mrs N.D.Goswami.

ADVOCATE FOR THE
PETITIONER(S)

-VERSUS-

Union of India & Ors.

RESPONDENT(S)

Sri A.Deb Roy, Sr.C.G.S.C.

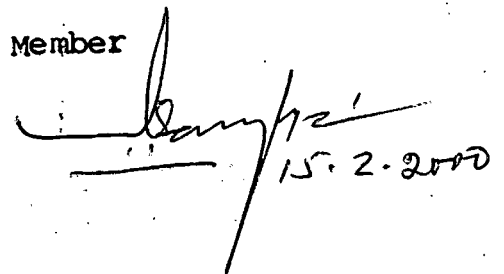
ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N.BARUAH, VICE CHAIRMAN.

THE HON'BLE MR G.L.SANGLYINE, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the Judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Administrative Member


15.2.2000

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 71 of 1998.

Date of Order : This the Day of February, 2000.

The Hon'ble Mr Justice D.N.Baruah, Vice-Chairman.

The Hon'ble Mr G.L.Sanglyine, Administrative Member.

Shri Anil Chandra Dey,
son of late Abhoy Charan Dey,
Umpling, Plot No. 254,
Shillong-793006.

. . . Applicant

By Advocate S/Shri J.L.Sarkar, M.Chanda
& Mrs N.D.Goswami.

- Versus -

1. Union of India,
through the Secretary to the
Government of India,
Ministry of Finance, Department of Revenue,
New Delhi.
2. Chief Commissioner,
Customs and Central Excise(EZ)
15/1 Strand Road,
Customs House,
Calcutta-700001.
3. Commissioner of Customs (Preventive)
North Eastern Region,
Shillong.
4. Commissioner of Central Excise,
North Eastern Region,
Shillong.
5. Mrs L.R.Mitran,
Commissioner,
Central Excise,
Shillong.

. . . Respondents.

By Advocate Shri A.Deb Roy, Sr.C.G.S.C.

O R D E R

G.L.SANGLYINE, ADMN.MEMBER,

The applicant was a Havildar in the Commissionerate of Central Excise, Shillong. Disciplinary action under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 was initiated against him on the ground that he had failed to perform his duty by not joining his duty in the training cell pursuant to the order dated 31.5.1996

issued by the Superintendent (Hqrs) Customs and Central Excise, Shillong. Further he failed to maintain absolute integrity, devotion to duty and acted in such a way which is unbecoming of a Government servant. Further that he disobeyed the orders of the Superintendent regarding rotation/ duty distribution for Group D staff. An enquiry was held and Shri A.Swamy, Superintendent (CIU-VIG) was appointed as Inquiry Officer. The Inquiry Officer on his finding stated that the case was an outcome of the mis-understanding/tussle between the then Superintendent Hqrs. and Group 'B' officer of Customs Preventive and that the applicant was not at fault. On completion of the Inquiry the disciplinary authority imposed a penalty of reduction by 5 stages of pay in the time scale. The applicant preferred an appeal. The appellate authority modified the order of the disciplinary authority to the extent that the reduction of pay of the applicant was to be by 3 stages without cumulative effect. The applicant submitted Revision Petition and the revisionary authority rejected the Revision Petition of the applicant with a result that the order as modified by the appellate authority^{was}/upheld.

2. In the above situation the applicant submitted the present Original Application. The respondents have contested the applicant by filing a common written statement including respondent No.5, who was made a party and against whom mala fide is alleged. Mr A.Deb Roy, learned Sr.C.G.S.C supported the action of the respondents and their written statement. Mr M.Chanda, learned counsel for the applicant however submitted that the action of the respondents is not sustainable in law on the grounds as narrated hereinbelow. He submitted that no copy of the Inquiry Report was furnished to the applicant. The disciplinary authority passed the penalty

order imposing the penalty in violation of sub-rule 2 of Rule 15 of the CCS (CCA) Rules 1965. Inasmuch as when he disagreed with the findings of the enquiry authority the disciplinary authority did not record his own findings on the charges as contemplated in the rule. Further, the order is in violation of sub-rule 12 of Rule 11 of the said rules as the sub-rule 12 of Rule 11 was not followed at all. The appellate order is also not sustainable in law because it is a cryptic, non speaking and mechanical order which did not deal with the issues raised by the applicant as an appellant. The sub-rule 2 of Rule 27 of the Rules was ignored by the appellate authority. Even the Revision Petition of the applicant was disposed of by a cryptic and non speaking order. He also submitted that the respondents have not been able to rebut the contention of the applicant that the disciplinary proceeding was out of mala fide of respondent No.5 as no separate affidavit was filed by the respondent No.5. The learned Sr.C.G.S.C did not dispute that copy of the enquiry report was not furnished to the applicant before disciplinary authority issued the penalty order. He did not also dispute that the penalty imposed in the penalty order and even ⁱⁿ the appellate order is also not exactly in terms of Rule 11 (iii) (a) which reads as below :

"reduction to a lower stage in the time scale of pay for a period not exceeding 3 years, without cumulative effect and not adversely affecting his pension."

He also did not dispute that the order dated 12.2.1998, Annexure-23 is not the order of the revisionary authority, the Chief Commissioner of Customs and Central Excise, East Zone, Calcutta but only an intimation of his order by the Additional Commissioner.

3. We have heard learned counsel of both sides. The fact that the enquiry report was not supplied to the applicant

was admitted by the respondents in their written statement^{stating} / that it is a fact that the copy of the enquiry report was not supplied to the applicant but the finding of the enquiry officer was clearly written in the final order. This is a case of imposing of minor penalties. Holding of an enquiry is resorted to before imposing of penalty in case the disciplinary authority was of the opinion that such enquiry was necessary. An enquiry was held through an Inquiry Officer who had submitted his report to the disciplinary authority. The disciplinary authority after taking into consideration the case records, which may include the enquiry report, had imposed the penalty of reduction by 5 stages of pay in the time scale. It is no doubt that the enquiry report in this case was, as seen from the abstract thereof, in favour of the applicant. But all the same non supply of the enquiry report denied the applicant the opportunity to know all the materials contained in the enquiry report. As a result he does not have proper and adequate opportunity to defend his own case. The importance of supplying copy of enquiry report to the affected official cannot be disputed. The Hon'ble Supreme Court in State of Maharashtra vs. B.A.Joshi and another reported in 1969(1) SCC 804 had held :

"If the report was in his favour, in his representation to the Government he would have utilised its reasoning to dissuade the Inspector General from coming to a contrary conclusion, and if the report was against him he would have put such arguments or material as he could to dissuade the Inspector General from accepting the report of the Enquiry Officer."

In Prakash Sanmukhlal vs. Union of India & ors. reported in (1993) 23 ATC 726 a similar situation as in the present O.A. arose. After holding that the ratio of the decision of the Hon'ble Supreme Court in Union of India and ors. vs. Md Ramjan Khan, (1991) 1 SCC 588 was applicable to that

case, the Tribunal held :

"It is bad enough on the part of the D.A not to furnish a copy of the E.O's report in which the delinquent is found guilty and look into it behind his back to agree with that conclusion and then punish him. This has been held to be a denial of the principles of natural justice. It is much worse to keep back from the delinquent the E.O's report exonerating him and then take a decision behind his back holding him guilty, after disagreeing with the E.O's report."

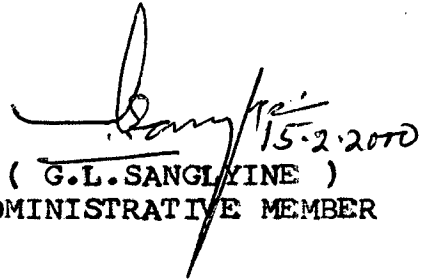
Now in the present case before us the enquiry report which was in favour of the applicant was not furnished to the applicant and the disciplinary authority punished the applicant without recording his reasons for disagreeing with the findings of the Inquiry Officer. In fact no ^{reference} mention at all was made to the report of the Inquiry Officer under the heading Findings of the Disciplinary Authority recorded in the order dated 28.4.1997. Failure to record reason is in contravention of Rule 15(2). In these facts and circumstances the order of the disciplinary authority is not sustainable in law. The appellate order was issued on the basis of such illfounded order of the disciplinary authority and without dealing with the grounds put forward by the applicant in details in his appeal dated 12.6.1997. Thus the appellate order is also not sustainable being an order passed without addressing the issues in question. The revisionary order which was communicated contains no reason except stating that the revisionary authority was of the opinion that the appellate order was legally correct. Thus the revisionary order also cannot be sustained as it contains no reason with reference to the issues raised by the petitioner in his Revision Petition dated 18.10.1997.

As a result we hereby set aside and quashed the impugned revisionary order, appellate order and the order of the disciplinary authority dated 28.4.1997.

The application is disposed of. No order as to costs.



(D.N.BARUAH)
VICE CHAIRMAN



(G.L.SANGLYINE)
ADMINISTRATIVE MEMBER