

Central Administrative Tribunal
Jabalpur Bench at Gwalior

OA No.377/2000

Gwalior this the 29th day of October, 2003.

Hon'ble Mr. Shanker Raju, Member (Judl.)

Bharat Kumar Kanaldekar

-Applicant

(By Advocate - None)

-Versus-

Union of India & Others

-Respondents

(By Advocate - Shri P.N. Kelkar)

ORDER

Applicant impugns minor punishment of censure imposed vide order dated 17.6.1997 as well as order in appeal dated 1.2.1999, upholding the punishment.

2. The facts, which are not disputed are that applicant while working as Air Custom Officer at IGI Airport has been alleged to have demanded and accepted illegal gratification to enable Sh. Vijay Gupta, a passenger to smuggle out one Lap Top Computer. It has also been alleged that by giving incorrect description less amount of duty was paid.

3. On aforesaid charges Enquiry Officer exonerated applicant, whereas on 3rd article of charge a disagreement note issued culminated into a final order passed by the disciplinary authority, wherein charges No.1 and 2 were not proved by the enquiry officer has been agreed to by the disciplinary authority. Article 3 of charge alleges fraudulent motive and help to the passenger to smuggle out

by not mentioning the quantity under the pretext that one number of ~~xxxx~~^h item brought by the passenger is for illegal gratification depriving government revenue.

4. The disciplinary authority in its order held applicant guilty of exhibiting negligence and carelessness while preparing baggage receipt to the effect that the required column for the quantity in the baggage receipt should not be left blank.

5. One of the main contentions raised by applicant is that whereas he has been charged for leaving blank the baggage column with a view to ^htake illegal gratification but has been punished by the disciplinary authority on a charge of negligence and carelessness which is alien to the proceedings and being an extraneous matter applicant in absence of any specific charge of negligence and carelessness framed in the memorandum has been deprived of a reasonable opportunity, which is in violation of principles of natural justice and fair play.

5. On the other hand^h, respondents' counsel Sh. Kelkar vehemently opposed the contentions and stated that applicant himself has admitted to have left the baggage column blank as a practice. As the aforesaid misconduct has enabled the passenger to smuggle out without paying duty the punishment is commensurate with the misconduct. It is further ^hstated that no procedural illegality has been

committed in the proceedings and in a judicial review the scope of interference of this Court is very limited.

6. I have carefully considered the pleadings on record and the submissions made by the learned counsel of the respondents. As none appeared for applicant OA stands disposed of in terms of Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987, in the absence of applicant's counsel. The contention that it is not disputed that charge of negligence and carelessness has not been levelled against applicant in the memorandum issued on 30.5.1995, whereas even on disagreement the disciplinary authority though agreed with the Enquiry Officer on articles 1 and 2, imposed the punishment on applicant not on article of charge as reflected in the memorandum, i.e., leaving the quantity column in the baggage receipt blank and with a view to help the passenger for illegal gratification. What has been established is negligence and carelessness in duty while preparing baggage receipt. By not filling the quantity column in the baggage receipt applicant has committed a serious misconduct. This charge has never been put against applicant against which he has not given any opportunity to rebut or to produce evidence. Punishment on extraneous charge beyond the memorandum of charge cannot be sustained in the eye of law .

7. The contention put-forth by respondents that the allegation levelled against applicant is failure to maintain devotion to duty brings within its scope the negligence and carelessness as a natural consequence, justifying punishment of censure, cannot be countenanced. The charge in the

memorandum should be specific and clear, with a view to afford an opportunity to the delinquent to rebut the same.

8. As the applicant has been deprived of the aforesaid opportunity which has greatly prejudiced him, punishment of censure cannot be sustained.

9. The appellate order also has not taken stock of the aforesaid submission and the punishment was maintained without any justification.

10. In the result, for the foregoing reasons OA is allowed. Impugned orders are quashed and set aside. Applicant shall be entitled to all consequential benefits. No costs.

S. Raju
(Shanker Raju)
Member (J)

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PN Kaul, Adm.
PN Kaul, Adm.
BWH

Issued.
6/11/03

Shankar
6/11/03