

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH :: GUWAHATI-5.

D.A. NO. 213 of 1994
T.A. NO.

DATE OF DECISION 8.7.1997

Shri C. Shullai

(PETITIONER(S))

Mr B.K. Sharma and Mr S. Sarma

ADVOCATE FOR THE
PETITIONER (S)

VERSUS

Union of India and others

RESPONDENT (S)

Mr S. Ali, 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 ? *yes*
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 Vice-Chairman

S. Ali

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.213 of 1994

Date of decision: This the 8th day of July 1997

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

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

Shri C. Shullai,
Inspector of Customs & Central Excise,
Office of the Collector,
Customs & Central Excise,
Shillong.Applicant

By Advocate Mr B.K. Sharma and Mr S. Sarma.

-versus-

1. Union of India, represented by the Secretary, Government of India, New Delhi.
2. The Collector of Customs & Central Excise, Shillong.
3. The Additional Collector of Customs & Central Excise, Shillong.
4. Shri R. Bhattacharjee, Addl. Collector, Customs & Central Excise, Shillong.
5. The Deputy Collector of Customs & Central Excise, Shillong.Respondents

By Advocate Mr S. Ali, Sr. C.G.S.C.

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O R D E R

BARUAH. J. (V.C.)

At the material time the applicant was Inspector of Customs and Central Excise and was posted at Shillong. On 23.6.1989 the Additional Collector, Customs and Central Excise, framed Annexure-1 Article of Charges and served a copy of the Article of Charges and also statement of imputation of misconduct or misbehaviour. The applicant was asked to submit his statement of

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defence in writing within ten days from the date of receipt of the memorandum. The applicant was also asked as to whether he desired to be heard in person. Pursuant to this the applicant submitted his explanation. The explanation so submitted by the applicant was not found satisfactory by the authority concerned. Accordingly, respondent No.3 decided to hold an enquiry. Pursuant to that Shri S.K. Chakravarty, Superintendent (Anti-Evasion), Customs and Central Excise, was appointed Enquiry Officer to enquire the charges levelled against the applicant. The Enquiry Officer held the enquiry in which the applicant had participated. After completion of the enquiry the Enquiry Officer submitted his report holding that the charges levelled against the delinquent officer was not proved. The Disciplinary authority, respondent No.3, however, did not agree with the conclusion arrived at by the Enquiry Officer. While holding that the delinquent officer ~~was~~ guilty of the charges, the Disciplinary Authority held thus:

"However I find that the seizure was effected by the "Prev. Party" which means that there was shared responsibilities as well as shared benefits, but in this case only one officer has been singled out even though 2 other Inspectors and a Sepoy were part of the Prev. party as no other action was contemplated or taken against these other officers. This could be an account of the accused officer acting as the Officer-in-Charge of the party by virtue of his sincerity. Nevertheless, the case has unfairly over-weigh one side without recording any justification in all fairness therefore, and on equity, I am of a strong opinion that the officer who is otherwise reported to be "Very good" on record should be given a chance because it such officers are totally condemned in the first error, there is no redeeming factor. Hence, I am of the opinion that the punishment should be more corrective in nature and not condemning.

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Moreover, the case could have been completed earlier thereby avoiding the mental agony of the officer which by itself was punishment enough already, coupled with the posting out and separation from his family.

Considering all the circumstances therefore, I would consider the loss of only one promotion sufficient punishment commensurate with the offence found to have been committed in the above findings. Any further loss would amount to unfair and unbalanced punishment. I would also consider an advisory note to the officer."

Accordingly the Disciplinary Authority awarded punishment by withholding one promotion whenever it became due. Being aggrieved by the decision of the Disciplinary Authority the applicant preferred Annexure-5 Appeal before the Collector, Customs and Central Excise, the respondent No.2. The respondent No.2 also disposed of the appeal by Annexure-6 order rejecting the appeal. While rejecting the appeal the respondent No.2 observed thus:

"I have considered the submission made by Shri Shullai, Inspector carefully as well as the order passed by the Additional Collector(P&V), the Disciplinary Authority, to see whether there is any change/modification is merited or not. His transfer and his non-posting to Audit etc. which Shri Shullai called as punishment, cannot be strictly called as punishment as these were to be necessary pending investigation and enquiry in his case. All these form parts of disciplinary proceedings, and therefore, cannot be considered to be in confl with the provision of the Constitution of India, of course, I found that there has been undue delay in finalisation of his case. The case started in the month of June 1989 and the Order was passed in this case only on 1.11.83 though Shri Shullai has been fairly prompt in his response. This was also observed by the Disciplinary Authority. Shri Shullai, Inspector has also contended that a major penalty has been imposed on him.

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This contention is also not correct. He has been only awarded deprivation of one promotion only. I found the order of Additional Collector(P&V) to be balanced, unbiased and fair in this case."

Thereafter, on the same date as per the order of the Principal Collector, the respondent No.2, also reviewed the order and arrived at the same conclusion. Hence the present application.

2. We have heard Mr S. Sarma, learned counsel for the applicant and Mr S. Ali, learned Sr. C.G.S.C. Mr S. Sarma submits that the applicant was charged for committing mischief and entanglement with smugglers in connection with the customs seizure case No.2/UCL/IMP/CUS/HQRS.PREV./SH/89 and thereby he contravened Rule 3(1)(i), (ii) and (iii) of CCS (Conduct) Rules, 1964. The contention of Mr Sarma is that the applicant was found guilty in respect of some matters other than what he was charged of by the Disciplinary Authority. The Appellate Authority and the Reviewing Authority also came to similar conclusion. Besides, according to Mr Sarma the Disciplinary Authority as well as the Appellate Authority did not come to any definite finding as to whether the charges levelled against the applicant had been proved. Mr Sarma also submits that it is a settled law that the finding of the Enquiry Officer may not be accepted by the Disciplinary Authority, but in that case the Disciplinary Authority must consider the case on his own and come to an independent finding. In such case also the Disciplinary Authority as well as the Appellate Authority ought to have come to a definite finding about the charges levelled against the delinquent officer.

Mr Sarma after taking us to the order of the Disciplinary Authority submits that there is no such finding. Mr Ali also has not been able to show that the authorities, namely, the Disciplinary Authority, the Appellate Authority and the Reviewing Authority had come to a definite finding regarding the aforesaid two charges. These authorities did not come to a definite finding that the charges levelled against the applicant had been proved. On the other hand, the authorities came to a conclusion quite different from the charges framed against the applicant. Mr Ali very fairly submits that on going through the order passed by the Disciplinary Authority as well as the Appellate Authority and also the Reviewing Authority he finds that there is nothing to show that those charges against the applicant had been established. On the other hand, the conclusion arrived at by the authorities are quite different from the charges framed against the applicant. Besides this, it is also confirmed by Mr Ali that there had been some procedural irregularities in conducting the disciplinary proceedings. The punishment awarded to the applicant was on grounds which are not in the charges.

3. Considering all these we are of the opinion that the Disciplinary Authority as well as the Appellate Authority did not properly consider the case of the applicant and on the basis of such findings the applicant cannot be punished.

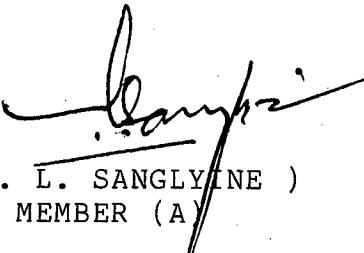
4. In view of the above we set aside the order passed by the Disciplinary Authority, Appellate

Authority.....

Authority and the Reviewing Authority.

5. Mr S. Sarma, learned counsel for the applicant, submits that the applicant had been promoted vide order No.167/95 dated 7.5.1995 during the pendency of this application. According to Mr Sarma the promotion ought to have been given effect from 15.6.1993 when his juniors were promoted. However, this has not been done. But then, we feel that the authority should consider the same. The applicant, therefore, may file a representation in this regard before the authority concerned within one month and the authority may consider the same if such representation is filed within the period mentioned and pass order accordingly.

6. The application is accordingly disposed of with the above observation. However, considering the facts and circumstances of the case we make no order as to costs.


(G. L. SANGLYINE)
MEMBER (A)


(D. N. BARUAH)
VICE-CHAIRMAN

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