

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 23/2012

New Delhi this the 20th day of August, 2015

**Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Rajesh Raj Bhatt
S/o Late Shri B.L. Raj Bhatt
Aged about 53 years
Foreign Trade Development Officer
R/o 173, DK-4, Danish Kunj, Kolar Road,
Bhopal-462042 (MP) ... Applicant

(Through Shri L.R. Khatana, Advocate)

Versus

1. Union of India
Through its Secretary,
Ministry of Commerce & Industry,
Udyog Bhawan, Moulana Azad Road,
New Delhi-110011
2. The Joint Secretary & Chief Vigilance Officer
Government of India,
Ministry of Commerce & Industry,
Office of Directorate General of Foreign Trade
(Vigilance Section), Udyog Bhawan,
Moulana Azad Road,
New Delhi-110011
3. Union Public Service Commission
Through its Under Secretary,
Dholpur House, Shahjahan Road,
New Delhi-110069
4. The Joint Director General of Foreign Trade,
IIIRD Floor, Nirman Sadan, 52-1 Arera Hills,
Bhopal-462011 ... Respondents

(Through Dr. Ch. Shamsuddin Khan, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant, Foreign Trade Development Officer, was issued a Charge Memorandum in a common proceeding against five officials dated 17.10.2006. The charges against the applicant were as follows:

"ARTICLE-I

Shri Rajesh Raj Bhatt on 24.03.2003 signed and sent a letter to M/s H.A. Exports, Moradabad, asking the party to submit an affidavit in support of their contention of having lost their Duty Exemption Entitlement Certificate (DEEC) Book and Advance Licence No.2910001377 dated 14.12.2000. However, without waiting for the response, he processed the fresh application of the party for the issuance of a high value licence of Rs.2.95 crore.

ARTICLE-II

Shri Rajesh Raj Bhatt alongwith other officials had conducted an inspection of M/s H.A. Exports and had jointly submitted a perfunctory verification report falsely stating the existence of the firm which resulted in erroneous issuance of a high value licence in favour of the firm.

ARTICLE-III

Shri Rajesh Raj Bhatt had facilitated the issuance of Advance Licence No.2910004330 dated 31.3.2003 for a Cost Insurance Freight (CIF) value of Rs.2.02 crore to M/s United Handicrafts, Moradabad despite the knowledge that the firm was de-registered by the Export Promotion Council for Handicrafts, New Delhi w.e.f. 23.4.2002.

ARTICLE-IV

Shri Rajesh Raj Bhatt alongwith other officials had conducted an inspection of M/s United Handicrafts and had submitted a perfunctory verification report falsely stating the existence of the firm.

ARTICLE-V

Shri Rajesh Raj Bhatt alongwith other officials had conducted an inspection of M/s Creation Crafts and had submitted a perfunctory verification report falsely stating the existence of the firm."

2. In the departmental proceedings, the Presenting Officer (PO) in his brief did not find any malafide intention on the part of the Charged Officer. The Inquiry Officer (IO) filed his report dated 9.01.2008 and concluded as follows:

| | | |
|-------------|---|---------------|
| "Article-I | : | Proved |
| Article-II | : | Partly proved |
| Article-III | : | Partly proved |
| Article-IV | : | Partly proved |
| Article-V | : | Partly proved |

3. The disciplinary authority recorded his disagreement note holding Article II as proved and thereafter passed the punishment order dated 27.10.2009 after obtaining Union Public Service Commission (UPSC) advice and imposed the penalty of reduction of pay by two stages for a period of three years with cumulative effect upon the applicant with a further direction that he will not earn increments of pay during the period of reduction. Incidentally, the UPSC vide its letter dated 20.08.2009 had concluded as follows:

"4.6 To sum up Article of Charge-I is proved, Articles of Charge II, IV and V are partly proved to the extent of C.O.'s failure to conduct the inspection in the spirit in which it was required to be carried out and submitting of a perfunctory report, which did not meet the objectives of the inspection. Article of Charge III is partly proved."

4. Since this was a Presidential Order, there was no provision for an appeal. The applicant is aggrieved by this order and seeks the following reliefs:

- (i) Summon the entire relevant record from the respondents for its kind perusal;
- (ii) Set aside the punishment order dated 27.10.2009 **Annexure A/1;**
- (iii) Command the respondents to provide all consequential benefits as if the impugned order aforesaid is never passed.

5. The applicant's case is that joint proceedings were started against five officers including the applicant. The charge sheets were different in the case of each officer and, therefore, separate inquiry reports were submitted. The leader of the team Shri K.P. Singh was issued a charge sheet as follows, in which three of the charges against him were similar to three of the charges against the applicant:

"(i) Shri K.P. Singh had recommended the issuance of an Advance Licence to M/s H.A. Exports, Moradabad despite prior knowledge that the firm may not be existing at the given address as correspondence made with it had been returned undelivered with the following remarks of the postal authorities`left without address, return to sender';

(ii) Shri K.P. Singh along with other officials had conducted an inspection of M/s H.A. Exports and had jointly submitted a perfunctory verification report falsely stating the existence of the firm which resulted in erroneous issuance of a high value licence in favour of the firm;

(iii) Shri K.P. Singh processed a request for the issuance of an Advance Licence to M/s United Handicrafts, Moradabad despite his specific knowledge that the firm had failed to fulfill its export

obligations against another licence and might not be existing at the given address;

(iv) Shri K.P. Singh along with other officials had also conducted an inspection of M/s United Handicrafts and had submitted a perfunctory verification report falsely stating the existence of the firm;

(v) Shri K.P. Singh, Dy.DGFT had processed a request for the issuance of licence for a cost insurance freight (cif) value of Rs. 1 crore to M/s Creation Crafts, Moradabad ignoring the instructions issued by DGFT which requires obtaining the prior approval of the Head Quarters in cases where the export proceeds had not been fully realized on the date of receipt of application of the party or on the date of issuance of the Advance Licence to the party; and

(vi) Shri K.P. Singh, along with other officials had also conducted an inspection of M/s Creation Crafts and had submitted a perfunctory verification report falsely stating the existence of the firm.”

6. It is stated that there were six charges against Shri K.P. Singh, of which three charges were same as would be seen from the comparison of the charges. Shri K.P. Singh filed OA 1381/2010 before this Tribunal and the Tribunal vide order dated 27.04.2011, **K.P. Singh Vs. Union of India and others**, held that the charges, even if proved against the applicant therein (Shri K.P. Singh), would not amount to any delinquency, it may be, at the most, a case of inefficiency. The OA was, therefore, allowed and the impugned order dated 30.09.2009 quashed and as a consequence of the aforesaid order, the applicant was held to be entitled to all consequential benefits, as may be permissible under the rules. It has been argued that since the leader of the team has not been punished, the applicant who was a junior officer, cannot be punished on the same charges.

7. While arguing that the act of the applicant can, at best, be called error of judgment and that there was no 'misconduct', the applicant placed reliance on **Inspector Prem Chand Vs. Govt. of NCT of Delhi and others**, (2007) 4 SCC 566 and **G.P. Sewalia Vs. Union of India and another**, OA 2210/2006 decided by the Principal Bench of the Central Administrative Tribunal on 27.08.2008.

8. It was further argued that under Article I of the charge, specific charge against the applicant is that he "processed" the fresh application of the party for the issuance of a high value licence of Rs.2.95 crore. It is emphasized that the charge is not that the applicant sanctioned or released money. It is stated that the applicant is an officer in a chain of officers and the process was initiated by the dealing assistant who works under him. It is reiterated that though the applicant is in the middle of the chain, he has been singled out and awarded punishment though no one else has been punished. It is pointed out that in the cross-examination, the applicant had clearly stated that he was given the job of processing applications of fresh licences as specified in the relevant office order. The dealing hand had submitted the note on 28.03.2003 in the prescribed format. He had stated in the note that the previous licence i.e. licence No.2910001377 dated 14.12.2000 was not used by the firm. The CO (applicant) had recommended for issuance of higher value advance licence on 28.03.2003. He had also recommended in his note to confirm about the cancellation of the previous licence of the firm. The CO had marked the file to DDG, who

had recommended for issuance of advance licence and marked the file to Jt. DGFT. The advance licence of CIF value Rs.2.95 crore was approved by Jt. DGFT on 28.03.2003. The advance licence under the signature of the CO was issued on 28.03.2003. Therefore, the conclusion of the IO is not as per the charge but beyond what has been alleged in the charge sheet. It is further pointed out that the PO in his brief had stated as follows:

"P.O.'s Brief:-

Since a decision was already taken for closure of the case on 13.03.2003 itself and the letter was issued to the party calling for an affidavit for closure of the case the application which was submitted by the firm was processed on 28.03.2003 and with the approval of Jt.DGFT, I don't find any malafide intention on the part of Sri R.R. Bhatt FTDO in processing for sanction of second licence."

9. From the report of the IO, it also becomes clear that the applicant had marked the file to his immediate superior i.e. Dy.DGFT, who had ordered to issue the licence and then put up the file to Jt. DGFT. It is thus contended that there was no malafide on the part of the Charged Officer or any attempt to mislead his superiors. His superiors i.e. Dy.DGFT and Jt. DGFT were aware of all the facts and in fact, only on the specific direction of the Dy. DGFT was the order issued and, therefore, if he has to be blamed, his superiors are equally to be blamed but the respondents have not taken action against anyone except the applicant.

10. The learned counsel for the applicant placed reliance on **Narinder Mohan Arya Vs. United India Insurance Co. Ltd.**

and others, (2006) 4 SCC 713, where the Hon'ble Supreme Court observed as follows:

"26. In our opinion the learned Single Judge and consequently the Division Bench of the High Court did not pose unto themselves the correct question. The matter can be viewed from two angles. Despite limited jurisdiction a civil court, it was entitled to interfere in a case where the report of the Enquiry Officer is based on no evidence. In a suit filed by a delinquent employee in a civil court as also a writ court, in the event the findings arrived at in the departmental proceedings are questioned before it, it should keep in mind the following: (1) the enquiry officer is not permitted to collect any material from outside sources during the conduct of the enquiry. [See State of Assam v. Mahendra Kumar Das, (1970) 1 SCC 709 (2) In a domestic enquiry fairness in the procedure is a part of the principles of natural justice [See Khem Chand v. Union of India, AIR 1958 SC 300 and State of Uttar Pradesh v. Om Prakash Gupta, (1969) 3 SCC 775. (3) Exercise of discretionary power involve two elements - (i) Objective and (ii) subjective and existence of the exercise of an objective element is a condition precedent for exercise of the subjective element [See K.L. Tripathi v. State of Bank of India, (1984) 1 SCC 43. (4) It is not possible to lay down any rigid rules of the principles of natural justice which depends on the facts and circumstances of each case but the concept of fair play in action is the basis [See Sawai Singh v. State of Rajasthan, AIR 1986 SC 995] (5) The enquiry officer is not permitted to travel beyond the charges and any punishment imposed on the basis of a finding which was not the subject matter of the charges is wholly illegal. [See Director (Inspection & Quality Control) Export Inspection Council of India v. Kalyan Kumar Mitra, 1987 (2) CLJ 344. (6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances [See Central Bank of India Ltd. v. Prakash Chand Jain, AIR 1969 SC 983, Kuldeep Singh v. Commissioner of Police, (1999) 2 SCC 10]."

11. It is further argued that Article-III of the charges mentions that the applicant facilitated the issuance of advance licence but as stated above, it was the Dy. DGFT who had directed him to

issue the order. Therefore, he cannot be held responsible. Moreover, our attention has been drawn to page 3 of the OA, where it is mentioned as follows:

"A bare perusal of the charge sheet reveals that the respondents have not stated anywhere that which Rule/ Regulation has been violated by the applicant while performing his duties. The respondents have also not stated anywhere in the charge sheet that which instructions of the department or superior officer has been flouted by the applicant during the course of the inspection or making process to grant licence to the firm as mentioned in the charge sheet. Thus, the charge sheet itself is vague and ambiguous which does not constitute any misconduct under the Conduct Rules. It is significant to note here that it has been mentioned in the charge sheet that the applicant has violated Rule 3(1)(i)(ii) and (iii) of CCS (CCA) Rules."

In this regard, reliance has been placed on **A.L. Kalra Vs. Project and Equipment Corporation of India Ltd.**, (1984) 3 SCC 316, where the Hon'ble Supreme Court held thus:

"Where misconduct when proved entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct."

12. It is pointed out that in reply to this para, the respondents have only stated that it is a matter of record and needs no comment. Learned counsel for the applicant, therefore, states that in this way, the respondents have actually accepted that the applicant has not violated any rule. Moreover, in para 4.8 in which the applicant has made an assertion that the act of the applicant cannot be brought within the purview of misconduct,

the respondents have given the following reply, which is not to the point, absolutely vague and clearly not acceptable:

"That the contention of the applicant in this para is denied except which are matter of record. It is submitted that it is not practically possible to cover every action required to be taken by an official during the performance of his duty under the ambit of rules/ instructions. Nevertheless nothing precludes the disciplinary authority to judge the bonafides of his action from the view point of what a man of common prudence would have done in similar situation. Thus, notwithstanding the fact that even if apparently no specific rule/ instruction is available to cover a particular act, it would still be termed as a misconduct if the official had acted in a manner which is not consistent with the dictates of common prudence and reasonableness. In recent judgment, the Hon'ble Supreme Court, **Surendra Kumar Vs. Union of India**, 2010 (1) SCC L&S 24, it was held that "Scope of judicial review in departmental inquiry is very limited and the only scope in such cases is to examine in the manner in which the departmental inquiry is conducted, the judgment cited by the applicant has no relevance in this case."

13. In addition, in para 4.10 of the OA, the applicant has referred to the fact that the disciplinary authority while recording the disagreement note had relied on the advice of the CBI. It is stated that since the report of the CBI is based on statements of PWs and PWs have refused to record their statement in the CBI, the disagreement note is faulty. In reply to this para, the respondents have stated as follows:

"That the contention of the applicant in this para is denied except which are matter of record. The disciplinary authority is free to reach his own conclusion based on its knowledge, which may follow from any source as long as its conclusion is drawn on the basis of the facts. The CBI report clearly brings out that the erroneous issue of licence and conducting of perfunctory inspections by the Charged Officer translated into a huge loss to the exchequer.

Finding of disciplinary authority are based on facts available on records that clearly establish that the Charged Officer had been negligent in discharging his duties without even exercising ordinary prudence in dealing with cases that had wide ranging ramifications in terms of revenue losses to the exchequer."

14. It is argued that the stand of the respondents clearly is not based on legal principles and cannot be accepted.

15. First of all, the respondents stated that the order of the Tribunal in K.P. Singh (supra) will not apply in this case as there is difference between charge memorandum issued in his case and in the case of K.P. Singh. Regarding the PO's statement, the respondents in their reply in para 5.4 have stated that the failure of the PO to present the prosecution case properly is a clear misconduct on his part but despite the PO's best attempts to subvert the case by adopting a stand contrary to his assigned brief, the IO still found sufficient material on record to press charges against the applicant.

16. Learned counsel for the respondents also pointed out that in the inquiry report, the conclusion that deregistration was informed in April 2002 and the applicant had willfully suppressed this information at the time of applying for advance licence was itself a sufficient ground to withhold the issuance of licence after its printing/ typing. Therefore, the ground taken by the applicant that he was responsible only upto the stage the licence was printed is not correct.

17. We have heard learned counsel for the parties, gone through the pleadings available on record and perused the judgments/ orders cited.

18. It is stated during arguments that the said policy of the government was lapsing on 31.03.2003. Therefore, it could be understood that there was lot of pressure on the officers to dispose of the cases on the last day i.e. 31.03.2003. In order to ensure that no mistake is committed in the process, the government maintains a hierarchy of personnel for scrutiny and re-scrutiny also. In this case, no doubt a mistake has been committed. It is not a good enough reason for the applicant to argue that since others have been let off he should be let off. He was the FTDO, an officer level, and hence his responsibility for getting facts right is high. Dy. DGFT and Jt. DGFT will depend on facts on his note. Secondly, he stands on a different footing which becomes clear from the following facts recorded in IO's report:

"The dealing hand wrongly mentioned in his note that the previous licence was not used by the firm. However, the fact was that the firm did not submit any information about their export/ import till the date of approving the fresh advance licence. The dealing hand in his deposition (SW-3) has stated that he had extracted this information from the application for fresh licence. The CO in his observation did not object to this information in spite of the fact that he had himself sent a letter on 25.3.03 to the firm to furnish an affidavit about utilization of the earlier licence."

"However, it is seen from the note dated 06.5.03 of Jt. DGFT that the licence was wrongly typed before ascertaining the BL/SL. The CO has also wrongly observed that the licence could not be refused on the

basis of mere information of deregistration from EPCH. The deregistration was informed in April, 2002 and the applicant had willfully suppressed this information at the time of applying for advance licence. This ground itself was sufficient to with-hold the issuance of licence after its printing/typing."

Thus, responsibilities at each level are different and one person getting let off does not ipso facto exonerate the others. Moreover, these were separate departmental proceedings.

19. The applicant has also argued that the charge memorandum does not specify what Rule has been violated by the charged officer. The charge memorandum clearly states that by not protecting the interests of the department the applicant has committed gross misconduct and thus contravened Rule 3 (1) (i) [maintain absolute integrity], (ii) [maintain devotion to duty] and (iii) [do nothing which is unbecoming of a Government servant]. The charge memorandum is thus specific and clear on this issue and we cannot accept the contention of the applicant.

20. The learned counsel for the applicant has also taken the stand that his is a case of at best negligence and not misconduct. The facts of the case does not support this as has been pointed out earlier in para 18 above. The applicant's case is beyond doubt a case of misconduct.

21. We accept the contention of the learned counsel for the respondents that the Tribunal normally should not interfere in such matters unless there is obvious miscarriage of justice and we cannot get into re-appreciation of evidence in a departmental

proceeding. Moreover, the sole ground in this case is discrimination which also is not borne out.

22. In view of the above, the OA is dismissed. No costs.

(P.K. Basu)
Member (A)

(V. Ajay Kumar)
Member (J)

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