

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.788/2014

Order Reserved on:18.10.2016

Pronounced on:26.10.2016.

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

R.N. Zutshi,
S/o late Shri A.N. Zutshi,
R/o 111, Acharya Puri,
Near Roadways Workshop,
Gurgaon, presently in Delhi.

-Applicant.

(By Advocate : Mrs. Jaswinder Kaur)

Versus

1. Union of India through
Secretary (Revenue),
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Chief Commissioner of Customs,
New Custom House,
IGI Airport, New Delhi.
3. Commissioner of Custom (I&G),
New Custom House,
IGI Airport , New Delhi.
4. Additional Commissioner (P&V),
Central Excise, (Delhi-I),
C.R. Building, I.P. Estate,
New Delhi.

- Respondents

(By Advocate Shri R.N. Singh)

ORDER

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 praying for the following main relief:

“1. May direct the Respondents to drop and file the impugned Departmental enquiry initiated vide impugned charge sheet dated 30.07.2007 on the grounds and documentary evidence mentioned in para 4 & 5 of the Original Application;”

2. The brief facts of this case are as under.

2.1 The applicant joined Customs and Central Excise department in the year 1980 as an UDC. He was promoted to the post of Inspector in July, 1986. During the period November, 1998-October, 2000, he was posted as Air Customs Officer (ACO) at IGI Airport, New Delhi.

2.2 On 28.08.2000, one group of Uzbekistani nationals arrived at IGI Airport from Bishek by flight no.K-2-245 with pooled baggage of 27 packages in the name of Ms. Olga Kozirera – one of the passengers in the group. Although the lady had denied to be carrying any dutiable goods but when she was intercepted at the exit gate, 81,160 yards of silk fabrics were seized from her baggage. During the course of investigation of the case, the applicant's name figured as a suspect who was purported to have facilitated clearance of the commercial

baggage imported by Ms. Olga and party. Accordingly, Annexure A-1 charge-memo dated 30.07.2007 was issued to him, in which the following articles of charges have been levelled against him:

“Article-I

That Shri R.N. Zutshi was working as Air Customs Officer, IGI Airport, New Delhi during the period Nov., 1998 to Oct., 2000. During the period, he put up 3 adjudication orders in respect of Uzbek National passenger Ms. Olga Kozierva and Nazira Ibragimova. Both these passengers were frequent visitors and the goods brought by them were not bonafide baggage. He should have thus recommended to the adjudicating authority for imposition of high fine and penalty as deterrent, which he failed to do. These lapses constitute grave misconduct on part of Shri R.N. Zutshi. Further, these acts of commission and omission were made by him with ulterior motive as a part of conspiracy to assist the said passengers to the detriment of revenue. He, thus, failed to maintain absolute integrity and discharge his duty with devotion and diligence, acted in a manner unbecoming of a Govt. servant. He also did not act in his best judgment and thus contravened the provisions of Rule 3 (1)(i),(ii) & (iii) and Rule 3 (2)(ii) of the CCS (Conduct) Rules, 1964.

Article-II

That while working as Air Customs Officer, IGI Airport, New Delhi, on 10.7.2000 and 1.8.2000 no adjudication Orders were put-up for Olga and Nazira respectively and on 1.8.2000 adjudication Order No.21727/01/08.2000 for 1100 mtr. of Textile had been put up by Shri R.N. Zutshi in respect of Ms. Olga Kozireva. The quantity of goods imported did not constitute bonafide baggage and were suppressed for adjudication or clearance without adjudication, thereby causing wrongful loss of revenue to the tune of Rs.13,54,776/-. These lapses in themselves constitute serious misconduct on part of Shri R.N. Zutshi. Further these acts of commission and omission were made by him with ulterior motive as a part of conspiracy to assist the said passengers to the detriment of revenue. He, thus, failed to maintain absolute integrity and discharge his duty with devotion and diligence acted in a manner unbecoming of a Govt servant and thus contravened the provisions of Rule 3 (1)(i),(ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article-III

That in the adjudication orders put up by Shri R.N. Zutshi, the column regarding previous visits had been deliberately kept blank so as to prevent the matter assuming deserved seriousness. This was done with ulterior motive so as to assist the passenger to the detriment of revenue interest. He deliberately ignored this lapse and did not fill-up these details with honesty and devotion.

He, thus, failed to maintain integrity and discharge his duty with devotion and diligence, acted in a manner unbecoming of a Govt. servant, thus, contravened the provisions of Rule 3 (1)(i),(ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article-IV

That Shri R.N. Zutshi, the then Air Customs Officer, IGI Airport, New Delhi while working at the said airport conspired with Uzbek Nationals/Afghan Nationals and in furtherance of conspiracy, he interacted from his Mobile phone No.98101-36977 and Land Line No.6322294 with Mamoor Khan 62 times on his Mobile No.98111-35921, with Del Agha 18 times on Mobile No.98102-22162, with Ms. Nazira 2 times on Mobile No.98111-92565 and with Del Agha 10 times on Mobile No.98112-58376 (total 98 times), and, thus contravened the provisions of Rule 3 (1)(i),(ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article-V

That while working at the IGI Airport during the above period, Shri R.N. Jutshi,

- (i) Involved himself in corrupt practices as is evident from his own statement.
- (ii) did not ensure the integrity and devotion to duty resulting in large scale smuggling of goods by the CIS Nationals at the IGI Airport, New Delhi in connivance with some Customs officials posted at the Airport;

He, thus, failed to maintain integrity and discharge his duty with devotion and diligence, acted in a manner unbecoming of a Govt. servant, thus, contravened the provisions of Rule 3 (1)(i),(ii) & (iii) of the CCS (Conduct) Rules, 1964.”

2.3 Annexure-III of the charge-memo (page 34 of the paper-book) contains the list of documents relied upon by the respondents to prove the charges against the applicant. These are:

- “(i) Show Cause Notice dated 23/24.8.2001 issued by the Commissioner of Customs (General), New Delhi.
- (ii) Manifest for the flights K2 545/10.7.2000 and PK-270/1.8.2000.
- (iii) Copy of passports of Ms. Olga.
- (iv) Printout of Phone No.98101-36977 of Shri R.N. Zutshi.
- (v) Adjudication order NO.21727/1.8.2000.
- (vi) Statement of Shri R.N. Zutshi, Inspector given before DRI on 17.1.2001.”

2.4 The applicant, vide his Annexure A-2 letter dated 13.08.2007, in reply to the charge-memo, requested for inspection of the originals of the documents relied upon, as also demanded a copy of statement of witness Shri U.K. Mishra. Vide Annexure A-4 order dated 06.09.2007, the respondents appointed Shri Pradeep Kumar, CDI, CVC as Inquiry Officer (IO), who vide his Annexure A-5 order dated 15.10.2007, directed the Presenting Officer (PO) to get the inspection of prosecution documents done by the Charged Officer (CO) and his Defence Assistant, if any, by 22.10.2007 at a mutually convenient date and time. The PO vide Annexure A-6 certificate dated 23.10.2007 has stated that original documents were not available with him and, therefore, the same could not be inspected.

2.5 The applicant vide his letter dated 12.11.2007 had forwarded list of defence documents and witnesses. Out of the 12 listed documents, IO found all the documents relevant for the enquiry except one at serial no.8. The IO accordingly directed PO to ensure that the defence documents allowed by him are obtained from the custodian of the documents and copies are given to the CO (applicant) (Annexure A-8). The main grievance of the applicant is that respondents have neither allowed inspection of originals of the prosecution documents nor have they provided copy of the defence documents allowed by the IO

and have gone ahead with the proceedings of the enquiry which has prejudiced the interest of the applicant. Accordingly, by way of the instant OA he has prayed for dropping the Disciplinary Enquiry (DE) proceedings.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The applicant thereafter filed his rejoinder. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 18.10.2016. Mrs. Jaswinder Kaur, learned counsel for the applicant and Shri R.N. Singh, learned counsel for the respondents argued the case.

4. Mrs. Jaswinder Kaur, learned counsel for the applicant, besides highlighting the issues raised in the OA, submitted that despite the direction given by the IO, the respondents have failed to facilitate inspection of the originals of the prosecution documents and also failed to provide copies of the defence documents allowed by the IO. She further drew our attention to the Central Board of Excise & Customs (CBEC) circular dated 24.02.2011 (pages 72-73 of the paper-book), wherein *inter alia*, it is stated as under:

“If the originals documents are tied up in a court of law, the CBI/investigating agency which had taken possession of the original documents should be asked to authenticate the documents. Its assistance may also be taken for getting the original documents in custody of the court inspected by the charged officer by making an appropriate application for inspection in the court, if the charged officer so insists. If the original documents are otherwise not in

custody of Court/CBI/investigating agency but can still not be located, then the disciplinary authority should not proceed to conduct the inquiry till all out efforts are made to locate the original documents.”

4.1 Continuing her arguments, she submitted that from the *ibid* circular of the CBEC, it is quite clear that DE proceedings against the applicant cannot be continued unless the original documents are located and made accessible to the applicant. Mrs. Kaur also placed on record a communication dated 24.11.2009 from Central Bureau of Investigation (CBI) to the Commissioner of Customs (Gen.) Vigilance Section, Mumbai, in which it is stated that the RDA (Regular Departmental Action) Initiating Authority (IA) has prepared the draft charges and hence the relevant documents should be available with the IA. It is also mentioned in the said letter that a meeting was held in the Directorate of Vigilance, Customs and Excise, New Delhi on 28.08.2008 in regard to the facilitation of smooth conduct of the RDA proceedings and in compliance of the decisions taken therein, the CBI has made available one full set of attested copies of the documents available with the CBI. Mrs. Kaur vehemently argued that despite this, the respondents have failed to provide access to the prosecution documents as well as in providing the copy of the defence documents allowed by the IO. She further stated that the incident pertains to the year 2000,

whereas the impugned charge-memo has been issued to the applicant after a long gap of over 07 years on 30.07.2007.

4.2 Learned counsel for the applicant argued that inordinate delay in initiating disciplinary proceedings has greatly prejudiced the case of the applicant. In support of her argument she placed reliance on the following judgments:

- i) Judgment of the Hon'ble Supreme Court in the case of **P.V. Mahadevan v. M.D. Tamil Nadu Housing Board**, [2005 SCC (L&S) 861].
- ii) Judgment of the Hon'ble High Court of Delhi in the case of **Delhi Development Authority v. D.B. Bambha**, (LPA No.39/1999].
- iii) Judgment of the Hon'ble High Court of Gujarat in the case of **M.D. Parmar v. Y.B. Zala**, [1980, ILJ 260].
- iv) Order of this Tribunal in the case of **Ms. Ritu Chaudhary v. Union of India & Others**, [OA No.1011/2013, dated 07.01.2014].

4.3 Concluding her arguments, the learned counsel prayed for allowing the relief claimed by the applicant.

5. Per contra, Shri R.N. Singh, learned counsel for the respondents submitted that the applicant has approached this Tribunal pre-maturely. The DE proceedings are still pending.

The applicant has prayed for dropping the DE proceedings, which cannot be considered. The learned counsel further submitted that the respondents would have no objection, if this Tribunal is pleased to give a direction to the respondents to complete the DE proceedings in a time bound manner. He also stated that although the charge-memo was issued on 30.10.2007 but the applicant chose to challenge it after about 07 years by filing this OA on 24.02.2014.

5.1 Shri Singh further argued that the applicant is unnecessarily making an issue of the inspection of the originals of the prosecution documents.

5.2 Elaborating further, he said that the first prosecution document is the show cause notice issued by the Commissioner of Customs (Gen.) New Delhi dated 23/24.08.2001, the second one is manifest of Flight No.K-2-545 dated 10.07.2000 and PK-270 dated 01.08.2000, the third one is a copy of passport of Ms. Olga, fourth one is printout of mobile phone of the applicant, the fifth one is adjudication order dated 01.08.2000 and the last one is the statement of the applicant before DRI on 17.01.2001. Copies of these documents had already been made available to the applicant. His insistence on seeing the originals of these documents is bewildering. Shri Singh stated that the CBI is also

seized of the issue and originals of these documents are in its custody.

6. We have considered the arguments of the learned counsel for the parties and have also perused the pleadings and the documents annexed thereto. The sole ground raised by the applicant in the OA is that the originals of the prosecution documents have not been allowed to be inspected by the applicant and that copy of 11 defence documents allowed by the IO have not been made available to him, as a result of which he is not in a position to defend himself in the DE proceedings. After going through the list of the prosecution documents, originals of which are stated to be in the custody of the CBI, we are of the view that the DE proceedings can proceed ahead based on the copies of these documents available with the respondents who have also made such copies available to the applicant. The applicant has not stated anywhere in his pleadings nor has his learned counsel mentioned during the course of the arguments as to any likely discrepancy between the photocopies of these documents and the originals. As a matter of fact, these are all standard documents where there cannot be any scope of any manipulation.

7. As regards the 11 defence documents allowed by the IO, the respondents are duty bound to make copies of these

documents available to the applicant so as to facilitate him to defend his case properly.

8. We are also conscious of the fact that this is a very old matter pertaining to the year 2000, wherein charge-sheet was issued in the year 2007 and the instant OA has been filed in 2014. It would be, therefore, in the interest of both the parties that the DE proceedings are taken to their logical end at the earliest.

9. In the conspectus of the discussions held in the foregoing paragraphs, we dispose of this OA with the following directions to the parties:

i) The respondents shall provide copies of all the 11 documents allowed by the IO to the applicant within two weeks of the receipt of a certified copy of this order.

ii) The DE proceedings would be concluded within three months of the receipt of a certified copy of this order.

iii) There shall not be any insistence on the part of the applicant for the inspection of the originals of the prosecution documents, as we have already observed that the photocopies of such documents are good enough for the DE proceedings to continue.

iv) The applicant shall fully cooperate in the enquiry.

10. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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