

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4222/2014

Order Reserved on: 05.01.2017
Order pronounced on 14.02.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

Ms. Meenu S. Kumar (Age 48 years)
W/o Sh. Satish Kumar
R/o 37-C, Sector 15A
Green View Apartments
Noida, U.P.-201301.
(Presently Additional Commissioner,
Customs Central Excise & Service Tax) ... Applicant

(By Advocate: Shri Ajesh Luthra with Ms. Jyotsna Kaushik)

Versus

1. Union of India
Through its Secretary
Ministry of Finance
(Department of Revenue)
North Block
New Delhi – 110 001.
2. Central Board of Excise & Customs
Through its Chairman
Ministry of Finance
(Department of Revenue)
North Block, New Delhi – 110 001. Respondents

(By Advocate: Shri Rajnish Prasad)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, an Additional Commissioner of Customs, Central Excise and Service Tax, filed the OA, questioning the imposition of the punishment of reduction to a lower stage in the time scale of pay by two stages for a period of five years with the direction that she will earn increments of pay during the period of reduction, and the chargesheet and inquiry report in pursuance of which, the said punishment was imposed.

2. The brief facts of the case are that the respondents issued the impugned Annexure A3-Charge Memorandum No.17/2010, dated 26.07.2010 to the applicant, and the sole charge contained therein reads as under:

**STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST
SMT. MEENU S. KUMAR, ADDITIONAL COMMISSIONER,
CUSTOMS & CENTRAL EXCISE**

ARTICLE-I

Smt. Meenu S. Kumar, Additional Commissioner while functioning as Additional Commissioner (P&V), Central Excise, Meerut-II during the period from June 2003 to July 2007 issued a false Identity Card under her signatures and official stamp showing, a person, in her/her husband's private employment, as an employee of Customs & Central Excise Commissionerate, Meerut-II..

Smt. Meenu S. Kumar, Additional Commissioner has thus failed to maintain absolute integrity and devotion to duty, acted in a manner which is unbecoming of a Govt. Servant and has contravened the provisions of Rule 3(1)(i)(ii)&(iii) and 3(2)(i)&(ii) of CCS (Conduct) Rules, 1964."

3. The applicant vide Annexure A4-Letter dated 18.08.2010, denied the charge levelled against her. Thereafter, the respondents conducted a detailed regular departmental inquiry into the charge

levelled against the applicant and the inquiry officer vide Annexure A2-Inquiry Report, dated 09.01.2012 submitted his report holding the charge as proved. The said inquiry report was furnished to the applicant for making a representation and accordingly, the applicant vide Annexure A18 submitted a representation against the same on 03.09.2012. The respondents vide the impugned Annexure A1-Order No.36/2014, dated 26.09.2014 imposed the above referred punishment on the applicant.

4. Heard Shri Ajesh Luthra, the learned counsel for the applicant and Shri Rajnish Prasad, the learned counsel for the respondents, and perused the pleadings on record.

5. Shri Ajesh Luthra, the learned counsel appearing for the applicant, would, inter-alia, raised the following grounds in support of the OA averments:

i) The charge against the applicant is that she has issued the Annexure A26-Identity Card, to an ineligible person, namely, Iqbal Ali, by signing the said Identity Card by affixing her stamp. But the original of the said Identity Card was not produced in the inquiry and not marked as one of the Exhibits. In the absence of production of the original Identity Card, and not marking the same as one of the Exhibit in the inquiry, on which the entire charge is dependent, there is no evidence against the applicant.

- ii) Photocopy of a original document is not admissible in evidence in a departmental inquiry.
- iii) Admittedly, even the hand writing expert of the CFSL examined the laminated original identity card for giving his opinion, which is impermissible, as it is not possible to give an accurate opinion when there is lamination on the Identity Card.
- iv) The alleged charge is vague and does not constitute any misconduct under any of the service rules applicable to the applicant.
- v) The alleged charge is no way connected to the official functions of the applicant.
- vi) Neither it was alleged nor proved that the alleged Identity Card was even utilized/misused by the person in whose possession it was alleged to have been found.
- vii) The SW-4, Shri Akhil Tyagi, Tax Assistant, categorically admitted that during 2004-2006 he was the dealing assistant and blank cards were used to be in his custody, and during the relevant period the applicant did not hold the charge of Additional Commissioner (P&V) which means she was not responsible for issuing the cards under her signatures, and that the applicant had not asked for any

blank card from him. He had also not stated that the Identity Card on which the applicant alleged to have been signed, was one of the cards under his custody. He only stated that it was apparently similar. No other witness deposed about the fact that the Identity Card, which was said to have been signed by the applicant, was one of the cards under the Department custody. Hence, it was not proved that the Identity Card on which the applicant alleged to have signed was issued by the respondent-Department.

- viii) Any financial loss or damage to the respondents was neither alleged nor proved.
- ix) Holding the sole charge of signing on a Identity Card as proved, even without showing the original to the applicant at any stage is not only a clear violation of principles of natural justice and also a clear perverse finding of the inquiry officer.
- x) The charge is proved basing on no evidence and hence, the entire disciplinary proceedings are liable to be quashed.
- xi) The private handwriting expert vide Annexure A28-Report, dated 19.09.2010, opined that the disputed signature D1 does not belongs to the applicant.
- xii) The learned counsel placed reliance on the following:

a) Letter dated 24.02.2011 of the Central Board of Excise and Customs.

b) Judgement dated 08.12.2015 in FAO (OS) 660/2015 in **Anil Gupta and Anr. v. Kewal Sehgal and Others** of the Hon'ble High Court of Delhi.

c) Judgement dated 03.04.2006 in CRP No.4781/2005 in **Bheri Nageswara Rao v. Mavuri Veerabhadra Rao and Others** of the Hon'ble High Court of Andhra Pradesh.

6. Shri Rajnish Prasad, the learned counsel appearing for the respondents, while denying the contentions of the applicant, would submit as under:

- i) In a trap laid by the CBI to catch one Shri Satish Kumar, Additional Director (Investigation), Income Tax, Meerut, who is the husband of the applicant, though the said Satish Kumar, managed to escape, the applicant and Shri Iqbal Ali, their Driver along with two others were found in the Scorpio vehicle No.DI4C NB 0847, on 25.05.2006. During search by the CBI, one false Identity Card of Govt. of India, Ministry of Finance, Customs and Central Excise Commissionerate, Meerut-II in the name of Shri Iqbal Ali, was recovered from him and the said Iqbal has stated that the said Identity Card was given to him by the applicant.
- ii) During investigation, the CBI team obtained specimen signature of the applicant in the presence of an independent

witness and her admitted handwritings from the office, were obtained and the same along with the Identity Card were sent to CFSL, CBI, and the CFSL confirmed the signature on the Identity Card is that of the applicant.

- iii) Shri D.R.Handa, HOD and SSO-1 (Documents), CBI, CFSL, New Delhi was examined as one of the witnesses, who categorically deposed that the signature on the Identity Card is that of the applicant.
- iv) Though the applicant requested for production of original documents but later she herself requested the inquiry officer to proceed with the inquiry on the basis of authenticated documents. As the applicant was furnished with the authenticated copies of the documents, the inquiry proceeded with. Hence, the applicant cannot now contend that the original document was not produced before the inquiry.
- v) The charge against the applicant was that she unauthorizedly issued an Identity Card to an ineligible person. Once the handwriting expert who has given the report for the CFSL, deposed that the signature on the Identity Card is that of the applicant, no further evidence is required.
- vi) This Tribunal cannot sit in appeal over the findings of the inquiry and disciplinary authorities and assume the role of the appellate authority.

vii) The learned counsel for the respondents placed reliance on a Judgement of the Hon'ble Apex Court in **Lalit Popli v. Canara Bank**, (2003) 3 SCC 583.

7. As rightly submitted by the learned counsel for the respondents, it is no doubt true that the Courts would not interfere with the findings recorded at the departmental inquiry by the disciplinary authority or the Inquiry Officer as a matter of course. The Court cannot sit in appeal over those findings and assume the role of the appellate authority. But this does not mean that in no circumstance can the Court interfere. The power of judicial review available to the Court under the Constitution takes in its stride the domestic inquiry as well and it can interfere with the conclusions reached therein if there was no evidence to support the findings or the findings recorded were such as could not have been reached by an ordinary prudent man or the findings were perverse or made at the dictates of the superior authority.

8. In the background of the aforesaid rival submissions, it is clear that the entire charge is dependent on the Identity Card which was seized by CBI from Iqbal Ali, and was alleged to have been signed by the applicant.

9. Admittedly, the original Identity Card was not produced before the inquiry officer. When the case of the applicant was a total denial of her signature on the said Identity Card, without production of the same in the inquiry whether the finding of the inquiry officer that the

charge is proved, is valid and legal and in accordance with the established principles of law, is the issue before us.

10. The learned counsel for the applicant placed reliance on **Lalit Popli** (supra), by submitting that the expert opinion, even without corroboration, can be accepted by disciplinary authorities. In this case, the appellant, a Clerk in the respondent - Canara Bank, was charged that he was responsible for the unauthorized withdrawal of Rs.1.07 lakhs from a customer's account, by got issuing a Cheque Book unauthorizedly and by utilizing the Cheque leaves by forging the signature of the account holder. It was held by the Hon'ble Apex Court, with respect to the expert opinion, as under:

"11. Sections 45 and 73 of the Indian Evidence Act, 1872 (in short 'the Evidence Act') deal with opinion of experts and comparison of signature, writing or seal with other admitted or proved. Section 45 itself provides that the opinion are relevant facts. It is a general rule that the opinion of witnesses possessing peculiar skill is admissible. There was no challenge to the expertise of V.K. Sakhija. He deposed to have testified in about ten thousand cases relating to disputed documents. Though the employee highlighted certain adverse remarks, it cannot be lost sight of that they were about four decades back. But we need not go into that aspect in detail as no infirmity in the report acted upon by the authority in the present case was noticed or could be pointed out.

12. It is to be noted that under Sections 45 and 47 of the Evidence Act, the Court has to take a view on the opinion of others, whereas under Section 73 of the said Act, the Court by its own comparison of writings can form its opinion. Evidence of the identity of handwriting is dealt with in three sections of the Evidence Act. They are Sections 45, 47 and 73. Both under sections 45 and 47 the evidence is an opinion. In the former case it is by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experiences. In both the cases, the Court is required to satisfy itself by such means as are open to conclude that the opinion may be acted upon. Irrespective of an opinion of the Handwriting Expert, the Court can compare the admitted writing with disputed writing and come to its own independent conclusion. Such exercise of comparison is permissible under Section 73 of the Evidence Act. Ordinarily, Sections 45 and 73 are complementary to each other. Evidence of Handwriting Expert need not be invariably corroborated. It is for the Court to decide whether to accept such an uncorroborated evidence or not. It is clear that even when experts' evidence is not there. Court has power to compare the writings and decide the matter.

[See Murari Lal vs. State of Madhya Pradesh (1980) 1 SCC 704].

13. In the instant case, the Enquiry Officer and the Disciplinary Authority took pains to carefully consider the Handwriting expert's report and also looked at the documents to arrive at their own conclusions.

14. Great emphasis was laid on the Forensic Science Laboratory's report to say that the Handwriting Expert's report is not worthy of acceptance. We have looked at the report of the Forensic Science Laboratory. It only says that no definite opinion can be formed. That itself is an indication that a clean chit was not given as claimed by the employee. "

11. In the above case, as observed by the Hon'ble Apex Court, the inquiry officer and the disciplinary authority not only considered the handwriting experts report but also examined the documents to arrive at their own conclusions. But in the instant case, neither the inquiry officer nor the disciplinary authority, admittedly not even seen the original Identity Card before holding the charge against the applicant, is proved. Moreover, admittedly, the original Identity Card was not produced in the inquiry, in spite of repeated requests of the applicant. The request of the applicant to proceed with the inquiry with the authenticated documents to avoid delay in completion of inquiry, does not absolve the prosecution from marking the original Identity Card by placing before the applicant, which is the only document on which entire charge is dependent. It is also not the case of the respondents that they cannot produce the original Identity Card due to any valid reasons. Equally, though the hand writing expert was examined in the inquiry, to prove the signature of the applicant on the disputed Identity Card but even to the hand writing expert, the original Identity Card was not shown in the inquiry to prove whether he examined the same Identity Card

or not. Hence, in the absence of the same, the opinion of the expert has no evidentiary value.

12. The Government of India with regard to Xerox copies in departmental inquiry under CCS (CCA) Rules, 1965, issued vide F.No.C-14010/3/2011-Ad.V, dated 23.02.2011, and the same read as under:

"However, in a number of instances, it has been noticed in the Board that the proceedings in the field formations are being routinely conducted on the basis of the unauthenticated Xerox copies only, either because the original documents are not available or are tied up in a court of law. It is clarified that such a course of action is not permissible. If the original 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.

It is also mentioned that the UPSC, while considering a case referred to it for advice, invariably insists on the original /authenticated copies of the documents and does not entertain a proposal till all the case records/documents are either in original or duly authenticated copies thereof. In a number of cases, the proposals have not been finalized so far as the UPSC has returned the proposals on the above considerations and in the absence of the original documents, copies thereof taken on record in the inquiry can not be authenticated. These cases include cases of retired Group B, C and D employees under Rule 9 of CCS (Pension) Rules, 1972 as also cases of Appeal/revision of such category of employees.

It is therefore urged that disciplinary authorities may ensure that departmental proceedings are based only on original/authenticated copies of the relied upon documents. It may also be ensured that while making a reference to the DGoV /Board bringing out alleged irregularities in a case involving a Gr. A officer or seeking first stage advice in respect of a Gr. B officer or seeking sanction of the President under Rule 9 for initiating action against a retired employee, it must be ensured that only authenticated copies of the documents sought to be relied upon are sent for consideration. Any proposal accompanied by only Xerox

copies will not be considered and will be returned without any examination."

13. In **Bheri Nageswara Rao** (supra), it was held that a proper opinion can be given by the expert only if he examines the original signature only, and that a xerox copy of a document can never constitutes the basis. The relevant paragraphs read as under:

"4. Section 45 of the Act enables the Court to obtain the opinion of an expert on various aspects, including the one relating to the comparison of disputed signatures. An expert would be in a position to render his opinion, only when the original of the document containing the disputed signature is forwarded to him. Further, there can be effective comparison and verification of the signatures, if only another document containing the undisputed signatures of the contemporary period are made available to the expert. In the instant case, respondents 1 to 3 filed Exs.B.13 and B.15, which are, admittedly, the Xerox copies of general power of attorney, dated 21-12-1988 and khararnama, dated 21-12-1988. It is rather incomprehensible that an expert would be able to undertake analysis of the imprint of a signature, on a Xerox copy.

5. The opinion of hand writing expert involves the analysis of the slant, which a person uses in the matter of putting his signature, and in some cases, the point of time, at which it may have been subscribed. These analysis would become possible only vis-à-vis an original signature; and the signature mark: on a Xerox copy of a document can never constitute the basis."

14. In **Anil Gupta** (supra), the Hon'ble High Court of Delhi, held that opinion given by an expert comparing photocopies of documents would not be of any evidential value.

15. In **Roop Singh Negi v. Punjab National Bank & Others**, (2009) 2 SCC 570, the Hon'ble Apex Court while observing that "the provisions of the Evidence Act may not be applicable in a departmental proceedings but the principles of natural justice are", held, mere production of documents is not enough and that the contents of documentary evidence has to be proved by examining witnesses, the relevant paragraphs of which read as under:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial

function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, *inter alia*, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

15. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

16. In the present case, the only document on which the entire charge is dependent, is the Identity Card, but even without producing the original of the said Identity Card in the inquiry, the charge against the applicant was held proved both by the inquiry and disciplinary authorities, which amounts to no evidence and is a clear perversity and violation of the Principles of Natural Justice, and accordingly, the Inquiry Report and the disciplinary order are liable to be quashed and set aside.

17. In normal circumstances, whenever it is found that the inquiry is deficient either procedurally or otherwise, the course being adopted is to remand the matter back to the concerned authority to redo the same afresh. However, in the present case, there is no allegation or proof that the alleged Identity Card was used or misused by any

person. Further, there is no allegation of any financial loss or damage to the Government or to any other person. In these peculiar circumstances, we do not propose to remand the matter for fresh inquiry.

18. In a recent decision of the Hon'ble Apex Court in **Allahabad Bank & Others v. Krishna Narayan Tewari**, decided on 02.01.2017, (2017) SCC online SC 2, it was held, as under:

"8. Any remand either to the Enquiry Officer for a fresh enquiry or to the Disciplinary Authority for a fresh order or even to the Appellate Authority would thus be very harsh and would practically deny to the respondent any relief whatsoever. Superadded to all this is the fact that the High Court has found, that there was no allegation nor any evidence to show the extent of loss, if any, suffered by the bank on account of the alleged misconduct of the respondent. The discretion vested in the High Court in not remanding the matter back was, therefore, properly exercised."

19. In the circumstances and for the aforesaid reasons, the impugned orders are quashed with all consequential benefits, and the OA is allowed as prayed for. No costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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