

Central Administrative Tribunal
Principal Bench

O.A.No.52/2003

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 26th day of May, 2003

Kamlesh Kumar
s/o Shri Ruldu Ram
r/o FC-31, Lajpat Nagar
Sector-IV
P.O.Sahibabad, Distt.
Ghaziabad (UP). ... Applicant

(Applicant in person)

Vs.

- 1. Union of India through
The Secretary
Ministry of Finance
Deptt. of Revenue
North Block
New Delhi - 110 011.
- 2. Deputy Commissioner (P&V)
(Now Addl. Commr. P&V)
Office of the Commr. of Central Excise
Delhi - 1
C.R.Building, I.P.Estate
New Delhi-2.
- 3. The Commissioner of Central
Excise Delhi-1
Central Revenue Building
Indraprastha Estate
New Delhi - 110 002.
- 4. The Chief Vigilance Officer
Central Board of Excise & Customs
Ministry of Finance
Deptt. of Revenue (CBEC)
Govt. of India
North Block
New Delhi - 110 011. ... Respondents

(By Advocate: Sh. R.V.Sinha)

O R D E R(Oral)

By Shri Shanker Raju, M(J):

Applicant in person impugns respondents' penalty order dated 2.9.1999 imposing upon him a penalty of stoppage of three increments without cumulative effect as well as the appellate order dated 23.10.2001 where the penalty has been modified to

stoppage of two increments without cumulative effect. He has sought quashment of these orders with grant of all consequential benefits.

2. Applicant, who was an Inspector, Customs and Central Excise, was posted at IGI Airport during the year 1993 as Air Customs Officer was issued a charge sheet wherein it is alleged that while functioning as above, in the warehouse at IGI Airport on 27.9.1993 one passenger namely, Shri Pema Tsering Lama presented two Detection Receipts (hereinafter called as "DRs") in the name of another passenger Shri Atup Lama for clearance of their goods which had been detained at IGI Air Port on their arrival from Nepal. Alongwith the above two DRs vide NOC dated 11.6.1993 from Department of National Parks and Wildlife Conservation, Kathmandu certifying collection of 150 kgs of wool from demostic goats was also a annexed. There was endorsement on the DRs is the clearance after NOC from Wild Life Department as per rules. In the view of the matter, it is alleged that despite a clear endorsement applicant recommended for the release of the goods on the basis of NOC issued at Katmandu and had failed to bring to the notice of the senior officers relevancy of the above documents, and having regard to the contradiction apparent, whereas the said goods have been sold on 20.5.1993 and certificate was issued on 11.6.1993 has resulted in release of the goods without any proper identification and customs duty clearly shows lack of devotion to duty. The aforesaid charge sheet was replied to as the required documents have not been found relevant.

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By an order dated 2.9.1999 a minor penalty was imposed which was affirmed by the appellate authority, giving rise to the present OA.

3. The main contention put forth by the applicant is that the punishment is not as per the CCS (CCA) Rules, 1965, the disciplinary authority of the applicant is Collector of Customs as applicant is a Group 'C' employees whereas punishment has been imposed by the Commissioner of Customs, who is his appellate authority.

4. It is further stated that the disciplinary authority has taken into consideration the extraneous matter, and punishment has been imposed, without any misconduct and as the applicant had acted and followed the directions of Assistant Commissioner as the DR was approved by the Superintendent and ACO, imposing punishment on the applicant is arbitrary and without any justification.

5. He has also contended that the orders passed are mechanical, without application of mind and without any evidence on record.

6. On the other hand, respondents' counsel Shri R.V.Sinha vehemently opposed the contentions and stated that one of the cases of appraiser Sh. B.K.Singh, who was similarly dealt with and imposed in a minor penalty in OA 1896/2002, this Court has upheld the penalty.

7. Moreover, it is stated that an higher authority. can impose the punishment and right of the appeal has not been affected there is no illegality in the orders passed. However, in view of the fact that higher officers were involved, Commissioner has acted as a disciplinary authority.

8. On facts, it is stated that as the applicant has derelicted and found negligent not to notice the endorsement on the DRs, he slacked in his duty which resulted in damage making the degree of culpability proportionally high amounting to misconduct.

9. I have carefully considered the rival contentions of the parties and perused the material on record.

10. The Apex Court in Nagar Panchayat v. Dinesh, 2002 SCC (L&S) 718 has held that if right of punishment is exercised by the appellate authority, which deprives the delinquent of a right of appeal, the order passed is illegal.

11. In the present case as the other officers higher in rank were involved the punishment has been passed by the higher authority, i.e., Commissioner of Customs. As the right of appeal has not been divested away from the applicant who exercised his right of appeal to the Board as such merely the punishment has been passed by the appellate authority would not vitiate the order.

12. In so far as the plea that documents have not been served upon the applicant as the relevant documents have been provided to applicant, the other documents which were not relied upon in the charge sheet have been correctly denied to him by an order passed on 4.8.1997 passed by the Deputy Commissioner. In absence of any establishment of the fact that any prejudice is caused to applicant, grounds fails.

13. In so far as the misconduct is concerned, as the applicant being Inspector, having regard to the noting on the DRs as to release of the goods only after proper verification from the Wild Life, having not taken note of the same and failed to point out the endorsement to his senior officer, the goods later on found to be hairs of Tibetan Antelope which is a scheduled I Wild Life Protection Act, 1972, the negligence is apparent on the fact of it.

14. The Apex Court in Union of India v. J.Ahmed, 1979 (2) SCC 289 held mere negligence and lack of efficiency or attainment of highest standards in discharging of duty attached to the public post would not constitute as misconduct but if such negligence or act ensues civil consequences directly attributable to the negligence would be such to be irreparable or the resultant damage would be so high making the degree of culpability proportionally high it amounts to misconduct. Due to wrong valuation in ignorance of the nothings in DR resulted in clearance of a contraband item the resultant damage is very high.

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15. If one has regard to the aforesaid. As the applicant has derelicted in his duty and was negligent which resulted in damages making the degree of culpability proportionality high, in my considered view, the aforesaid act of the applicant amounts to misconduct. Applicant cannot shirk in his own responsibility by shifting the burden on others. No other legal ground has been raised to assail the impugned orders.

16. As the orders are passed dealing with all the contentions of the applicant and in the absence of any procedural illegality, this Court cannot sit as an appellate authority to reappraise the evidence or to go into the correctness of the charge. Accordingly, OA is found bereft of merit and is dismissed. No costs.

S. Raju
(Shanker Raju)
Member(J)

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