(2023) 01 CAT CK 0011

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00347 Of 2020

Sajith Kumar C.R. APPELLANT

Vs

Union Of India & Ors RESPONDENT

Date of Decision : 04-01-2023

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 164
Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14

Citation : (2023) 01 CAT CK 0011

Hon'ble Judges : Sunil Thomas, Member (J);K.V. Eapen, Member (A)

Bench : Division Bench

Advocate : T.C. Govindaswamy, S.R.K. Prathap

Final Decision : Allowed

Judgement

Sunil Thomas, Member J

1. The applicant is now working as the Superintendent of the Central GST under the respondents. He was working at Karipur Airport in the Air Intelligence Unit (AIU) in 2005. While so, RC No. 26(A)/2005/CBI/ACB/KER was registered by the Central Bureau of Investigation (CBI) alleging various offences under the IPC and the Prevention of Corruption Act, and few customs officials posted at Karipur Airport were intercepted. In relation to that incident, the applicant was issued with Annexure A4 charge memorandum dated 22.2.2007. It was served under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The crux of the allegation is as under:

"During the course of investigation in RC 26(A)/2005 registered by the Central Bureau of Investigation against officers working in Calicut Airport, Karipur, it was revealed that a system of bribe collection from passengers arriving from abroad was prevalent in the Calicut Airport since February, 2005 and the Station Duty Officer, Shri C.J. Thomas, Inspector and subsequently Shri T.C. Rajkumar, Inspector, used to give directions to Shri P.P. Abdul Rehman @ Paithal, a private person, to distribute the bribe collection among the Customs officials working at Calicut Airport. Smt. P. Jayashree, while functioning as Inspector of Central Excise & Customs, Calicut Airport, during the period from 1.9.2005 to 2.11.2005, failed to maintain absolute integrity and acted in a manner unbecoming of a Government Servant, in as much as she received fortnightly share of bribe collected by Customs officials from the passengers arriving from abroad".

Identical charge sheet was issued to 22 other officers. All of them faced domestic inquiry. Annexure A7 is the report of inquiry, by which the inquiry officer found that all the charges leveled against the delinquent employees were established. Annexure A8 reply to the findings was submitted by the applicant. The 3rd respondent disciplinary authority, by Annexure A1 order imposed a penalty of reduction of pay by one stage from Rs. 17,170/- to Rs. 16,530/- in the pay band of Rs. 9,300-34,800/- with Grade Pay of Rs. 4,800/-for a period of one year w.e.f. 1.5.2011. It was also ordered that the applicant will not earn increment of pay during the period of reduction and that on expiry of that period, the reduction will have the effect of postponing his future increments of pay.

2. Aggrieved by the penalty, applicant submitted Annexure A9 appeal, which on rejection was followed by Annexure A11 revision. It was also rejected, by Annexure A3 order, dated 1.2.2018. In the meanwhile, some of the officers of the Air Customs against whom criminal proceedings were initiated as RC No. 26(A)/2005, faced trial and were acquitted by the Sessions Court.

3. Contending that the applicant was proceeded against and imposed with penalty without any evidence on record and that the findings were clearly based on surmises and conjectures, applicant has preferred this OA. The reliefs sought in the OA are as follows:

"i) Call for the records leading to the issuance of Annexure A1, Annexure A2 and Annexure A3 orders and set aside the same;

ii) Direct the respondents to grant all consequential benefits as if Annexure A1, Annexure A2 and Annexure A3 order has not been issued at all."

4. Heard both sides and examined the records.

5. Annexure A7 is the inquiry report. It discloses that the penalty was imposed essentially on the basis of two materials revealed in the course of inquiry. Firstly, the inquiry officer relied on the confession of one Shri P.P. Abdul Rehman @ Paithal. Secondly, the inquiry officer relied on S8 and S9, two documents stated to have been recovered in the course of investigation, which incriminated all the accused as well as the persons against whom disciplinary proceedings were initiated.

6. Some of the other officers against whom disciplinary proceedings were launched and penalty imposed and were identically situated as that of the applicant herein had approached this Tribunal by filing OAs Nos. 779 of 2018 and 85 of 2019. After a detailed evaluation of the entire materials available on

record, by a common order dated 18th October, 2022, both the OAs were allowed and the penalty imposed on them were set aside.

7. The learned counsel for the applicant placed heavy reliance on the above order and contended that the applicant was identically placed as that of the applicant in OA No. 85 of 2019. It was contended that the inquiry officer relied on materials which could not have been admitted on record and inadmissible and unreliable materials were relied by the inquiry officer to hold that the applicant was guilty of the charges leveled against him.

8. There is no dispute that the applicant in OA No. 89 of 2019 is similarly placed as that of the applicants in OA 779/2018 and 85/2019, who were also engaged in AIU on the relevant date. In that OA's, this Tribunal considered the question whether the inquiry officer was justified in relying on the retracted confession statement of SW1, P.P. Abdul Rehman @ Paithal. It was noticed by this Tribunal on the basis of the settled legal authorities that the evidence of a person who has retracted from the confession statement when he was examined before the Session Court, can be relied on, only if it was found to be reliable and credible. However, it was held by this Tribunal that Section 164 Cr. PC statement of SW1 which was heavily relied on by the inquiry officer was in fact recorded in breach of Rule 70 of the Criminal Rules of Practice. It was noticed that the Session Court had correctly held that the mandatory requirement under Rule 70 of the Criminal Rules of Practice was not followed in recording the statement of the above witnesses under Section 164 Cr. PC. Consequently, it could not have been relied on, for any purpose.

9. Though the inquiry officer had tried to justify that even such retracted statements are admissible in evidence before an inquiry, it was ultimately held by this Tribunal that the defect noted by the Session Court relying on Section 70 of the Criminal Rules of Practice was in the nature of fundamental error and the statement so recorded was defective and could not have been relied on to any extent.

10. After holding that the reliance placed by the inquiry officer on the Section 164 Cr. PC statement was wrong and that the inquiry officer could not have relied on it, this Tribunal proceeded further to find out whether on merits any other material was available to hold that the applicants' therein were guilty of the charges leveled against them. On the basis of the materials placed, it was held that in S8 and S9 documents relied on by the inquiry officer, the names of the applicants before the Tribunal in the earlier proceedings were not referred to. Even in Section 164 Cr. PC statement given by SW1, he did not refer to the names of the applicants therein. The only material that was found to be incriminating in the Section 164 Cr. PC statement was that the witness had deposed that he had paid bribe to one Unnikrishnan on behalf of AIU. AIU was interpreted as Air Intelligence Unit, which was the wing wherein the applicant herein as well as the applicants in OA No. 85 of 2019 were employed. It was noticed by this Tribunal that on the basis of above part of the retracted

confession of SW1, by a wrong process of reasoning, the inquiry officer concluded that since one person had received bribe on behalf of AIU, and the applicant herein as well as the applicant in OA No. 85 of 2019 were working in AIU, during the relevant time, it must be held that both persons have received bribe. This was found to be a conclusion bordering surmise and no reasonable authority could have found the delinquent guilty on the basis of this extremely weak material. In the present case also neither in the statement of SW1, nor in S8 and S9, the name of applicant herein was referred to.

11. It was also noticed by this Tribunal that though names of few Inspectors who were engaged in AIU was mentioned by the witnesses, he did not refer to the names of applicant herein nor the applicant in OA No. 85 of 2019. On this material, this Tribunal held that the inquiry officer had committed fundamental mistake by assuming that, since bribe was received on behalf of the members of AIU, it must be assumed that all officers in AIU had received bribe. It was also noticed by this Tribunal that neither in the statement of three persons nor in S8 or S9, the name of the applicant appeared. It was found that merely on the basis of a finding that money was handed over to one person of AIU, it could not be said that it was received of behalf of all members, essentially when SW1 and S10 had only stated that one Unnikrishnan had received bribe on behalf of AIU, but did not state that he received on behalf of "the entire members of AIU". This fundamental mistake was not noticed by the inquiry officer. S8 was also found to be a half burnt document, which did not in any manner incriminate the applicant in OA No. 85 of 2019.

12. An evaluation of order in that OA, coupled with the available materials before this Tribunal produced in the form of inquiry report as Annexure A7 clearly shows that the inquiry officer went thoroughly wrong in finding that the applicant herein was guilty of charges leveled against him. The benefit granted to the applicant in OA No. 85 of 2019 is that the inquiry was based on no materials, equally apply in the case of the applicant herein also. Consequently, the penalty imposed on the applicant is liable to be set aside.

13. In the result the OA is allowed. The penalty imposed on the applicant by Annexure A1 is set aside and the applicant shall be paid the entire amount due to him as if no penalty has been imposed on him by virtue of Annexure A1. The amount shall be quantified and paid to him within a period or two months from the date of receipt of a copy of this order, failing which it will carry 6% interest after above two months.

14. The Original Application is allowed as above. No costs.