(2021) 06 CAT CK 0054

In the Central Administrative Tribunal

Case No : Original Application No. 180, 00686 Of 2018

Shibu.V.Issac, Head Havildar (Removed From Service)	APPELLANT
Vs	
Central Board Of Excise & Customs & Others	RESPONDENT

Date of Decision : 01-06-2021

Acts Referred:
Customs Act, 1962 — Section 108

Citation : (2021) 06 CAT CK 0054

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

Bench : Division Bench

Advocate : Dr. K. P.Pradeep, N.Anilkumar

Final Decision : Dismissed

Judgement

P.Madhavan, Member J

1. This is an Original Application filed seeking the following reliefs:

i. To call for the records leading to pass Annexure A7, A9 and A13 and to set aside Annexure A7 order in Original, Annexure A9 order in Appeal and

Annexure A 13 order in Revision.

ii. To direct the respondents herein to reinstate the applicant herein to se/vice, after granting all his sen/ice benefits ill. To issue of such other orders or

directions, which are appropriate to secure ends of justice, in the facts and circumstances of the case iv. Award costs of this application v. and grant

such other and further reliefs as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The applicant, in this case, was working as Head Havildar of the Customs Department in Central Government Service. While working in Customs

House, Cochin, respondents had initiated a major disciplinary proceedings and after the Inquiry, he was imposed with a major penalty of removal from

service as per Annexure A-7. He then filed a statutory appeal before the 3rd respondent and the 3rd respondent had dismissed the appeal as per

Annexure A-9 order issued by the 4th respondent. He filed a revision and the said revision application was also dismissed as per Annexure A-i 3

order. The applicant challenges the above orders before this Tribunal.

3. The applicant in this case was working as Head Havildar. On 19.08.2015, the applicant was issued with a memorandum of charge which is

produced as Annexure A-i. As per the charges, the applicant had connived with Mr Rajeev and Mr Jalal A.M, who were involved in the charges of

smuggling of 2 kilograms of Gold Bar through Cochin International Airport, which was carried by Mr Ajas Kasim. The carrier had transported the

smuggled gold on 27.6.2015 and the carrier was a passenger in EK 532 who arrived from Dubai. The carrier was arrested by Special Intelligence and

Investigation Branch and a case was booked.

4. The main allegation against the applicant was that he had received an amount of Rs.40,000I- as remuneration for enabling the carrier to bring the

Gold without the clearance by the Customs. The Charge Memorandum was issued and an Inquiry was conducted. The Inquiry Report is produced as

Annexure A-S. He was asked to submit written submission by the Disciplinary Authority and after hearing him, the Disciplinary Authority had ordered

the removal of the applicant from service considering the gravity of the offence committed by him on 18.07.2016. A copy of the order is produced as

Annexure A-7. According to the applicant, he was not present in the Cochin International Airport when the incident took place and he was working in

another office of the Customs at Kochi. According to him, the statement taken by the Superintendent of Customs, SuB was obtained under coercion

and threat and it cannot be made use of in any proceedings against him. He has retracted his earlier statement by filing a statement before the Court.

The Inquiry Officer had accepted the statements of the accused incriminating him in the incident and he has also relied upon the statements taken

under Section 108 of the Customs Act, 1962.

5. The main grounds of challenge raised in this case is that Annexure A-7, Annexure A-9 and Annexure A-13 orders were issued in a highly

mechanical manner and without examining the fact that the applicant herein was not present or had no authority or had no regular duty at the Airport

clearance during the relevant time at Cochin International Airport. The appellate and revision orders were passed in a highly prejudicial manner. None

of the contentions raised by the applicant in the appeal were properly considered. The Disciplinary Authority's decision for imposing a major penalty of

removal from service is illegal and cannot be accepted as it is highly arbitrary and against justice. The orders passed by the Disciplinary Authority as

well as the Appellate Authority are based on presumptions and assumptions. The Attendance Register produced by the applicant was not considered

and the same document was important to show that the applicant was not in the Cochin International Airport on that day. There is absolutely no

evidence to show that the applicant had accepted a remuneration of Rs.40,000I- for facilitating the crime. There is no direct evidence to show his

involvement. The Appellate and Revisional Authorities have not considered the principles of natural justice and has not followed the procedures as laid

down by law. The applicant mainly relies on the decision of the Hon'ble High Court in Sudhakaran v. KSRTC, reported in 2014(2) KLT

5. The entire proceedings were based on the statement of co- accused and it is not proper to rely on the statement of co-acused for punishing him. So

according to the applicant, the order of removal is highly excessive, improper and liable to be interfered etc.

6. The respondents entered appearance and filed a detailed statement denying the allegations. They admit the order of removal from service produced

as Annexure A-7, Annexure A-9 order in appeal and order in revision as Annexure A-13. But they completely denied the contentions of the applicant

that these orders were passed without considering the case of the applicant and without application of mind. They also denied the allegation that those

orders were passed in a mechanical manner and prejudicial to the interest of justice.

7. According to the respondents, the applicant was posted on three different occasions for a total period of nine months at the Cochin International

Airport. The applicant has information about the functioning of the statutory agencies and it is not necessary for an official to be physically present at

such location to make use of loopholes available in the formation. The charge against the applicant was that he had conspired to smuggle gold. The applicant had taken part in the conspiracy for smuggling gold for remuneration. According to the respondents, a person familiar with the customs

duties in the Airport would know the days on which there will be less checking and also days on which the intensity of checking passengers will be

more. The applicant has used this information for facilitating the commission of the offence. According to them, the statement of the applicant and co-

accused were recorded in a prejudicial manner under Section 108 of the Customs Act, 1962. The first statement of the applicant was taken on

28.6.2015 and thereafter on 29.6.2015 and the applicant reiterated the statement made on 28.6.2015 on 29.6.2015 also. The applicant being an officer

of the Customs Department, had every right to protest any attempts of coercion. But statement recorded are not against his free will and he had only

reiterated the contents on the next date also. The said statements can be accepted in evidence. It was also submitted by the respondents that even

though the applicant would say that he had retracted from the earlier statements, neither the Disciplinary Authority nor the Investigating Authority had

not received such a statement. The appellate order, as well as revisional order, were passed after considering all the contentions of the applicant and it

is not a mechanical order as alleged by the applicant. Grounds raised by the applicant are not sustainable and there is no merit in the Original

Application. The charges against the applicant are of a very serious nature and he has collaborated with smugglers for smuggling. Hence the

punishment is proportionate.

8. We have heard Advocate Dr K.P.Pradeep, learned counsel for the applicant and Adv. Mr N.Anilkumar, SCGSC, learned counsel for the

respondents. We have also perused the records and various documents produced in this O.A.

9. The main allegation against the applicant, in this case, is that he had helped the smugglers to bring gold through Cochin International Airport. Hence

he had committed grave misconduct for which a charge memorandum was issued. The counsel for the applicant would contend that the applicant, in

this case, was not present at the Airport as he was working in the Customs Preventive Commissionerate, Kochi on the date of this incident. He was

not in charge of any duties of Cochin International Airport. The applicant was punished on the basis of the statement given by co-accused Mr Jalal and his own statement given under Section 108 of the Customs Act. There is no independent evidence to prove his complexity in the smuggling. So

there is absolutely no reliable evidence to show that the applicant was also a party to the smuggling of 2 kilograms of gold on the relevant date. The

counsel for the respondents would contend that the respondents had clearly followed all the procedures/formalities for conducting the Inquiry and the

applicant was also given sufficient opportunity to defend h.is case. There is absolutely no ground for upholding that the respondents had violated any of

the principles of natural justice in this particular case. After receiving the Inquiry Report at Annexure A-5, the applicant was given an opportunity to

explain his side and the applicant has filed his written submission as Annexure A-6. The Disciplinary Authority had heard the applicant and after

detailed consideration of the evidence on record, the order of removal from service was passed against the applicant as Annexure A-7 on 8.7.2016.

The applicant thereafter filed an appeal raising the similar contentions and the Appellate Authority had passed a very detailed speaking order regarding

the involvement of the applicant as well as other in the conspiracy of smuggling of gold and has considered almost all the contentions raised by the

applicant and confirmed the order passed by the Disciplinary Authority as Annexure A-9 dated 27.9.2016. Thereupon, the applicant had filed a

Revision Petition before the Chief Commissioner of customs as Annexure A-10. The Revisional Authority had again gone through all relevant aspects

and passed a speaking order as Annexure A-13 confirming the punishment imposed on the applicant by the Disciplinary Authority.

10. We could not find any reason to show that the Appellate Authority, as well as the Revisional Authority, acted in a mechanical manner. Counsel for

the respondents had invited our attention to the decision of the Hon'ble Supreme Court in State Bank of Bikaner and Jaipur v. Nemi Chand Na!waya

reported in 2011 KHC 4281. The Hon'ble Supreme Court has held that the Courts should not act as an appellate court and reassess the evidence led

in the domestic enquiry, nor interfere on the ground that another view is possible on the material on record. If the enquiry has been fairly and properly

held and the findings are based on evidence, the question of the adequacy of the evidence or the reliable nature of the evidence will not be grounds for

interfering with the findings in departmental enquiries. Only prepondence of probability has to be considered in domestic enquiries.

11. The counsel for the respondents also invited our attention to the decision of the Hon'ble High Court of Kerala in Vasu K.0 v. State of Kerala

reported in 2009(4) KHC 931. The Hon'ble High Court has held that in Disciplinary Proceedings, the standard of evidence required to prove charges

in disciplinary proceedings, unlike a criminal case where the proceedings are regulated by the provisions of the Evidence Act and other statutes, all

that is required to be complied with in disciplinary proceedings is natural justice by ensuring fairness and reasonable opportunity to the delinquent.

12. From the above decisions of the Hon'ble Supreme Court as well as Hon'ble High Court, it can be seen that the Tribunal is not expected to reassess

the evidence which was brought before the Inquiring Authority again and the Tribunal is not an Appellate Authority. What the Tribunal is expected to

look into is that whether they had committed any procedural illegally and whether there is a violation of natural justice. In this case, the Inquiring

Authority has conducted the Inquiry in a very fair manner and the Disciplinary Authority has accepted the said report and imposed the penalty. The

Appellate Authority has also considered all the relevant materials produced by the applicant and passed a very detailed and speaking order. The

Revisional Authority also has passed a speaking order after considering all relevant aspects.

13. We do not find anything to interfere with the Disciplinary Authority's finding regarding the applicant's involvement in this case. The misconduct

committed by the applicant is very grave and the statements given by him as well as co-accused clearly shows the involvement of the applicant. We

do not find anything to interfere with the finding or the punishment imposed as it is proportionate to the gravity of the misconduct. In the result, we find

no merit in the contentions raised by the applicant in this case. The Original Application stands dismissed. No costs.

