

Tribunal Application

Present:

The Hon'ble Justice Pranab Kumar Chattopadhyay

And

The Hon'ble Justice Md. Abdul Ghani

Judgment on 30.08.2010

W.P.C.T. 112 of 2009

With

C.A.N. 6178 of 2010

Sudipto Nandy

Versus

Union of India & Ors.

Points:

Charge – Consultation- Whether a person can be punished on a charge without mentioning the charge in the charge-sheet. - Whether consultation with the Union Public Service Commission means that the Disciplinary Authority will not take its own independent decision upon recording its own finding. - CCS(CCA) Rules, 1965 R. 16(1)(e)

Facts:

The petitioner being an Additional Collector of Customs, Export Investigation Branch, Calcutta pursuant to the instructions of the Principal Collector disposed of about 80 pending files including 7 cases of M/s. Annapurna Yarn Fabrics. Department had accepted all the assessments so made in respect of the aforesaid cases. Thereafter a charge-sheet was issued against the petitioner under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 for major penalty alleging

that the said petitioner had given order for logging of the exports of M/s. Annapurna Yarn Fabrics in DEEC Book, misinterpreting the order dated 16th April, 2004 passed by the Principal Collector of Customs, Calcutta. The petitioner filed his written statement. The Disciplinary Authority after considering the written statement of defence filed by the petitioner herein decided to drop the charges leveled against the said petitioner. Accordingly, a reference was made to the Central Vigilance Commission for necessary concurrence. The Central Vigilance Commission thereafter, advised for converting the proceeding for violation of the provisions of Rule 3(1)(i), (ii) and (iii) of the CCS(Conduct) Rules, 1964 into simple minor penalty proceedings and to impose suitable minor penalty on the petitioner. The Disciplinary Authority thereafter, passed an order withdrawing the Memo of charges issued earlier to the petitioner and initiated a fresh proceeding under Rule 16 of the CCS(CCA) Rules, 1965 on the ground of guilty of administrative and supervisory lapses as a follow-up action pursuant to the advice of the Central Vigilance Commission. The petitioner submitted reply to the said memorandum. On receipt of the reply from the petitioner, advice of Union Public Service Commission was sought for in relation to the disciplinary proceedings initiated against the petitioner herein. The Union Public Service Commission advised for imposition of penalty of reduction, by a stage, in the time scale of pay for a period of one year, without cumulative effect on the petitioner herein. Pursuant to the said advice Disciplinary Authority passed final order imposing the penalty of reduction of pay, by a stage, in the time scale of pay for a period of one year, without cumulative effect. Central Administrative Tribunal dismissed the petition filed by the petitioner challenging the validity and/or legality of the said

disciplinary proceedings and the subsequent final order passed by the Disciplinary Authority.

Held:

The Disciplinary Authority, in the present case, has totally surrendered its authority and felt itself obliged to follow the advice of the Union Public Service Commission. Rule 16(1)(e) of the CCS(CCA) Rules, 1965 provides consultation with the Union Public Service Commission where such consultation is necessary but the same does not mean that the Disciplinary Authority will not take its own independent decision upon recording its own finding on each imputation of misconduct or misbehaviour in terms of Rule 16(1)(d) of the CCS(CCA) Rules, 1965. Para 21

The Disciplinary Authority found the petitioner guilty of the charges which were never alleged against the said petitioner as mentioned in the charge memo. No person can be punished by the Disciplinary Authority on the charge which was never mentioned in the charge-sheet. In the present case, findings of the Union Public Service Commission as recorded in the order of punishment and relied upon by the Disciplinary Authority were not even confined to the charges levelled against the petitioner. The petitioner was found guilty on a score not forming a charge in the charge-sheet. Para 28

Neither the Union Public Service Commission nor even the Disciplinary Authority ever held that the charges levelled against the petitioner as mentioned in the charge Memo for violation of Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964 were proved. Therefore, no punishment could be imposed on the petitioner since the charges levelled against the said petitioner as mentioned in the impugned charge memo were never proved.

Para 32

Cases cited:

(1991) 3 SCC 219 [Nagaraj Shivarao Karjagi vs. Syndicate Bank, Head Office, Manipal & Another]; AIR 1952 SC 16 [Commissioner of Police, Bombay vs. Gordhan Das Bhanji]; (2002) 10 SCC 351 [State of Bihar & Ors. vs. Lakshmi Shankar Prasad]; 2008 (II) CLJ (Cal) 858 [Nathuram Toppo vs. The State of West Bengal & Ors.]; 2) 1987 (1) CLJ 467 [Ananda Chakravorty vs. Union of India & Others]

For the Petitioner : Mr. L. K. Gupta

Mr. S. Mehta

Mr. D. Kundu

Mr. Subhasis Chakraborty

Mr. Ashim Bose

Mr. Joydeep Acharya

For the Respondents: Mr. B. R. Ghosal

Md. Nizamuddin

PRANAB KUMAR CHATTOPADHYAY, J.

The petitioner herein is aggrieved by the judgment and order dated 6th February, 2009 passed by the learned Central Administrative Tribunal, Calcutta Bench in the application being O.A. 104 of 2008 and has assailed the same in the instant writ petition.

2. From the records we find that at the material time, the petitioner herein was posted as Additional Collector of Customs, Export Investigation Branch, Calcutta.

3. It has been submitted on behalf of the petitioner that pursuant to the instructions of the Principal Collector mentioned in the note dated 16th April, 1994, said petitioner being the Additional Collector of Customs

disposed of about 80 pending files including 7 cases of M/s. Annapurna Yarn Fabrics. According to the petitioner, department had accepted all the assessments so made in respect of the aforesaid cases.

4. Mr. L. K. Gupta, learned Senior Counsel of the petitioner submitted that all the aforesaid assessments made by the petitioner in connection with about 80 shipping bills including 7 cases of M/s. Annapurna Yarn Fabrics were appealable orders under Section 129D of the Customs Act, 1962. Mr. Gupta further submitted that the petitioner while acting in a quasi-judicial capacity passed the aforesaid orders as an Assessing Officer which were appealable orders although the competent authority of the department accepted the said orders passed by the petitioner and allowed implementations of the same. Mr. Gupta also submitted that the competent authority of the Customs Department did not even challenge the aforesaid orders passed by the petitioner after initiation of the enquiry by the Central Bureau of Investigation in December, 1994.

5. On 1st October, 2004, a charge-sheet was issued against the petitioner under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 for major penalty alleging that the said petitioner had given order for logging of the exports of M/s. Annapurna Yarn Fabrics in DEEC Book, misinterpreting the order dated 16th April, 2004 passed by the Principal Collector of Customs, Calcutta. The entire allegations mentioned in the charge-sheet were in respect of the consignments of export of HDPE woven fabric of M/s. Annapurna Yarn Fabrics.

6. The petitioner filed his written statement. The Disciplinary Authority after considering the written statement of defence filed by the petitioner herein decided to drop the charges levelled against the said petitioner.

7. Accordingly, a reference was made to the Central Vigilance Commission for necessary concurrence. The Central Vigilance Commission thereafter, advised for converting the proceeding for violation of the provisions of Rule 3(1)(i), (ii) and (iii) of the CCS(Conduct) Rules, 1964 into simple minor penalty proceedings and to impose suitable minor penalty on the petitioner.

8. The Disciplinary Authority thereafter, passed an order in the name of the President bearing No. 13/2005 dated 30th June, 2005 withdrawing the Memo of charges dated 1st October, 2002 issued earlier to the petitioner and initiated a fresh proceeding under Rule 16 of the CCS(CCA) Rules, 1965 on the selfsame facts and charges as a follow-up action pursuant to the advice of the Central Vigilance Commission.

9. A Memorandum being No. 28/2005 dated 30th June, 2005 was issued to the petitioner regarding the minor penalty proceedings under Rule 16 of the CCS(CCA) Rules, 1965 and the petitioner herein submitted reply to the said memorandum. On receipt of the aforesaid reply from the petitioner, advice of Union Public Service Commission was sought for in relation to the disciplinary proceedings initiated against the petitioner herein.

10. The Union Public Service Commission thereafter, advised for imposition of penalty of reduction, by a stage, in the time scale of pay for a period of one year, without cumulative effect on the petitioner herein.

11. Pursuant to the aforesaid advice of the Union Public Service Commission, Disciplinary Authority passed final order being No. 29/2007 dated 31st December, 2007 imposing the aforesaid penalty of reduction of pay, by a stage, in the time scale of pay for a period of one year, without cumulative effect.

12. Challenging the validity and/or legality of the aforesaid disciplinary proceedings and the subsequent final order passed by the Disciplinary

Authority, an application was filed before the learned Central Administrative Tribunal which was finally disposed of by the impugned judgment and order dated 6th February, 2009 passed in O.A. 104 of 2008 whereby and whereunder the learned Tribunal dismissed the said application filed by the petitioner herein on merits.

13. Assailing the aforesaid judgment and order passed by the learned Tribunal, petitioner herein filed the present writ petition mainly, on the grounds that the initiation of the minor penalty proceedings was a follow-up action pursuant to the advice of the Central Vigilance Commission and the punishment was inflicted at the dictate of the Union Public Service Commission.

14. Mr. L. K. Gupta, learned Senior Counsel representing the petitioner submitted that the Disciplinary Authority held the petitioner guilty and imposed punishment without arriving at any independent finding about the guilt of the petitioner. Mr. Gupta specifically urged before this Court that neither the Union Public Service Commission nor the Disciplinary Authority ever held that the charges levelled against the petitioner have been established. According to Mr. Gupta, Union Public Service Commission recommended for the punishment of the petitioner even in absence of any specific finding regarding establishment of the charges mentioned in the charge Memo.

15. Mr. B. R. Ghosal, learned Senior Counsel of the respondents, however, submitted before this court that the Disciplinary Authority after considering the advice of the Central Vigilance Commission took an independent decision for converting the proceedings into simple minor penalty proceedings in respect of the petitioner herein. Mr. Ghosal further submitted that in compliance with the Rule, before passing the final order in the said

minor penalty proceedings, Union Public Service Commission was consulted but the Disciplinary Authority took an independent decision while inflicting the punishment on the petitioner herein.

16. Scrutinising the final order dated 31st December, 2007 passed by the Disciplinary Authority in respect of the petitioner herein we find that the charge memo dated 1st October, 2002 issued earlier to the petitioner under Rule 14 of the CCS(CCA) Rules, 1965 was withdrawn and a fresh charge memo dated 30th June, 2005 under Rule 16(1)(a) of the CCS(CCA) Rules, 1965 was issued as a follow-up action pursuant to the advice of the Central Vigilance Commission. The decision for converting the disciplinary proceedings earlier initiated against the petitioner into simple minor penalty proceedings had been taken at the behest of the Central Vigilance Commission which has been specifically recorded in the order of punishment issued to the petitioner being Order No. 29/2007 dated 31st December, 2007. The relevant extracts from the aforesaid Order No. 29/2007 dated 31st December, 2007 are set out hereunder:

“Shri Nandy sent his written statement of defence vide letter dated 30.1.2003. The reply was examined and the Disciplinary Authority agreed to the proposal of the Department to drop the charge against Shri Nandy. Accordingly, a reference was made to CVC for their concurrence. CVC vide their advice dated 16.06.2004 advised that proceedings for violation of provisions of Rule 3(1)(i),(ii) & (iii) of CCS conduct rules be converted into a simple minor penalty proceedings and a suitable minor penalty could be administered to Shri Nandy. As a *follow-up action*, the charge memo dated 1.10.2002 issued to Shri Nandy under Rule 14 of the CCS(CCA) Rules, 1965 was withdrawn and a fresh Charge Memo dated 30.6.2005 under Rule 16(1)(a) was issued to him.” (*Emphasis Supplied*)

17. The aforesaid narration of facts recorded in the order of punishment dated 31st December, 2007 clearly shows that the Disciplinary Authority did not itself decide to initiate the aforesaid simple minor penalty proceedings against the petitioner and as a matter of fact, initiated the minor penalty proceedings against the said petitioner as a “*follow-up action*” on the advise of the Central Vigilance Commission.

18. From the aforesaid order of punishment dated 31st December, 2007 we also find that the Union Public Service Commission advised the Disciplinary Authority to impose the penalty of reduction in the time scale of pay, by a stage, for a period of one year, without cumulative effect. On receipt of the advice of the Union Public Service Commission, the Disciplinary Authority passed the order accordingly. The relevant extracts from the aforesaid order dated 31st December, 2007 are set out hereunder:

“7. In view of the position brought out, the Commission has observed that the action taken by the CO in allowing logging of the DEEC book, as per a specific portion of the Principal Collector’s letter, while having brought out in his order itself that the goods were exported at about 10 times the prevailing market price, was not proper. He should have either ordered for ascertaining more evidence about the reported over-invoicing or have placed the matter before the Collector or the Principal Collector. Accordingly, in the light of their findings as discussed above and after taking into account all other aspects relevant to the case, the Commission has advised that the ends of justice would be met in this case if the penalty of reduction, by a stage, in the time scale of pay for a period one year, without cumulative effect be imposed on Shri S. Nandy.

8. AND WHEREAS the advice of the UPSC has been examined carefully. The Commission have analysed the case logically and found the CO guilty

of administrative and supervisory lapse on his part. The advice of the UPSC is in conformity with the tentative view taken by the Disciplinary Authority and the same has been adopted.

9. NOW, THEREFORE, the President of India being the Disciplinary Authority, after considering the advice of the UPSC and all other aspects relevant to the case, orders to impose a ‘penalty of reduction, by a stage, in the time scale of pay for a period of one year, without cumulative effect’ on Shri S. Nandy, Commission of Customs & Central Excise.”

19. In the aforesaid order of punishment dated 31st December, 2007, findings and observations of the Union Public Service Commission have been specifically recorded and thereafter, in the light of the findings of the said Commission, Disciplinary Authority imposed the penalty on the petitioner. The Disciplinary Authority did not record its own findings in order to hold that the charges levelled against the petitioner have been proved. Therefore, the Disciplinary Authority held the petitioner guilty and imposed penalty even in absence of its own finding.

20. In order to impose minor penalties, recording of finding on each imputation of misconduct or misbehaviour is a mandatory requirement which has not been complied with in the present case. Rule 16(1)(d) of the CCS(CCA) Rules, 1965 is set out hereunder:

“16. Procedure for imposing minor penalties. –

(1) Subject to the provisions of sub-rule (3) of Rule 15, no order imposing on a Government Servant any of the penalties specified in clauses (i) to (iv) of Rule 11 shall be made except after-

(a).....

(b).....

(c).....

(d) recording a finding on each imputation of misconduct or misbehaviour;”

21. The Disciplinary Authority, in the present case, has totally surrendered its authority and felt itself obliged to follow the advice of the Union Public Service Commission. Rule 16(1)(e) of the CCS(CCA) Rules, 1965 provides consultation with the Union Public Service Commission where such consultation is necessary but the same does not mean that the Disciplinary Authority will not take its own independent decision upon recording its own finding on each imputation of misconduct or misbehaviour in terms of Rule 16(1)(d) of the CCS(CCA) Rules, 1965.

22. Mr. Gupta, learned Senior Counsel of the petitioner referred to and relied on the following decisions of the Supreme Court in support of his arguments:

1) (1991) 3 SCC 219 [*Nagaraj Shivarao Karjagi vs. Syndicate Bank, Head Office, Manipal & Another*] (Paragraphs 14-17 & 19)

2) AIR 1952 SC 16 [*Commissioner of Police, Bombay vs. Gordhan Das Bhanji*]

3) (2002) 10 SCC 351 [*State of Bihar & Ors. vs. Lakshmi Shankar Prasad*] (Paragraph 3)

23. In the case of *Nagaraj Shivarao Karjagi (Supra)*, Hon’ble Supreme Court held:

“17.....Even if the Bank has made a self-imposed rule to consult the Central Vigilance Commission in every disciplinary matter, it does not make the Commission’s advice binding on the punishing authority. In this context, reference may be made to Article 320(3) of the Constitution. Article 320(3) like Regulation 20 with which we are concerned provides that the Union Public Service Commission or the State Public Service Commission, as the case may be, shall be consulted on all disciplinary matters affecting a civil

servant including memorials or petitions relating to such matters. This Court in *A.N. D'Silva v. Union of India* has expressed the view that the Commission's function is purely advisory. It is not an appellate authority over the inquiry officer or the disciplinary authority. The advice tendered by the Commission is not binding on the government. Similarly, in the present case, the advice tendered by the Central Vigilance Commission is not binding on the Bank or the punishing authority. It is not obligatory upon the punishing authority to accept the advice of the Central Vigilance Commission."

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"19.....The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See : De Smith's *Judicial Review of Administrative Action*, 4th edn., p. 309)....."

24. In the case of *State of Bihar & Ors. vs. Lakshmi Shankar Prasad (Supra)*, Hon'ble Supreme Court observed:

"3. In the case in hand, as it appears, the departmental authority started a departmental proceeding with the idea of inflicting a major punishment and, therefore, following the procedure meant for the same. But later on that

proceeding was withdrawn and a fresh proceeding was initiated with the idea of inflicting a minor punishment as provided under Rule 55-A of the Bihar Civil Services (Classification, Control and Appeal) Rules. After the initiation of the fresh proceeding, though an explanation was called for from the delinquent, but the impugned order of punishment indicates that the disciplinary authority has not recorded a finding about the guilt of the delinquent of different charges which were levelled against him as well as the consideration of the explanation given by the delinquent to the charges levelled against. In such circumstances, the High Court was fully justified in interfering with the order of punishment on a conclusion that the disciplinary authority did not record a finding about the guilt of the delinquent nor has it recorded any reasoning for arriving at such conclusion.”

25. Furthermore, from the impugned order of punishment dated 31st December, 2007 issued against the petitioner herein we find that the said petitioner was found guilty of administrative and supervisory lapses on his part. Mr. L. K. Gupta, learned Senior Counsel of the petitioner submitted that the petitioner was never charged on account of administrative and supervisory lapses on his part.

26. From the charge Memo issued to the petitioner we find that the allegation against the said petitioner was contravention of the provisions of Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964. Paragraph 15 of the aforesaid charge Memo is set out hereunder:

“15. Thus, Sri S. Nandy, by his aforesaid acts of omission and commission contravened the provision of Rule 3(1)(i), (ii) & (iii) of the Central Civil Services (Conduct) Rules, 1964.”

27. We also do not understand on whom the petitioner herein could exercise supervisory jurisdiction while acting as the Assessing Officer since the said

petitioner as the Additional Collector of Customs in charge of Export Investigation Branch at the relevant time passed final assessment orders under Section 14 of the Customs Act in a quasi-judicial capacity, which were appealable orders, although the competent authority of the concerned department accepted the orders passed by the petitioner and allowed implementations of the same.

28. In any event, the Disciplinary Authority found the petitioner guilty of the charges which were never alleged against the said petitioner as mentioned in the charge memo. No person can be punished by the Disciplinary Authority on the charge which was never mentioned in the charge-sheet. In the present case, findings of the Union Public Service Commission as recorded in the order of punishment and relied upon by the Disciplinary Authority were not even confined to the charges levelled against the petitioner herein. The petitioner was found guilty on a score not forming a charge in the charge-sheet.

29. Mr. Gupta referred to and relied on the following decisions in support of his aforesaid contention:

1) 2008 (II) CLJ (Cal) 858 [*Nathuram Toppo vs. The State of West Bengal & Ors.*] (Paragraph 14)

2) 1987 (1) CLJ 467 [*Ananda Chakravorty vs. Union of India & Others*] (Paragraphs 6 & 13)

30. In the case of *Nathuram Toppo vs. The State of West Bengal & Ors.* (*Supra*), a Division Bench of this Court held:

“14. In the charge-sheet there is no mention that the applicant was in full uniform. In the charge-sheet there is no mention that he failed and neglected to deposit the arms and ammunition before going out for food. Thus, it appears to us charge was something, while recording guilt on different thing.

It is not understood why the statement made in the defence was not at all considered and discussed and why it was rejected. Unfortunately, the learned Tribunal did not make any endeavour to call for the records and did not scrutinise the aforesaid lapses in detail.”

31. In the case of *Ananda Chakravorty vs. Union of India & Ors. (Supra)*, Justice G.N. Ray, speaking for the Bench, held:

“6. Mr. S. Pal, learned counsel appearing for the appellant has submitted that the disciplinary authority had passed the impugned order of punishment of dismissal from service on the finding that the delinquent officer for his own selfish end and for monetary greed had helped in leakage of Railway Revenue. Mr. Pal has submitted that charge roll is not for actual leakage of Railway revenue but the said charge only indicate that the delinquent officer had kept concealed 171 pieces of blank paper cut into sizes of the self-printed tickets, one self-printed ticket without inscription of ticket number, date and time and one printed ticket dated 12th August, 86 and three two rupee G.C. Notes inside the drawer for the purpose manufacturing faked tickets with intent to sell to the intending passengers for personal gain. He has submitted that the aforesaid charge clearly indicates that there had not been any leakage of Railway revenue but the delinquent officer was making preparation for manufacturing faked tickets with intent to sell to the passengers. Mr. Pal has therefore, submitted that the finding of the disciplinary authority that there has been leakage of Railway revenue is contrary to the charge levelled against the delinquent officer. On that score alone, the finding of the disciplinary authority should be set aside and the learned Trial Judge had failed to appreciate the said fact in dismissing writ petition.....”(Emphasis Supplied)

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“13. It also appears to us that as the disciplinary authority had proceeded on the footing that the delinquent officer was responsible for the leakage of the Railway fund, the impugned order of punishment had been passed by the disciplinary authority. In the circumstances, the impugned order of punishment cannot be sustained and should be set aside.....”

32. Neither the Union Public Service Commission nor even the Disciplinary Authority ever held that the charges levelled against the petitioner as mentioned in the charge Memo for violation of Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964 were proved. Therefore, no punishment could be imposed on the petitioner since the charges levelled against the said petitioner as mentioned in the impugned charge memo were never proved.

33. For the reasons discussed hereinabove, the minor penalty proceedings initiated against the petitioner pursuant to the Memorandum No. 28/2005 dated 30th June, 2005 and the impugned order of punishment bearing No. 29/2007 dated 31st December, 2007 issued to the said petitioner in connection with the aforesaid disciplinary proceedings cannot be sustained in the eye of law and the same are, therefore, quashed.

34. For the identical reasons, the impugned judgment and order passed by the learned Central Administrative Tribunal on 6th February, 2009 in O.A. 104 of 2008 cannot be approved by us and the same is, therefore, set aside.

35. The respondent authorities herein are directed to grant all admissible service benefits including arrear salaries and emoluments to the petitioner as if no punishment was ever imposed on the said petitioner pursuant to any disciplinary proceedings. The respondent authorities are further directed to calculate the admissible arrear dues payable to the petitioner herein within a period of four weeks from the date of communication of this order and

disburse the same to the said petitioner within a period of two weeks thereafter.

36. With the aforesaid directions, this writ petition stands allowed.

37..In view of disposal of the writ petition, no further order is required to be passed in the connected application being C.A.N. 6178 of 2010 and the same also stands disposed of along with the present writ petition.

38. In the facts and circumstances of the present case, there will be, however, no order as to costs.

39. Let urgent Xerox certified copy of this judgment and order, if applied for, be given to the learned Advocates of the parties on usual undertaking.

[PRANAB KUMAR CHATTOPADHYAY, J.]

MD. ABDUL GHANI, J.

I agree.

[MD. ABDUL GHANI, J.]