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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1525/2002

This the 26th day of February, 2004

HON'BLE SH. KULDIP SINGH, MEMBER (J)
HON'BLE SH. S.A. SINGH, MEMBER (A)

N.P. Singh
R/o House No. Q-263,
MIG, Phase-II, Pallavpuram,
Meerut, U.P.

(By Advocate: Sh. H.S.Dahiya)

Versus

1. Union of India
through Secretary
Ministry of Finance
North Block,
New Delhi-1.
2. Additional Commissioner (P&V),
Customs & Central Excise, Meerut-I,
Commissionerate, Meerut,
Mangal Pandey Nagar, Meerut.
3. Commissioner, Central Excise, Meerut-I,
Commissionerate, Meerut
Mangal Pandey Nagar, Meerut.
4. Member (P&V),
Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-1.

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

O R D E R

By Sh. Kuldip Singh, Member (J)

This is an application filed under Section 19 of the AT Act whereby the applicant has challenged the order of removal of service dated 15.1.99 passed by the Addl. Commissioner (P&V), Customs and Central Excise, Meerut-I. Applicant has also assailed order passed by the appellate authority dated 31.8.99 passed by Commissioner, Customs and Central Excise, Meerut-I as well as revision order dated 6.6.2001 passed by the Member Central Board of Excise & Customs, Department of Revenue, Govt. of India, New Delhi.

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2. Case of the applicant is that he was working as Tax Assistant in the Divisional Office, Meerut of Central Bolder of Excise & Customs and was working as a Cashier from 13.5.1988 to 20.5.92 and on 20.5.92 applicant was given a charge sheet under Rule 14 of CCS CCA Rules, 1965 for various acts of omissions and commissions while performing the duty of a Cashier. Applicant was awarded punishment of stoppage of 4 increments with cumulative effect. Though he had taken an appeal against the punishment order which was dismissed and revision petition was also dismissed and thereafter applicant filed an OA No.1932/97 and said OA was also dismissed.

3. However, the applicant vide memorandum dated 7.2.96 was again given a charge sheet under Rule 14 of CCS CCA Rules, 1965 and following charges were levelled against him:-

Article-I

The said Sh. N.P.Singh, Tax Assistant, while functioning as Cashier in Central Excise, Division Meerut, during the period 13.5.1988 to 24.9.92, failed to maintain absolute integrity, devotion to duty and committed such a conduct which is unbecoming of a Government servant in as much as he embezzled Government money to the tune of Rs.6897.40, involving 18 bills by showing the same as having been disbursed to the respective claimants, whereas, in fact, he had not made payments in respect of the said bills to the claimants, as not only their signatures on acquittance were not available on the bills but they had also, in their letters, denied to have received such payments, causing wrongful gain of Rs.6897.40 for himself and pecuniary loss of

the same amount to the Government, and thus, contravened Rules 3 (1)(i), 3 (1)(ii) & 3 (1)(iii) of the CCS (Conduct) Rules, 1964;

Article-II

The said Sh. N.P.Singh, Tax Assistant, while functioning as Cashier in Central Excise, Division-Meerut, during the period 13.5.88 to 24.9.92, failed to maintain absolute integrity, devotion to duty and committed such a conduct which is unbecoming of a Government servant in as much as he temporarily embezzled Government money to the tune of Rs.72,528/-, involving 46 bills by showing payment thereof on the very date of their encashment in the Cash Book, whereas, the payments were actually disbursed to the claimants on the subsequent dates, causing wrongful gain to himself for the intervening period and pecuniary loss to the Government of equal amount for the same period, and, thus, contravened Rules 3 (1) (i), 3 (1)(ii) & 3 (1)(iii) of the CCS (Conduct) Rules, 1964.

Article-III

The said Sh. N.P.Singh, Tax Assistant, while functioning as Cashier in Central Excise, Division-Meerut, during the period 13.5.1988 to 24.9.92, failed to maintain absolute integrity, devotion to duty and committed such a conduct which is unbecoming of a Government servant in as much as he embezzled Government money to the tune of Rs.21560, found short in the Cash Chest of Central Excise, Division-Meerut, during the Physical Cash Verification, carried out on 5.10.92 by a team of officers of Headquarters

Office & Divisional Office (including Sh. N.P.Singh) and, subsequently, attempted, in league with his the then Assistant Collector, Sh. P.D.Bhardwaj, to cover up his said act of embezzlement by placing a packet, containing the Rs.21,560 incash, in an Almirah of the Divisional Office, and thus, contravened rules 3(i)(i), 3 (1)(ii) & 3 (1)(iii) of the CCS (Conduct) Rules, 1964.

Article-IV

The said Sh. N.P.Singh, Tax Assistant, while functioning as Cashier in Central Excise, Division-Meerut, during the period 13.5.88 to 24.9.92, failed to maintain absolute integrity, devotion to duty and committed such a conduct which is unbecoming of a Government servant in violation of Rules 3 (1)(i), 3 (1)(ii) & 3 (1)(iii) of the CCS (Conduct) Rules, 1964, in as much as-

- (i) he made payment of 18 bills wherein amount of payment in each case exceeded Rs.20, without getting the revenue stamp affixed on the acquittances, whereas affixing of revenue stamps was mandatory on the bills/vouchers exceeding payment of Rs.20/-;
- (ii) he had made payments to unauthorised persons in case of 11 bills without having obtained authority letters issued in favour of the recipients by the claimants and without having obtained acquittance from the claimants;

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(iii) he made payments of 15 bills, wherein he failed to obtain the signatures of the recipients in token of having received the payments;

(iv) he failed to prepare and put up to the Adm. Officer Monthly Expenditure Statements in time for onward submission to the Headquarters Office;

(v) he failed to prepare and put up to the Adm. Officer Monthly Cash Verification Reports in time for onward submission to the Headquarters Office;

(vi) he had defied the orders of his Superior Officers of not handing over the charge of Cashier to the persons deputed by them;

(vii) he had failed to maintain the Cash Book properly;

(viii) he had not maintained Register of Undisbursed Pay and Allowances etc. properly;

(ix) he had retained a sum of Rs.16,355.90 in respect of 13 bills un-disbursed for a period exceeding three months from the date of encashment against Rule 92 of the Central Government Account (Receipt & Payment) Rules, 1983;

(x) he had failed to deposit Rs.3,195/- with the Bank after receiving the same on 8.7.91 against four TR-5s in violation of Rule 6 of the Central Government Account (Receipt & Payment) Rules, 1983."

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4. Applicant alleges that issuing of this chargesheet itself was illegal and vitiated the rules because the documents mentioned in support of the charges on the basis of which the charges were proposed to be proved, were not supplied to the applicant alongwith the chargesheet. Therefore, disciplinary proceedings were vitiated. Applicant denied the charges levelled against him. Applicant also submitted that the charges were the same for which he had already been given chargesheet on 20.5.92 and punished vide order dated 9.3.94. Thus, it is submitted that departmental enquiry was held on the basis of same charges is in violation of the applicant's rights to defend himself and in violation of the procedure. But still the enquiry officer proceeded with enquiry to submit his report holding applicant guilty. It is stated that even in the findings that enquiry officer had observed that the applicant is guilty to the extent of negligence in performing his duties and it has also been observed by him as regards the charge framed under Article-1 which also forms the part of Article of charge framed under chargesheet dated 20.5.92 and for which applicant has already been punished vide order dated 9.3.94 the sums due to the officer as a listed mentioned in the Annexure to be impugned charge sheet, may be recovered from the pay of the applicant if at all they have not yet been paid.

5. Thus, the applicant submits that it is a repetition of charges by order dated 20.5.92 and applicant had been punished so the same cannot be repeated in the new enquiry. Thus, the enquiry is liable to be quashed. Consequently, the order passed on the enquiry proceedings as the same charges are also liable to be quashed.

6. Respondents are contesting the OA. Respondents submitted that there is no provision for supplying the relied upon documents only a list of documents can be supplied and the applicant can be allowed inspection of the documents. Since all the documents had been produced before the applicant he had examined the same, therefore, on the question of non-supply of documents, applicant cannot claim that the proceedings are vitiated.

7. Respondents denied that some of the charges levelled against the applicant in the earlier departmental proceedings are common in the present proceedings. It is also submitted that in the earlier chargesheet there was no charge of embezzlement. Now there are greater number of complaints by other staff whose bills have not been paid by the applicant. It is also stated that there is one Inspector A.K. Aggarwal who figures in both the charges as he was in 7 complainants to whom payment are required to be made as per Article-III of the charge sheet and the said four amounts pertained to three, out of 18 bills figure in Article of charge-I of the subsequent charge sheet dated 7.2.96. Yet it cannot be said that the charges were same in both the charge sheets. As the first charge sheet framed was with regard to non-payment of dues to certain staff members who had come out to complaint, but it was not with regard to embezzlement but the second charge sheet specifically states about the bills and the second charge sheet encompasses greater number of bills, pertaining to bigger number of officers/staff members so it was not the outcome of any complaint.

8. We have heard the learned counsel for the parties and gone through the record.

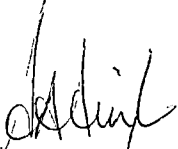
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9. We have compared both the charge sheets issued in the year 1996 and one issued earlier in the year 1992. It appears that some of the charges are common and have not been spelt properly if the same differed with regard to any period or number of complaints and as per the counter affidavit itself there is also overlapping with regard to complaint made by Inspector A.K. Aggarwal for non-payment of his bills. This also figure in both the charge sheets. Thus some of the charges are common and for part of which applicant had already been punished vide earlier order. So it is a fundamental principle of law that no one can be vexed with same charges again and a person who is guilty of a misconduct and has already been awarded punishment cannot be awarded further punishment on the basis of the same allegations/charges. Thus, we are of the considered opinion that the charge sheet issued to the applicant in the year 1996 itself is a defective one and is vitiated as it has a overlapping of charges for which applicant had already been proceeded with. So the same is liable to be quashed. Consequently the order passed on the basis of this chargesheet are also liable to be quashed.

10. Accordingly, we quash the impugned order as well as the charge sheet and remit the case back to the disciplinary authority who may issue a fresh chargesheet to the applicant and shall see to it that the charges for which the applicant had already been punished are not repeated in the charge sheet and thereafter proceedings may be taken against the applicant in accordance with law and judicial instructions on the subject. In case the respondents take a decision to issue a

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fresh chargesheet then the enquiry proceedings should be finalised within a period of 6 months from the date of receipt of a copy of this order.



(S.A. SINGH)
Member (A)



(KULDIP SINGH)
Member (J)

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