

**Central Administrative Tribunal
Madras Bench**

OA/310/00813/2013

Dated the 25th day of February Two Thousand Twenty

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

Raja Climax,
Superintendent of Central Excise,
C-50, SIPCOT Industrial Complex,
Tuticorin-8. .. Applicant
By Advocate **M/s.Akbar Row**

Vs.

1. Union of India rep by the
Secretary,
M/o Finance,
Department of Revenue,
Hudco Vishala Building,
6th Floor, B-Wing, Bhikaji Cama Place,
R.K.Puram, New Delhi 110 066.
2. The Commissioner of Central Excise,
Tractor Road, NGO 'A' Colony,
Tirunelveli 627 007. .. respondents

By Adovacte **Mr.K.Umesh Rao**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The above OA is filed seeking the following relief(s):-

“to call for all the records pertaining to the impugned penalty order passed by the 2nd respondent under file in C.No.11/10A/01/2007 VIG dated 08.5.2007 and confirmed and enhanced by the 1st respondent on appeal, vide order F.N.16012/23/2007 Ad.V, dated 27.4.2012 and to set aside and quash the same with costs; and

to pass further or any other orders as deemed fit in the facts and circumstances of the case and thus render justice.”

2. The case of the applicant in brief is as follows:-

The applicant is a Senior superintendent (Legal), working under the 2nd respondent (R2) at Chennai. On 05.1.2005, R2 had issued a Charge Memo against him under Rule 16 of CCS (CCA) Rules, 1965.

The main allegation against him is that he being the Secretary of All India Federation of Central Excise Gazetted, Executive Officers, Tirunelveli, had sent a written complaint to the Secretary to Government, Department of Revenue, New Delhi alleging that Shri C.Murugan who was holding charge of office of R2 had received an amount of Rs.20,000/- from one P.M.Bhaskaran, Superintendent of Central Excise for transfer and posting at Madurai. The said Murugan (R2) has issued the Charge Memo dt. 05.1.07 (Annexure A1) stating that the applicant had given a complaint against R2, Commissioner, Tirunelveli and holding charge of Madurai Commissionerate alleging taking of an amount of Rs.20,000/- for transfer

without any basis and hence liable for conduct unbecoming of a government servant under CCS (CCA) Rules. The Disciplinary Authority (R2) had himself imposed a punishment of reduction of salary by 3 stages for a period of 1 year as per order dt. 08.5.07 (Annexure A4). The applicant thereupon filed an Appeal to the President of India and the Appellate Authority (AA) after obtaining advise of UPSC had enhanced the penalty as “reduction of pay by one stage for a period of 3 years” as per order dt. 27.4.12 (Annexure A6).

The applicant's case is that the disciplinary proceedings is vitiated by malafides, violation of natural justice, improper inquiry and violation of procedure.

3. The respondents filed reply admitting the issue of Charge Memo and punishments awarded. According to the respondents, the act of the applicant is in contravention of Rule 3A and Rule 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964. He has made false allegations against R2 without any basis. An enquiry was conducted by the Joint Commissioner, Office of the Chief Commissioner of Central Excise, Coimbatore. It was found that there was no basis in the allegations. There is no bar in taking action even if a complaint was made against the DA. The charged officer did not submit his reply within time and he was made *ex parte* and DA proceeded to pass orders. According to the respondents, as this is not a vigilance case, there is no need to take advice of the CVC. The 1st penalty was a major one and the penalty imposed in the Appeal was only a minor penalty. There is no merit in the allegations made.

4. We have heard both sides and perused the pleadings and documents produced.

The main contention raised by the counsel for the applicant is that there has taken place a violation of principles of natural justice. No one should be a judge of his own cause. Here the allegations imputed were made by the charged officer against R2 who is the DA in this case. He himself had imposed the penalty on the charged officer. The respondents ought to have appointed another ad-hoc DA for taking a decision. On the other hand, counsel for the respondents would content that there is no bar in the rules against the DA passing such orders.

5. We have gone through the averments. It is an admitted fact that the applicant has given a complaint against the then R2 Murugan to the Secretary to Government. It is the basis of the Charge Memo issued in this case. The act of the applicant if proved may become a misconduct under the CCS (CCA) Rules. The alleged person (R2) had issued the Charge Memo against the applicant and he himself passed the punishment order against the applicant. It is a principle of jurisprudence that no person shall be a judge of his cause. The Hon'ble Supreme Court has stated the principle succinctly in the case of *Ashok Kumar Yadav & Other v. State of Haryana* [reported in AIR 1987 SC 454] in para 660 as follows:-

“ It is one of the cardinal principle of jurisprudence that no man can be a judge of his own cause and that if there is a reasonable likely hood of bias 'it is in accordance with and common sense that justice is likely to be so biased should be incapacitated from sitting'. The question is not whether the judge is actually biased or in fact decides partially, but whether there is a real likely hood of bias. What is objectionable in such a case is not that the decision is actually tainted with bias but that the circumstances are such as to create a reasonable apprehension in the mind of others that there is likely hood of bias affecting decision.”

The Hon'ble Apex Court has stated that the said principle not only applies to Judges

but also to Administrative Authorities.

6. The R2 ought to have authorised an ad-hoc DA to avoid bias and have a fair dealing in the proceedings. The MHA has clarified this position in the decision taken in G.I., MHA, File No.7/29/61-Ests.(A) (vide page 42 of Swamy's CCS (CCA) Rules 31st Edn. 2015).

7. So, from the above, it can be seen that the entire disciplinary proceedings is vitiated due to violation of procedure and on grounds of violation of natural justice.

8. Accordingly, we find merit in the contentions of the applicant in this case. **The punishment imposed by the DA dt. 08.5.07 and confirmed by AA dt. 27.4.12 is accordingly set aside. The respondents are hereby directed to issue a fresh Charge Memo, conduct an enquiry in an impartial manner following the procedures prescribed giving opportunity to the applicant to defend his case. The said exercise should be completed as expeditiously as possible not exceeding a period of 6 months from the date of receipt of a copy of this order.**

9. OA is disposed off accordingly. No costs.

(T.Jacob)
Member(A)

25.02.2020

(P.Madhavan)
Member(J)

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