

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.
OA/050/00921/2016

Date of CAV : 03.03.2020

Date of order : 01.06.2020

C O R A M

Hon'ble Shri Jayesh V. Bhairavia, Member [Judicial]
Hon'ble Shri Dinesh Sharma, Member [Administrative]



Amar Nath, son of late Alakh Singh, Inspector, Central Excise & Service Tax, Headquarter, Central Revenue Building [Annexe], Bir Chand Patel Path, Patna – 800001 [Bihar].

Applicant.

By advocate : Shri M.P.Dixit

Vs.

1. The Union of India through the Secretary [Revenue], Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chairman, Central Board of Excise & Customs, Ministry of Finance, Government of India, North Block, New Delhi.
3. The Chief Commissioner, Central Excise & Service Tax [Ranchi Zone], Revenue Building, Birchand Patel Path, Patna – 800001 [Bihar].
4. The Commissioner, Central Excise & Service Tax, Revenue Building, Birchand Patel Path, Patna – 800001 [Bihar].
5. The Additional Commissioner [P&V], Central Excise & Service Tax, Revenue Building, Birchand Patel Path, Patna – 800001 [Bihar].

Respondents.

By advocate : Shri H.P.Singh, Sr. SC

O R D E R

Per Jayesh V. Bhairavia , Member [J] : The applicant has filed the present OA seeing the following reliefs : -

“8[1] That your Lordships may graciously be pleased to quash and set aside the impugned order of Punishment dated 23.07.2015 passed by Respondent No.4 as contained in Annexure-A/6 together with order of Appellate Authority dated 10.11.2016 as contained in Annexure-A/8 together

with Inquiry Report dated 04.05.2015 as contained in Annexure-A/4.

8[2] That your Lordships may graciously be pleased to direct/command the Respondents to restore the pay of the Applicant with all consequential benefits including arrears of pay and interest thereon.

8[3] Any other relief or reliefs including the cost of proceeding may be allowed in favour of the applicant with all consequential benefits.”



2. The case of the applicant in brief is that the Commissioner, Central Excise & Service Tax, Patna [the Disciplinary Authority], proposed to hold an inquiry against the applicant, Shri Amarnath, Inspector, who was posted at Customs [P] Division, Motihari under Rule 14 of the Central Civil Services [Classification, Control and Appeal] Rules, 1965. The substance of the imputation of misconduct or misbehaviour in respect of charges as Annexure-I, reads as under : -

“Article-I

Shri Amarnath, Inspector, Central Excise and Service Tax [H], Patna [the then Inspector, Customs [P] Division, Motihari] failed to maintain absolute integrity, devotion to duty and acted as a manner unbecoming of a government servant in as much as he demanded illegal gratification from Sri Anil Kumar Thakur of Raxaul for release of a truck detained on 19.09.2008 by Motihari Customs [P] Division as given in Annexure-II.

Thus, he has contravened the provisions of Rule 3[1][i][ii]&[iii] of CCS [Conduct] Rules, 1964.”

3. The statement of imputation of misconduct or misbehaviour on which action was proposed against Shri Amarnath, Inspector [present applicant] was that –



One Shri Udit Kumar Thakur, DGFC, 1st Floor, Krishna Building, Customs Road, Raxaul, made a complaint dated 22.09.2008 addressed to the Commissioner, Customs [P], Patna levelling allegation of harassment and demand of illegal gratification by the officers of Customs [P], Motihari Division. The complaint also submitted a recorded CD containing alleged conversations between his brother Shri Anil Kumar Thakur and others. It was alleged that S/Shri Lal Bahadur Choudhary, Sepoy and one Inspector of Customs [P] Division, Motihari had demanded illegal gratification of Rs. 75,000/- monthly on 19 and 20.09.2008 and Rs.50,000/- for release of the detained truck no.HR 38J 7707 over his mobile no.9430852895 and tried to negotiate the release of the said truck. Shri Anil Kumar Thakur recorded the conversations between him and Shri Lal Babu, Havaladar and one Inspector of Motihari Customs [P] Division, whom he could not name, on his mobile. The recorded conversations was enclosed with the written complaint dated 22.09.2008.

The Assistant Commissioner, Customs [P] Division, camp at Muzaffarpur, vide his letter dated 22.09.2008 addressed to the Joint Commissioner [Vig.], Customs [H], Patna intimated that the preventive team of Customs Division, Motihari headed by S/Shri B.N.Pandit, Superintendent, S.N.Tiwari & T.N. Pandey, both Inspector and Lal Babu, Hawaldar of Customs [P] Division, Motihari

visited Raxaul to execute a search warrant No.3 dated 16.09.2008 issued against Shri Anil of DGFC, Raxaul in respect of seizure case no.62/Cus/Prev/MTH/08-09 dated 15.09.2008. The Officers were prevented from properly executing Search Warrant by Shri Anil Kumar Thakur, his brother Udit Kumar Thakur and one Md. Noman Alam. As reported they were forcibly locked in a room for about two hours. After being intervened by the officers of Raxaul Customs Office and local police, they were freed. Thereafter, FIRs were lodged by both the parties against each other in Raxaul Police Station.



Thereafter, in order to have an independent inquiry in the matter, the Joint Commissioner [Vig.], Customs Hqrs., Patna entrusted to the Assistant Commissioner, LCS Raxaul vide his letter C.Np.III[17]59-Con/Cus/08/984 dated 24.09.2008, who submitted his reports vide letter C.No.II[8[3]-Confidential/RXL/08/175 dated 22.12.2008 and letter of even No.16 dated 30.01.2009.

The preliminary enquiry report received from the Asstt. Commissioner, LCS, Raxaul reveals that the officers of Motihari Customs [P] Division intercepted a truck bearing No. HR-38J-7707 loaded with scrap and brought to the Customs [P] Division, Motihari on 19.09.2008. The Truck was released. The interception of the said vehicle, the recorded conversation and the incidence dated 20.09.2008 during search operation are all indicative of the intention of the officers. The release of the said vehicle after

holding/detaining the same for almost 10-12 hours without putting the valid reason on record is another strong indication of the malafide intention of the entire team. The entire episode of interception/detention and release of the said vehicle was intimated to the jurisdictional A.C., in writing, only on 29.09.2008, which again appears to be an attempt to cover up the bad doings during the period. The complaint has made the recorded voices as the prime basis of his complaint. Besides Shri Lal Babu Choudhary, there was another voice of an Inspector who was himself addressing as Inspector of Motihari Customs in the track no.6 of the recorded CD without disclosing his name, which needs identification.



The CD along with sample voice of Sri Amarnath, Inspector was sent to CFSL, Chandigarh for forensic test. Report of CFSL, Chandigarh dated 29.05.2012 reveals that the questioned voice Q/2 [recorded voice of Amarnath] have been analysed and compared with the specimen voices of Shri Amarnath [S/2] and it was found that – “the questioned voice Q/2 is the voice of same person i.e. Shri Amarnath [S/2] with high degree of probability.”

Shri Amarnath Inspector, Custmos [P] Division, Motihari had prima-facie negotiated with Shri Anil Kumar Thakur, as is apparent from hearing the impugned CD submitted by the complainant. Out of eight tracks of voice, in the impugned CD submitted by the complainant, track no.6 is of a person claiming himself to be an



Inspector, circumstantial evidences also point towards Shri Amarnath, Inspector as his name figures in the Inquiry Report dated 29.10.2008 of the Additional Collector cum Officer-in-Charge, Flying Squad, Vigilance, Motihari, Bihar which in turn was forwarded by CBI, ACB, Patna to the CVO [CBEC], and received this office, vide Chief Commissioner, CE&ST, RZP, Patna letter dated 04.06.2010. In the enquiry report of the Additional Collector cum Officer-in-Charge, it has been opined that on listening the enclosed CD of the complainant, it appeared that the conversation has taken place between the complainant and two officers of Customs namely Sri Amarnath, Inspector and Shri Lal Babu Choudhary, Havildar or Sepoy regarding demand of illegal gratification.

Thus, it appears from the aforesaid facts/evidences that Shri Amarnath, Inspector has deliberately tried to negotiate with the complainant and demanded illegal gratification for his personal gain by flouting laid down provisions/procedures in lieu of release of a detained truck.

Thus, Shri Amarnath, Inspector has failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant and has contravened the provisions of Rule 3[1][i][ii]&[iii] of CCS [Conduct] Rules, 1964.

4. In response to the aforesaid alleged charges, the applicant submitted his detailed representation/defence, vide Annexure-A/3 dated 11.07.2014, to Shri V.C. Gupta [Enquiry Officer], Additional

Commissioner, Central Excise and Service Tax, Patna and requested him to drop the charges levelled against him as the charges are not proved.

However, the Enquiry Officer considering the entire case as also the representation/defence brief submitted by the applicant and in his report it is observed as under –



“The CD along with sample voice of Sri Amarnath, Inspector was sent to CFSL, Chandigarh for forensic test. Report of CFSL, Chandigarh dated 29.05.2012 reveals that the questioned voice Q/2 [recorded voice of Amarnath] have been analysed and compared with the specimen voices of Shri Amarnath [S/2] and it was found that –

“the questioned voice Q/2 is the voice of same person i.e. Shri Amarnath [S/2] with high degree of probability.”

There was denial by the CO from the alleged conversation of demand of illegal gratification & threatening but the evidence as discussed above and non-production of any documentary or other corroborative evidences to refute the allegation by CO only led to conclusion about truth in veracity & genuinity of complaint. Through tone& tenor of conversation narrated in complaint may be exaggeration, but happening of incidence for demand of illegal gratification from Shri Anil Kumar Thakur and threatening him did stand established.

Thus charge of failure to maintain absolute integrity, devotion to duty & acting in manner unbecoming of a government servant stands proved.”

5. Thereafter, the applicant was served with the enquiry report and in response thereto, he submitted his reply/representation dated 25.05.2015 [Annexure-A/5] to the Commissioner, Central Excise & Service Tax, Patna stating therein that the findings of the Enquiry Officer is unreasoned and illogical to the extent that it has been made without taking into consideration and without discussion of any of the

submission made by the C.O. in his defence brief. Therefore, it is submitted that the Disciplinary Authority is left with onerous task to examine the enquiry report vis-a-vis the defence brief submitted by him as well as the submission made in the representation. He also prayed for an opportunity of personal hearing.



6. The Disciplinary Authority considering all aspects of the case as also his representation came to the conclusion that the applicant has failed to maintain absolute integrity and also failed to maintain devotion to duty and acted in a manner unbecoming of a Govt. servant and has contravened the provisions of Rule 3[1][i][ii]&[iii] of CCS [Conduct] Rules, 1964 and imposed penalty upon the applicant, Shri Amarnath, Inspector reducing his pay by two stages from Rs.19,370/- to Rs.17,990/- in the time scale of pay of Rs.9300-34800 for a period of two years with effect from 24.07.2015 without cumulative effect. It is further directed that Shri Amarnath, Inspector, will earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay and not adversely affecting his pension.

7. The applicant thereafter, filed his appeal dated 03.09.2015 [Annexure-A/7] to the Chief Commissioner [Appellate Authority], Central Excise & Service Tax, Ranchi Zone, Patna, which has been disposed of, vide Annexure-A/8 dated 10.11.2016 upholding the order in original dated 23rd July, 2015 passed by the Disciplinary Authority. Accordingly the appeal was rejected. However, the said Appellate authority, vide

communication dated 10.11.2016 intimating the delinquent that the revision petition against this order in appeal lies with the Hon'ble President within a period of six months from the date of which the order-in-appeal was communicated to him.

8. The applicant contended that the impugned orders passed by the Disciplinary Authority and the Appellate Authority are totally bad in law, unjust and non-application of mind and suffer from infirmities and as such, it is in violation of Article 14 and 311 of the Constitution of India.



The applicant relied upon the judgement rendered by Hon'ble Patna High Court based on the judgement of Hon'ble Apex Court reported in 2000 [3] PLJR page 10 wherein it has been held that – “It cannot be accepted that since the charges are based upon the documents so no witness needs to be examined to bring home the charges. The enquiry report in such cases loses all its importance and the punishment imposed cannot be sustained.”

It is further contended by the Id. Counsel for the applicant the entire action of the Respondents No.3 and 4 appears to be taken at the behest of and dictate of Vigilance which shows their non application of mind. The report of enquiry officer [Annexure-A/4] is based on perverse findings and smacks with various illegalities.

The vary complain which is the base of the entire proceeding, though it is part of the charge sheet, the same has not been supplied to the applicant. The forensic report in which the high probability has been suspected, has also not been tested or duly proved by the Enquiry Officer

through established rules for examining/testing the voice/CD. Thus, the impugned orders and the proceedings and based on that impugned order of punishment is totally bad in law.

9. On the other hand, the respondents have contested the case by filing their written statement. According to them, the impugned orders have been passed by the competent authority giving cogent reasons for their conclusion whereby it is concluded that the charges levelled against the delinquent is proved. The points raised by the applicant has been considered and the same has not been accepted by giving reasons to it.

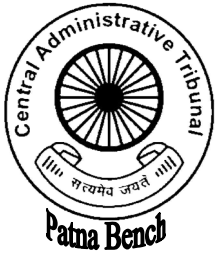


Hence, there is no violation of principle of natural justice, therefore the impugned orders do not suffer from any illegality or impropriety, as the same have been passed after complying with the provisions as contained in the Central Civil Services [Classification, Control & Appeal] Rules, 1965 and also after following the principles of natural justice. The impugned orders have been passed by the competent authority, therefore, no interference is called for by this Tribunal.

10. The Id. Sr. SC for the respondents further submitted that the duly constituted Departmental Enquiry was conducted after appointed the Inquiry Officer. The applicant had submitted his defence brief denying the allegations, hence the enquiry proceeded further which resulted in submission of the enquiry report. The Enquiry Officer has examined and discussed all the submissions made by the CO [the present applicant] and submitted his report. There was enough evidence on record to prove his misconduct and the Inquiry Officer has come to the conclusion that the

charges levelled against the applicant as established. In view of the submissions, the Id. Sr. SC submitted that it is crystal clear that the orders under challenge do not suffer from any illegality or procedural impropriety hence the OA deserves to be dismissed.

11. The learned Sr. SC for the respondents further contended that the voice verification test has been done by the Central Forensic Science Laboratory, Chandigarh, which is a reputed governmental agency, and their report reveals that the questioned voice [recorded voice of the applicant] has been analysed and compared with the specimen voice sample of the applicant and it was found that the questioned voice is the voice of same person, i.e. Shri Amarnath, the applicant with 'high degree of probability'. Further, the voice in the CD supplied by the complainant has been compared with the sample voice and CFSL had in their report clearly mentioned that "no discontinuity and editing/tampering could be detected in the audio files". The CFSL has also given the details of the mode and manner applied in their analysis and comparison of the voice. In view of the confirmation of the voice report by the CFSL, the points raised in this regard by the applicant is not tenable.



The Id. Sr SC vehemently further submitted that in the departmental enquiry/proceeding, the standard of proof required in a departmental enquiry differs materially from the standard of proof required in a criminal trial. The Hon'ble Supreme Court has also held that the standard of proof required in a disciplinary case is that of preponderance of probability and not proof beyond reasonable doubt.



12. Shri H.P. Singh, Id. Senior Standing Counsel appearing for the respondents vehemently and strenuously contended that the applicant has not exhausted all the remedies available under service laws, since he has not filed revision petition against the impugned orders as provided under the provisions of Rule 29 of the Central Civil Services [Classification, Control & Appeal] Rules, 1965. Rule 29 of the aforesaid Rules stipulates that a government servant being aggrieved with the orders of the Appellate Authority can file a Revision Application before the competent authority. In this regard, vide impugned orders 10.11.2016 while rejecting the appeal of the applicant, the Appellate Authority duly informed the applicant that revision petition against the order in appeal lies with the Hon'ble President and he may file the same within a period of six months on communication of the order in appeal to him. However, he failed to availed the said statutory remedy and without assigning any reason to it, he has filed the present OA, therefore, it cannot be entertained for want of non exhausting statutory remedy. The Id. Sr. SC submitted that since, the applicant has not filed the revision petition before the appropriate authority; therefore, the instant OA is liable to be dismissed on this ground alone.

13. The applicant has filed a rejoinder to the written statement and reiterated his submissions. Additionally it is contended that the written statement filed by the respondents is misleading, ill-motivated and baseless, since the points raised by the applicant in his appeal as well as in his defence statement has not been considered by the Disciplinary



Authority and the Appellate Authority. The applicant submitted that the said forensic report clearly shows that the allegation against the applicant has not been conclusively proved but the same has been stated to be proved solely on high probability. Though there is no allegation of threatening of witness stated in the charged sheet whereas in the report the Enquiry Officer has stated that “threatening him did stand established”. The said findings of the Enquiry Officer is beyond to the charge memorandum. There is violation of principle of natural justice. The two prosecution witness have been named and some documents including the complaint along with CD submitted by Udit Kumar Thakur, but the said two prosecution witnesses as well as the author of the CFSL report namely Sri D.P. Gangwar have not been examined in the enquiry and also the applicant has not been given any opportunity to cross examine. Thus, the impugned order and the proceedings suffer from infirmity of violation of principle of natural justice.

14. Heard the learned counsel for the parties and perused the materials available on record.

15. It is noticed that the Commissioner, Central Excise & Service Tax, Patna [the Disciplinary Authority], proposed to hold an inquiry against the applicant, Shri Amarnath, Inspector, who was posted at Customs [P] Division, Motihari under Rule 14 of the Central Civil Services [Classification, Control and Appeal] Rules, 1965. Accordingly, charge-memorandum was issued along with statement of imputation. On denial of charges, disciplinary proceeding was initiated against the applicant. It

is also noticed that the applicant delinquent participated in the departmental enquiry with respect to charge memorandum dated 07.08.2013. On conclusion of said enquiry the Enquiry Officer submitted his report dated 20.08.2014 therein he has recorded his findings that the charges levelled against the applicant has been established and stands proved.



It is noticed that the Disciplinary Authority after considering the Enquiry Officer's report and being agreed with the findings of the IO as also the defence brief/representation filed by the applicant, vide impugned order dated 23.07.2015 [Annexure-A/6], imposed penalty upon the applicant by reducing his pay by two stages from Rs.19,370/- to Rs.17,990/- in the time scale of pay of Rs.9300-34800 for a period of two years with effect from 24.07.2015 without cumulative effect with a further direction that Shri Amarnath, Inspector, will earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will not have the effect of postponing his future increments of pay and not adversely affecting his pension.

Against the said punishment order, the statutory appeal filed by the applicant has been rejected after considering the grounds raised by the applicant vide order dated 10.11.2016 [Annexure-A/8], stating therein that the revision petition against this order in appeal lies with the Hon'ble President within a period of six months from the date of which the order-in-appeal was communicated to him.

16. The law relating to judicial review by the Tribunal in the departmental enquiries has been laid down by the Hon'ble Supreme in the case of B.C.Chaturvedi vs. UOI & Others (AIR 1996 SC 484) at para 12 and 13, the Hon'ble Supreme Court observed as under:-



"12. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in eye of the Court. When an inquiry is conducted on charges of a misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a 4 competent officer or whether rules of natural justice be complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal on its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at the own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry of where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a disciplinary inquiry the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or

reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal.

In Union of India v. H. C. Goel (1964) 4 SCR 718 : (AIR 1964 SC 364), this Court held at page 728 (of SCR): (at p 369 of AIR), that if the conclusion, upon consideration of the evidence, reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued”.



[3] In the case of Union of India and Others Vs. P.Gunasekaran (2015(2) SCC 610), the Hon’ble Supreme Court has observed as under:-

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary 5 proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;*
- b. the enquiry is held according to the procedure prescribed in that behalf;*
- c. there is violation of the principles of natural justice in conducting the proceedings;*
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;*
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous consideration;*
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;*
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;*
- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;*

i. the finding of fact is based on no evidence."

19. Considering the aforesaid dictum of Hon'ble Apex Court in judicial review of the decision of the disciplinary authority as also submission made by the parties, we are of the considered opinion that due opportunity has been granted by the disciplinary authority to the delinquent to defend his case. As such there is no procedural lapse in decision making process noticed in the present case. The applicant filed his statutory appeal before the appellate authority which was considered and rejected. At the same time it is also noticed that the applicant failed to rebut the submissions of the respondents with respect to non-availing departmental remedy i.e. filing of revision application against the order passed by the Appellate Authority.



20. Undisputedly in the present case the applicant has not filed the revision petition under the statutory provision, i.e. Rule 29 of CCS [CCA] Rules, 1965. Section 20 of the A.T. Act puts an embargo on this Tribunal that the Tribunal shall not ordinarily interfere unless the applicant had availed all the remedies available to him under the service Rules as to redressal of grievances. The present case cannot be termed to be one where an exception could be made. Once a right to file the revision petition is available under Rule 29 of CCS [CCA] Rules, 1965, and the said remedy has not been exhausted by the applicant for any justifiable reason. Therefore, it is not opened for the applicant to state that he has exhausted all the remedies before filing the present OA.

In view of aforesaid discussions, we dispose of this OA by granting liberty to the applicant to file statutory revision application under the provision of Rule 29 of CCS [CCA] Rules, 1965 within a period of 30 days months from the date of receipt of certified copy of this order. The Revisional Authority on receipt of revision petition of the applicant shall decide the same within a period of two months in accordance with rules and materials on record.



21. In view of the aforesaid discussions, the OA stands disposed of. No costs.

Sd/-

[Dinesh Sharma]M[A]

Sd/-

[Jayesh V. Bhairavia]M[J]

mps.