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**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.No.597/2011

Date of decision : 06th February, 2020.

**Coram: Dr.Bhagwan Sahai, Member (Administrative)
R.N. Singh, Member (Judicial).**

SURINDER KUMAR VIRDI

The then Deputy Commissioner,
presently posted as
Joint commissioner of Customs and
Central Excise, ICE House, EDC Complex,
Plot No.6, Patto Plaza, Panaji, Goa-403001.
Residing at:D-3-A, Goa State Government
Quarters, Near St. Intez Church,
Panjim Goa.

... Applicant.

(By Advocate Shri R. G. Walia).

Versus

1. Union of India-through the Secretary
(Revenue), Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi-110001.
2. The Chairman,
Central Board of Excise and Customs,
North Block, New Delhi-110001.
3. The Chief Commissioner of Customs
and Central Exise, 41/A, ICE House,
Sassoon Road, Pune-411 001.

... Respondents.

(By Advocate A. M. Sethna).

O R D E R (O R A L)
Per : R. N. SINGH, Member (JUDICIAL)

Present.

1. Shri R. G. Walia, learned counsel for the applicant.

2. Shri A. M. Sethna, learned counsel for the respondents.

3. Heard the learned counsels for the parties.

4. The applicant who has been working as Deputy Commissioner under the respondents has approached this Tribunal by way of the present OA, filed under Section 19 of the Administrative Tribunals Act, 1985 to challenge the charge-sheet dated 13.04.2005 under Rule 14 of the CCS (CCA) Rules, 1965 and the order of penalty, issued vide order No.21/2011 dated 27.05.2011 (Annexure A-2).

5. In the impugned memorandum dated 13.04.2005, the statement of Article of charge against the applicant is as under;

"Shri Surendra Kumar Virdi, while functioning as Deputy Commissioner of Central Excise, Vapi-II, Vapi, committed gross misconduct by demanding an amount of Rs.4 lakhs as an illegal gratification from Shri V. G. Prabhu, Partner of M/s. Alfa Packaging, as a motive or reward for

granting temporary permission for extension of Bonded Store Room space in his factory premises.

The aforesaid act on the part of the Shri Surendra Kumar Virdi, the then Deputy Commissioner of Central Excise, Vapi-II, Vapi, shows that while functioning as a Public servant he did not maintain absolute integrity and acted in a manner which is unbecoming of a public servant and thereby contravened the provisions of Rule 3(1)(i) & (iii) of CS (Conduct) Rules, 1964."

6. In pursuance of the aforesaid charge-memorandum the Disciplinary Authority has appointed I.O. and P.O. The Inquiry Officer vide his report dated 27.11.2016 (Annexure A-4) reported that "In view of the facts and circumstances of the case, the charges levelled against the officer, under Charge-Memorandum No.14/2005 dated 13.04.2005 are devoid of any substance and there is no corroborative evidence strong enough to prove the charges". Besides other grounds the learned counsel for the applicant argues that without issuing any dissenting note and a tentative ground therefor, the Disciplinary Authority has passed the order of penalty. In the aforesaid facts and background the applicant has prayed for the following

reliefs in the present OA:-

"(a) This Honourable Tribunal may be graciously pleased to call for the records of the case from the Respondents and after examining the same, quash and set aside the impugned charge sheet dated 13.04.2005 and penalty order dated 27.05.2011 with all consequential benefits.

(b) This Honourable Tribunal be leased to direct the respondents to open the sealed cover in respect of DPC already held and direct the Respondents to promote the Applicant to the post of Additional Commissioner Customs and Central Excise with all consequential benefits.

(c) Costs of this Application be provided for.

(d) Any other and further order as this Honourable Tribunal deems fit in the nature and circumstances of the case be passed."

7. In response to the notice received from the Tribunal, the respondents have filed reply and have opposed, disputed and denied the claim made by the applicant. The applicant has filed rejoinder and he has reiterated submissions made in the OA.

8. We have heard the learned counsels for the parties and we have also perused the pleadings on record carefully. It is admitted case that after receipt of the inquiry report,

referred to above vide which the Inquiry Officer has given a finding that the charges against the applicant are devoid of any merit and substance, the Disciplinary Authority has not issued any dissenting note or any tentative opinion against such findings of the Inquiry Officer, however, he has chosen to pass impugned order of penalty dated 27.05.2011 (Annexure A-2) imposing the penalty of reduction to a lower stage in the time scale of pay by one stage till his retirement on attaining the age of superannuation i.e. 28.02.2013 with further directions that the applicant will not earn increment of pay during the period of such reduction with cumulative effect.

9. The applicant has challenged the aforesaid charge-memorandum as well as the order of penalty on various grounds including the ground that imposition of the penalty by the Disciplinary Authority without giving a tentative dissenting note and inviting the representation of the applicant against such dissent the punishment order is vitiated in the eyes of law.

10. In this regard, the learned counsel for

the applicant places reliance upon the law laid down by the Hon'ble Apex Court in Punjab National Bank Vs. Kunj Bihari Mishra, reported in 1998 (7) SCC 84, para 19 of which reads as under:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

11. we have perused the pleadings on record and have considered the submissions made on behalf of the parties carefully. We are of the considered view that in view of the facts noted above and the law laid down by the Hon'ble Apex Court in Kunj Bihari Mishra (supra) the impugned

order of penalty dated 27.05.2011 (Annexure A-3) is not tenable in the eyes of law. Accordingly, the same is quashed and set aside. Other grounds, if any, available to the applicant are left open.

12. The applicant is held to be entitled for all the consequential benefits in view of the aforesaid. However, the respondents will be at liberty to take the legal recourse, if so decided in accordance with the relevant rules and law on the subject.

13. The OA is disposed of in the aforesaid terms.

14. No order as to costs.

(R. N. Singh)
Member (J)

(Dr. Bhagwan Sahai)
Member (A)

V.

JD
25/02/2020

