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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA 2457/2001

New Delhi this the 23rd day of August, 2002
Hon'ble Mr. Kuldip Singh, Member (J)
Hon'ble Mr. M.P. Singh, Member (A)

Vimal Kumar Ex. Superintendent
Central Excise and Customs
Commissionerate, Meerut-II,,
R/o S.I./61, Shastri Nagar,
Ghaziabad.

...Applicant

Shri R. Venkataswamy, Sr. Counsel with
By Advocate: Shri M.K. Singh, Counsel

Versus

1. Union of India through
The Deputy Secretary,
Ministry of Finance,
Department of Revenue,
CBEC (AD.V)
Jeevan Deep Building,
Parliament Street,
New Delhi.
2. The Commissioner,
Central Excise, Meerut-I,
Mangal Pandey Nagar,
Meerut,
Uttar Pradesh.

...Respondents

By Advocate: Shri H.K. Gangwani.

ORDER (ORAL)

Hon'ble Mr. Kuldip Singh, Member (J)

The applicant in this OA has impugned order Annexure A-1
vide which his services has been terminated under summary procedure
after dispensing with regular enquiry under CCS (CCA) Rules, 1965.
2. The facts in brief are that the applicant was working as
Superintendent of Central Excise at Meerut. He was also elected
as General Secretary of All India Federation of Central
Excise Gazetted Executive Officers, Meerut since 1993 which is
alleged to duly affiliated to All India Federation of Central
Excise Gazetted Executive Officers. It is further submitted that

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due to successful organisational activities of the federation against the disparities created on account of 5th Pay Commission, the authorities of North Zone including the Chief Commissioner of Kanpur were prejudice against the office bearers of the Association since the federations were highlighting their demands to the superior authorities over the head of respondent No.2 which gave a reason to respondent No.2 to get annoyed and respondent No.2 had taken strong exception for taking a lead in the protest for this purpose.

3. Since the colleagues of the applicant who were also members of the federation were being victimised so the applicant being General Secretary of the Association took up their cause but respondent No.2 had unfortunately taken up a personal attack upon him in order to press the activities of the association respondent No.2 wanted to teach a lesson to the applicant, designed a grand plan to falsely implicate the applicant in number of false and frivolous cases and also planned to get rid of the applicant from service by adopting such method as would not exposed his said designed by respondent No.2 and it is in this back ground the impugned order has been issued.

4. In the grounds to challenge the same the authorities had invoked reasons for initiating Article 311(2)(b) in the ordinary circumstances but according to the judgment of the Hon'ble Supreme Court this provision cannot be invoked in the ordinary circumstances. No sound reason has been given to invoke the provisions of Article 311(2)(b).

5. It is further stated that enquiry against the Government servant is a constitutional right of the Govt. servant which should not be denied and before denying the same, the Government must ensure that the conduct of the concerned Government servant is such to justify the penalty.

6. It is further submitted that the provisions of Article 311 (2)(b) are not to be resorted to avoid the enquiry or because of ulterior motive and in this case it is submitted

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that respondent No.1 had called for the file pertaining to the case of applicant from respondent No.2 and the same was sent to the respondent No.1 which was retained for more than a month and thereafter after repeated reminders which clearly shows that the reasons have been subsequently fabricated. Thus it is stated that the order of dismissal has been passed without providing any opportunity of hearing to the applicant.

7. It is also submitted that one of the reasons recorded for dispensing of the enquiry was probably the witnesses against the applicant would not be available because in another complaint case before the C.M. Meerut wherein 4 Class I officers have also tendered their witnesses against the applicant, so the witnesses could have appeared before the Inquiry Officer but it is the respondents who did not want to conduct the enquiry but wanted to avoid the same so that the applicant should not be dismissed from service without affording any enquiry.

8. OA is being contested by the respondents. The respondents submitted that the order passed by the disciplinary authority as well as by the appellate authority are quite legal and valid being the disciplinary and appellate authorities respectively.

9. It is further submitted that the Principal Bench does not have the jurisdiction.

10. The respondents submitted that the agitational programme adopted by the Association with regard to 5th Pay Commission's recommendations has no relevance with the charges levelled in the disciplinary authority's order dated 1.3.2001 since it was an All India issues/demand of the staff Associations. It is merely an attempt of the applicant to divert the attention of the Hon'ble Court from the conduct of the applicant which led to his dismissal from service. The allegation with regard to victimisation ~~of~~ ⁱⁿ the members of the association and colleagues



of the applicant has also been denied. It is denied that could not have the department resorted to the provisions of Article 311 (2)(b).

The department was justified in invoking the provisions of Article 311(2)(b) as per the prevalent circumstances since it was not practicable to hold full fledged enquiry which would have deteriorated the situation further.

11. We have heard the learned counsel for the parties and gone through the records of the case.

12. The short question in this case is whether the authorities while passing the impugned order of punishment under Article 311(2)(b) particularly dispensing with the enquiry is justified or not. The disciplinary authority while assigning the reasons why a normal enquiry under Rule 14 is not possible, has stated as under:-

"Why a normal inquiry under Rule 14 is not possible

Shri Vimal Kumar has created an atmosphere of violence and general indiscipline, has propagated insubordination and has totally neglected his supervisory role as a gazetted officer. He has created conditions to threaten and intimidate the witnesses who are likely to depose against him with fear of reprisal. The witnesses are likely to be prevented by Shri Vimal Kumar from giving evidence against him.

It is also apprehended that if prompt action is not taken against Shri Vimal Kumar, the situation may worsen and ultimately become uncontrollable. This would jeopardise the interest of state in as much as the revenue collection which is the most important activity of state will be adversely effected.

In view of the above facts and circumstances, the undersigned is of the considered opinion that it would not be reasonably practicable to hold the enquiry as envisaged under Rule 14 of CSS (CCA) Rules, 1965 and it is a fit case for invoking clause (b) of second proviso to Article 311 (2) of the Constitution of India read with Rule 19(ii) of CSS (CCA) Rules, 1965".

13. The perusal of the above reasons go to show that the disciplinary authority had first taken up the ground that the applicant was intimidating the witnesses who are likely to

depose against him with fear of reprisal. Secondly it will effect revenue collection. So for these two grounds, the disciplinary authority had held that the normal enquiry under Rule 14 is not possible. So the next question is whether it can stand the test of judicial scrutiny as per the law laid down by the Hon'ble Supreme Court in this respect.

14. Admittedly the applicant was a gazetted officer working under the Excise Department. He was an officer bearer of the Federation of Central Excise Gazetted Executive Officers who were agitating over certain demands of the employees as ^{was} indicative from the brief facts of the case as given in the impugned order itself and since he had given a call for agitation and strike during the period when the Central Budget with certain statutory functions were required to be performed by the applicant and is stated to have prevented the other officers from performing the sovereign functions of the State. So it is to be seen whether ⁱⁿ such like circumstances can it be said that the applicant is such a powerful man ^{nowhere} who ~~had~~ intimidated the witnesses who were likely to appear against him and depose against him in the enquiry.

15. Before invoking the provisions of Article 311(2)(b) the respondents have to satisfy from the material placed before him that it is not reasonably practicable to hold a departmental enquiry. The decision to do so cannot rest solely on the ipse dixit of the concerned authority. It is incumbent on those who support the order to show that the satisfaction is based on certain objective facts and ^{is} not the outcome of whim or caprice. There must be independent material to justify the dispensing with the inquiry as envisaged by Article 311 (2). It was so held in Jaswant Vs. State of Punjab, 1991 (1) SCC 362 and the ruling was relied upon by the department itself. The fact that an individual would intimidate the witnesses is also based on surmises and conjectures and in this case merely because the applicant had written certain letters using threatening and derogatory language and caused aspersions on the senior officers that does not mean that the applicant would be

using his muscle power to intimidate the witness to depose against him. So the reasons recorded by the disciplinary authority do not ex facie show that it was not reasonably practicable to hold the disciplinary enquiry. The applicant who was working as a gazetted officer could not be expected to use such a muscle power to intimidate the witnesses who were likely to depose against him. If at all he has written letters to higher authorities casting aspersions on senior officers that could not be the best evidence that could be used against the applicant in the shape of documentary evidence itself and no amount of intimidation could have worked to produce the documentary evidence before the Inquiry Officer by the department.

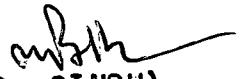
15. The appellate authority had also endorsed the view taken by the disciplinary authority when the appellate authority observed that the applicant had created an atmosphere of violence, exhibit gross indiscipline and propagate insubordination but from that no conclusion can be drawn against him, that the applicant would have intimidated the witnesses to depose against him.

16. It is also pleaded that the respondents had lodged an FIR against the applicant wherein about 12 subordinate officers of the respondents have tendered their witnesses against the applicant so there is no question of exercising intimidation or preventing the witnesses to depose against the applicant.

17. From the facts on record it appears that the disciplinary authority had passed the order in a hurried manner ~~immediately~~ and the disciplinary authority was more influenced by the intemperate language used by the applicant in his correspondence addressed to the higher officers wherein he had cast aspersions and mal practices of some of the officers in the department that can also be a good ground for holding the applicant guilty for

acting in a manner unbecoming of a Government servant but it is certainly not a good ground to arrive at a conclusion that the applicant would intimidate the witnesses and would prevent to depose against him which may justify dispensing with the enquiry so for these reasons we are of the considered opinion that the order passed by the disciplinary authority as well as by the appellate authority cannot stand and it cannot be held that it was not reasonably practicable to hold the enquiry against the applicant. So both these orders have to be quashed.

18. Accordingly the OA is allowed. The orders passed by the appellate authority as well as passed by the disciplinary authority are quashed and set aside. Respondents are directed to reinstate the applicant in service forthwith. However, the department may conduct the enquiry against the applicant in accordance with the CCS (CCA) Rules, law on the subject as well as ^{fees in} instructions. No costs.


(M.P. SINGH)
MEMBER (A)


(KULDIP SINGH)
MEMBER (J)

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