

Central Administrative Tribunal
Principal Bench: New Delhi

O.A. No. 2599/2001

This the 16th day of July, 2002

(10)

Hon'ble Shri V.K. Majotra, Member (A)
Hon'ble Shri Kuldip Singh, Member (J)

R.C. Gupta,
S/o late Kisori Lal
Ex. Asstt. Sales Tax Officer,
Govt. of NCT of Delhi,
R/o 1256, Gulabi Bagh,
Delhi-110007.

(None Present)

-Applicant

Versus

1. Lt. Governor, Delhi
Through Chief Secretary,
Govt of NCT of Delhi
Delhi Secretariat,
I.P. Estate,
New Delhi-110002.
2. Director of Vigilance,
Govt. of NCT of Delhi,
Old Secretariat, Delhi-52
3. Commissioner,
Sales Tax Deptt.,
Vikrikar Bhawan,
I.P. Estate,
New Delhi.

-Respondents

(By Advocate: Shri Mohit Madan, proxy for
Mrs. Avnish Ahlawat)

ORDER (Oral)

Hon'ble Shri Kuldip Singh, Member (J)

Since no-one has appeared for the applicant so we have proceeded to dispose of this case in terms of Rule-15 of CAT (Procedure) Rules, 1987 as the case has been coming up on the second occasion after the admission.

2. Applicant in this case has challenged the impugned order dated 13.12.2000 vide which the services

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of the applicant had been terminated and he has been imposed a penalty of dismissal from service.

3. The facts, in brief, are that the applicant at the relevant time was working as ASTO and had issued 44 ST-1 forms and various other forms. The applicant was issued charge sheet dated 15.3.99 wherein it was alleged that while functioning as ASTO Ward-51, the applicant committed misconduct inasmuch as he had issued 44 ST-1 forms and 20 ST-35 forms to M/s Punja Sales & Suppliers, who was also granted registration by him and had also allowed various diversified items for resale without having any check over the nefarious activities of the dealer. The dealer caused a heavy loss of revenue to the government and this itself proves that active connivance of the applicant was enjoyed by the aforesaid dealer. Another charge sheet was issued on 20.4.99 which also alleged that while functioning as ASTO Ward-51, applicant committed misconduct inasmuch as he had granted registration to M/s Northern Sales Corporation, T-510-C/37 B, Baljit Nagar, New Delhi without securing any registration enquiry through his lower functionaries and also subsequently allowed diversified items for resale without any verification of the transactions thereof through his lower functionaries. He had also issued 80 ST-1 forms, 116 ST-35 forms, 24 'F' forms and 5 'C' forms to this dealer in quick successions without ensuring any safeguard of Government revenue involved therein and enjoying the active connivance of the said officer the dealer succeeded to cause the loss of revenue to the Government of over Rs. 2.58 crores.

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Thus, applicant had shown negligence in the discharge of his duties as Revenue Officer and acted in a manner which is unbecoming of a Govt. servant and violated the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

4. There is another charge sheet dated 18.6.99 which also contains a similar allegation that while functioning as ASTO Ward-51, applicant committed misconduct inasmuch as he had issued 5 ST-I forms 112 ST-35 forms to M/S New Bhawani Sales Agency, 68 ST-I forms, 94 ST-35 forms to M/s Super Stars Enterprises and 126 ST-I forms 197 ST-35 forms to M/s New Industrial Traders without ensuring any safeguard of Government revenue involved therein. In addition to its M/s Super Star Enterprises were also granted registration by him while M/s New Industrial Traders had been shifting from one place to another very frequently and as such the activities of these dealers were also required to be checked from time to time in order to avert any misutilisation of the aforesaid statutory forms. He had also allowed various diversified items for resale to M/s New Bhawani Sales Agency and thereby enlarged the area of nefarious activities of the said dealer. On assessments additional demands of Rs. 79,69,811/- against M/s New Bhawani Sales Agency of Rs. 7,57,94,048/- against M/s New Industrial Traders and of Rs. 1,25,98,150/- against M/s. Super Star Enterprises were created and all these demands remained unsatisfied and are incurring interest thereon.

Thus, applicant had shown negligence and dereliction to duty by issuing statutory forms to the above dealers and

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thereby failed to maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Govt. servant and contravened the provisions of Rule 3 of CCS (Conduct) Rules, 1964.

5. The Statement of Article of Charge framed against the applicant shows that while functioning as ASTO in Ward-51 applicant committed misconduct inasmuch as after granting registration to M/s. Prasad Impex, T-446/3, West Patel Nagar, New Delhi. He had issued 48 ST-I forms and 77 ST-35 forms to the said dealer without ensuring any safeguard of Government revenue involved therein and thus siphoned a loss of over Rs.1.88 crores to the Govt. revenue by allowing the dealer to make concessional purchases on the strength of those forms.

Thus, applicant had shown negligence and dereliction to duty by issuing statutory forms to the aforesaid dealer that caused heavy loss to the Revenue and failed to maintain absolute integrity and thereby acted in a manner which is unbecoming of a Govt. servant and his conduct was in violation of Rule 3 of CCS (Conduct) Rules, 1964.

6. All these charge sheets show that applicant while working as ASTO had issued various ST forms and diversified items for resale. A regular enquiry was held against him. The enquiry officer was found that the applicant had committed misconduct and he was held guilty. Thereafter the impugned order dismissing the applicant from service was passed by the disciplinary authority, i.e., the Chief Secretary, Delhi.

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7. The applicant had also filed an appeal, but before the appeal was decided, the applicant had approached the court through this OA.

8. The applicant has relied upon a case entitled as **Junjarrao Bhikaji Nagarkar Vs. Union of India & Ors.** 1996 (6) Supreme Today 523 wherein it was observed that the wrong interpretation of law cannot be a ground of misconduct. So relying upon the same, the applicant has stated that while he was working as quasi judicial officer, he has passed the orders only in judicial capacity. So even if he has wrongly misinterpreted the law, that should not be taken as a misconduct and should not have been proceeded in a departmental enquiry.

9. Respondents have stated that the act of the applicant in issuing these ST forms and other misconduct regarding diversified of goods was deliberate on his part and it was not merely an exercise of quasi judicial functions and such type of act are not protected and the applicant could be proceeded in a departmental enquiry under CCS Rules. Respondents have also relied upon a recent judgment of this Principal Bench in OA 2463/2001 and other connected matters wherein a similar question was involved and the officers of the similar status were also involved. This Tribunal after referring various judgments including the judgment relied upon by the applicant found that applicants in those cases could be proceeded under the provisions of disciplinary action. A perusal of the judgment relied upon by the applicant also shows that the Hon'ble Supreme Court had also observed



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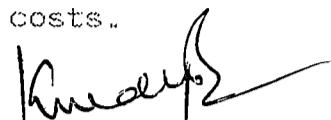
that a wrong interpretation of law cannot be a ground for misconduct and further observed that of course it is a different matter altogether if it is deliberate and actuated by malafides. Since in this case also the allegations against the applicant are that the orders, though passed by the applicant, are passed in exercise of the judicial function, but the same has been passed only with a malafide intention. The applicant can be proceeded with departmentally under the relevant CCS Rules as such department has a right to do so. We are also of the view that the applicant has no case for pleading that he cannot be proceeded with under the CCS Rules because the allegations and charge sheets as annexed along with the OA show that the applicant had been indulging in various activities with the dealers and had caused a heavy loss of revenue to the Government and this has been done by the applicant with the active connivance of the dealers. Thus, we find that the ground as taken up by the applicant has no merit. The disciplinary authority had also specifically observed that the act on the part of the charged officer was not inadvertent but with ulterior motive and malafide intention.

10. We are also informed that the appeal filed by the applicant has been decided by the appellate authority and all the pleas which were taken by the respondents in their reply were also considered, but the same was rejected on 23.11.2001. The applicant did not choose to challenge the order passed by the appellate authority, which he cannot do at this stage.

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11. In the circumstances, we find that the OA is totally devoid of merit and the same is dismissed. No costs.



(Kuldip Singh)
Member (J)



(V.K. Majotra)
Member (A)

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