

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2199/1999

New Delhi, this 8th day of January, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, Vice-Chairman(J)
Hon'ble Shri R.K. Ahooja, Member(A)

Ms. Dolly Saxena
Commissioner of Central Excise(Adj)
Room No.134, CR Building
IP Estate, New Delhi-110 002
r/o 1037/Sector 12, R.K. Puram
New Delhi-110 022

.. Applicant

(By Shri Raju Ramchandran, Sr. Advocate with
Shri M.K.Gupta and Shri Gaurav Aggarwal, Advocates)

versus

Union of India, through

1. Secretary
Dept. of Revenue
M/Finance, North Block, New Delhi
2. Chairman
Central Board of Excise & Customs
Dept. of ~~Finance~~, North Block
New Delhi ~~Revenue~~ ~~ministry of Finance~~
3. Central Vigilance Commission
Satarkata Bhavan
Near Vikas Sadan, INA, New Delhi .. Respondents

(By Shri R.R. Bharati, Advocate)

ORDER

The issue that is involved in this case is whether the applicant, who was Collector, Central Excise, could be subjected to disciplinary proceedings under CCS(CCA) Rules for alleged recklessness and negligence in passing an adjudicatory order.

2. The applicant was appointed as Collector, Customs and Central Excise and she was posted at Jaipur on 19.4.90. Collector is now called Commissioner. She was entrusted with the responsibility of adjudication of cases under the Central Excise Act, 1944 (for short ACT). She is entitled to confiscate the goods and to levy penalty, if there is any violation of law in payment of the excise duty by any assessee. A show

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cause notice had been issued to M/s J.K. Synthesis (hereinafter called 'assessee') on 20.2.91 for the alleged import of two heavy cabler machines and component parts, assemblies and sub-assemblies not fully covered by valid import licence and thus evading duty of Rs.1.121 crores.

3. The applicant, after hearing the said assessee, passed adjudicatory order dated 26.6.91 dropping the proceedings against the assessee. The order passed by the applicant was subjected to review by the Central Board of Excise and Customs (for short 'Board') under Section 129D(1) of Customs Act, 1962. It was found by the Board by an order dated 21.5.92 that the order of the applicant in allowing these major components of the machine as spares was improper and the Collector should not have accepted the machines as accessories of the main machines. The Board also directed the applicant to file an appeal before the customs Excise & Gold (Control) Appellate Tribunal (CEGAT, short) for determination of the question involved and impose suitable penalty on the assessee. Accordingly, an appeal was filed before CEGAT which, by an order dated 16.6.95, held that the entire dispute centered round the proper verification of the various components and spares imported. Since it was not found that proper physical verification was done, cegat allowed the appeal and remanded the case to the Collector, Customs & Central Excise, Jaipur, directing the Collector to either physically verify the facts himself or depute a team of experts to examine the facts before adjudicating the case in accordance with law. As a result of this order

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of CEGAT, adjudication proceedings were held by Shri Mahendra Prasad, the then Collector Central Excise. Though fresh physical verification was directed by the CEGAT, Shri Prasad had not chosen to order for verification but depended upon the verification already made by Shri Rajan Suri, Assistant Collector, Judicial. He was inclined to have accepted the allegations made in the show cause notice and accordingly imposed customs duty to the tune of Rs.1,21,07,611 under Section 28 of the Customs Act, 1962 and this order has become final.

4. Subsequently the applicant was issued with memorandum of charge-sheet dated 28.1.99 on behalf of the President of India alleging that adjudicating the case and before passing the order dated 26.6.91 dropping the proceedings against the assessee she did not summon the Directorate of Revenue Intelligence (DRI, for short) to prove its case but she relied upon the report of AC(Judicial) without ensuring association of experts appraisal from the department side and in the result, a demand of Rs.1.21 crores has been foregone on machinery and components. It was, therefore, alleged that the applicant has shown "recklessness as well as negligence in passing the adjudication order". She was therefore alleged to have contravened the provisions of Rule 3 (i)(iii) of the CCS (Conduct) Rules, 1964.

5. The applicant made representation to the charge-sheet to the Central Vigilance Commission, Chairman, Central Board of Customs & Excise as also to the Secretary, Ministry of Finance, requesting to drop the proceedings against her. Since she has not

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received any reply, she filed the present application challenging the initiation of disciplinary proceedings against her.

6. Shri Raju Ramachandran, learned counsel for the applicant contended that the applicant performing quasi-judicial functions cannot be proceeded against unless misconduct or culpable negligence was alleged in the discharge of her duties. It was contended that neither the charge-sheet nor the statement of imputations enclosed alongwith the charge-sheet mention any such allegation. She cannot be indicted for a mere error of law alleged to have been committed by her in adjudicating the case. the order is always liable for correction in appeal. The learned counsel relied heavily upon the decision of the Hon'ble Supreme Court in the case of Z.B. Nagarkar Vs. UOI (1999(4) SCALE 480). He points out that if such course is allowed, then the independence of quasi-judicial authorities and their free exercise of their operators would be seriously impaired.

7. Learned counsel for the respondents refuted the contentions of the counsel for the applicant and submits that the charge-sheet cannot be quashed at the threshold and that the applicant has to face the enquiry. He further points out that as the applicant was alleged to have caused loss to the revenue of the government, she is liable to be proceeded against for negligence in passing the adjudication order. She had dropped the proceedings against the assessee without summoning the DRI to prove its case nor the arguments of the

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investigating agency have been countered properly in the adjudication order. She had accepted all the contentions made by the assessee without verifying the veracity of the same, she had therefore committed misconduct for which she is liable to be proceeded against.

8. We have given careful consideration to the arguments advanced by the learned counsel for the applicant as also the respondents.

9. At the outset, we would refer to the law laid down by the Hon'ble Supreme Court as to the circumstances where the disciplinary proceedings against an officer performing quasi-judicial functions could be initiated. The law on this point is found in the case of Z.B. Nagarkar (supra). The learned judges of the Supreme Court, having considered elaborately the earlier decisions on the issue, summing up as under:

"40. When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness inadvertence or omission but as culpable negligence. This is how this Court in State of Punjab & Ors. Vs. Ram Singh Ex Constable (1992 4 SCC 54) interpreted 'misconduct' not coming within the purview of mere error in judgement, carelessness or negligence in performance of the duty. In the case of K.K. Dhawan (1993 2 SCC 56), the allegation was of conferring undue favour upon the assessees. It was not a case of negligence as such. In Upendra Singh's case (1994 3 357), the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assessee. Case of K.S. Swaminathan 1996(11) SCC 498, was not where the respondent was acting in any quasi-judicial capacity. This court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the Court to see whether they

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support the charge of the alleged misconduct. In M.S. Bindra's case (1998(7) SCC 310), where the applicant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Chaudhary (1999(3) SCC 396) where the appellant was compulsorily ... the court said that there should exist material in record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In K.N. Ramamurthy's case (1997(7) SCC 101) it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd.'s case (AIR 1970 SC 253), it was said that where proceedings are quasi judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This court has said that the penalty will not also be imposed merely because it is lawful so to do."

"43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority something more has to be alleged than a mere mistake of law, e.g. in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein, the impugned charge-sheet is rendered illegal."

10. In the light of the legal position as stated above, we would like to examine the charges levelled against the applicant, which are as under:-

"Article of Charge No.1

Smt. Dolly Saxena, as Collector (Judicial), Jaipur by her order-in original No.2/91-Cus passed on 31.5.91 & issued on 26.6.91 had dropped the proceeding in the Show Cause Notice No.VIII(A)10/3/89 against M/s J.K. Synthetics Ltd. Kota, and others.

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The SCN had been issued in respect of an importation of excessive component parts, assemblies and sub-assemblies not fully covered by valid import licence by the party. Whereas the party had claimed that the importation were sufficient to make eight machines, the Directorate of Revenue Intelligence which had conducted an investigation in the matter had concluded that the imported consignments could make 10 machines. Besides 4 winding units and 1 ring clean socket were not included in the invoice description. Yet Smt. Dolly Saxena dropped the proceedings. While doing so, she did not summon the DRI to prove its case (ii) nor the arguments of the investigative agency have been countered properly in the adjudication order. On the other hand Smt. Saxena accepted all the contentions made by the party without critically examining the veracity of the same.

Article of Charge No.2

Smt. Saxena had also based her order for dropping the proceedings on the physical verification conducted by the AC(Judicial) without ensuring association of expert appraiser from department's side. Thus she had relied on a report which was evidently perfunctory without considering the activity of the party.

Article of Charge No.3

By dropping the proceedings a demand of Rs.1.21 crores has been foregone on 2 heavy duty cabler machine, 4 winding units & 1 Ring Clean Socket.

Thus Smt. Dolly Saxena has shown recklessness as well as negligence in passing the adjudication order. By the above conduct, Smt. Dolly Saxena, has shown lack of devotion to duty. She has thus contravened the provisions of Rule 3(1)(ii) of the CCS Conduct Rules."

11. Article I of the charge contains an allegation that the applicant did not summon DRI to prove its case that the imported consignments could make 10 machines, 4 winding units and 1 ring clean contrary to the claim by the assessee that they were sufficient only to make 8 machines. It was also alleged that the applicant did not counter the arguments of the investigating agency properly and passed the order. In Article II, the only allegation made against the applicant is

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that she relied upon the perfunctory report of AC(Judicial). In Article III, it was alleged that she had caused a loss to the government by dropping the proceedings to the extent of Rs.1.21 crores. It was alleged that by the above actions of the applicant amounted to "negligence" and "recklessness" in adjudicating the claim of the assessee. In the statement of imputation of alleged misconduct in support of articles of charges, the case of the department was that the assessee sought clearance for (1) 4 containers and 65 cases said to contain 4 sets of Heavy Duty Direct Cablers valued at Rs.1,82,38,012.36; and (2) 4 containers and 63 cases said to contain 4 sets of Heavy Duty Direct Cablers valued at Rs.2,07,02,505.11, against the import licence. The bills of entry were assessed on the basis of documents produced and was allowed to be shifted to the warehouse at Kota. Meanwhile, DRI received an information to the effect that importers have brought some items not covered by their import licence. Expert appraisal team was deputed to examine the goods thoroughly and they found that 5 sets against which consignments were imported were found to be unauthorised and the total duty sought to be evaded came to the tune of Rs.1.21 crores and on that basis show cause notice was issued to the assessee. The assessee denied the charge. The applicant in her adjudication accepted the assessee's contention that the goods imported were adequate to assemble only 8 direct cabler machines and dropped all the proceedings. While doing so, she did not summon the DRI to have investigated the case to prove the case of the department and on the other hand she accepted the contention of the party relying upon the technical assistance provided by Shri Suri.



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12. The list of documents relied upon are the show cause notice, adjudication order, report presented by the Asstt. Collector and the adjudication order passed by Shri Mahender Prasad. The investigating officers of DRI were cited as two witnesses in the case.

13. A chronological reading of the allegations made in the charge-memo and statement of imputation, we find that operation to the exercise of the quasi-judicial functions while adjudicating the case against the assessee and passing the adjudication order.

14. The main accusation (Article I) is that the applicant has not heard the investigating agency. It is, however, the contention of the learned counsel for the applicant that it is not necessary to have given notice to the investigating agency or hear him before passing the order. He relies upon Section 124 of the Customs Act, 1962. Section 124 of the Act reads as under:

"Issue of show cause notice before confiscation of goods, etc. - No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter.

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral."

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15. The only requirement is to give notice to the assessee informing the proposed confiscation of imported goods and for making representation against the grounds for confiscation and he should also be heard in the matter. It therefore prima facie appears that the investigating agency is not entitled under law for hearing in the case. It would therefore appear that this allegation against the applicant has no substance.

16. The allegation made in article 2 of the charge also appears to be not correct. The applicant was found fault for relying upon the report of the Assistant Collector(Judicial) without taking the assistance of the experts from the department's side. It is not in dispute that the Assistant Collector(Judicial) after making physical verification of the machinery had given his report. In fact this report of the Assistant Collector (Shri Rajan Suri) has not been found fault by the Board while reviewing the order of the applicant. Moreover the successor to the applicant Shri Mahender Prasad, who passed the order after the appeal was remanded by the CEGAT, has relied upon the same report of Shri Rajan Suri. There was no other report on record before him. He did not find that the said report was a perfunctory one.

17. In article No.3 the allegation against the applicant was that by dropping the proceedings, the Govt. had been foregone the revenue of Rs.2.41 crores. By these allegations the applicant was said to have acted carelessly and negligently in passing the order.

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18. We have perused the statement of imputations and we find neither an allegation as to the misconduct of the applicant nor any allegation showing favour to the assessee other than the allegations mentioned in the articles of charge.

19. It should not be understood that while considering the allegations made against the applicant, we are determining the legality or otherwise of the said allegations or not. Our only endeavour is to show that, even *prima-facie*, the allegations appear to be not substantiated.

20. When a charge is questioned before the court what is to be seen essentially is whether the allegations made in the charge and the statement of imputations, taking them as true, constitute culpable negligence or any misconduct of the applicant. In our considered view the allegations pertain to the quasi-judicial exercise of jurisdiction of the applicant while adjudicating the case of the assessee. Whether the applicant was right in not hearing the investigating agency or whether she was right in relying upon the report of the Assistant Collector (Judicial) are matters which pertain to the quasi-judicial functions, they may go to show that the adjudication was wholly illegal or contrary to law or the evidence or contrary to procedure that has to be adopted by the officer and hence is a wrong order. As said by the Supreme Court in Nagarkar's case (*supra*), an officer performing judicial functions cannot be proceeded against departmentally under the conduct rules for writing a wrong order. An officer can be proceeded against on the allegation of negligence only if it was a 'culpable negligence'. Passing a wrong order cannot be said to be an order passed by way of culpable negligence. This aspect was dealt with by Supreme

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Court in State of Punjab Vs. Ram Singh, Ex Constable

(1992(4)SCC 54) (supra). It was held that mere error in judgment, carelessness or negligence in performing of duty "cannot be said to be misconduct." It was emphasized in Nagarkar's case that if every error of law were to constitute a charge of misconduct, it would impinge upon functions of quasi-judicial officers. Supreme Court further observed:

"The charge-sheet, if sustained will face infringe upon the quasi-judicial authority the entire system were under quasi-judicial powers fall into disrepute if officers performing such functions are inhibited from performing their functions because of the constant threat of disciplinary proceedings".

21. Learned counsel for the respondents submits that the applicant can face the enquiry and prove her innocence in the enquiry to be conducted and if the allegations are not substantiated, the applicant would be exonerated. As we find that there is no basis for the disciplinary authority to proceed against her departmentally, the respondents cannot be allowed to continue the enquiry in the absence of any allegations as to the misconduct. As stated by the Supreme Court, it would impinge upon the functioning of the quasi-judicial authority. This is not an individual case of the applicant that is involved. The entire system of administrative adjudication would fall into disrepute. It is open to an officer while discharging judicial functions, as done by judicial officers in their discharge of judicial functions, to commit error of fact or law and the appellate authorities are there to correct the errors. Unless clear allegations of misconduct in the sense of showing favour etc. in passing orders are alleged in the charge-sheet, it is not

open to the authorities to proceed under the departmental rules. In view of the ~~above~~ ^{foregoing & previous}, the impugned charge is liable to be quashed.

22. The learned counsel for the applicant also questioned the charge on grounds of unexplained or inordinate delay. It is contended that the delay vitiated the charge against the applicant. We do not find it necessary to consider this contention as we have taken the view that the impugned charge memo is liable to be quashed, accepting the first contention raised by the applicant.

23. In the circumstances, we are constrained to quash the impugned charge memo. The O.A. is accordingly allowed. In the circumstances, we do not order any costs.

R.K. AHOJA
(R.K. AHOJA)
MEMBER(A)

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unopposed
(V. RAJAGOPALA REDDY)
VICE CHAIRMAN(J)