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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A.NO. 2560/1999

New Delhi, this the 13th day of March, 2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Chander Prakash Tuteja,
Inspector (Customs and Central Excise)
B-279, Prashant Vihar,
Delhi - 110 085
(Applicant in person)

APPLICANT

VERSUS

Union of India through

1. Secretary,
Minister of Finance, C.B.E.C., New Delhi

2. Commissioner, Central Excise,
Delhi - I, New Delhi

3. Addl. Commissioner (P&V), Central
Excise, Delhi-I,
New Delhi
(By Advocate : Shri R.R. Bharati)

RESPONDENTS

O R D E R (ORAL)

Shri Govindan S. Tampi, Member (A):

In this case the applicant seeks to assail the order passed by the Disciplinary Authority i.e. Additional Commissioner of Central Excise (P&V), Delhi on 26.3.1998, wherein a penalty of stoppage of 3 increments without cumulative effect has been imposed on the applicant and that passed on 28.10.1998 by the Appellate Authority, i.e., Commissioner of Central Excise, modifying it to stoppage of two increments.

2. The pleadings of the applicant who appeared in person before us today are, that the case which had become the subject matter of the disciplinary proceedings involve the wrong and improper availment of deemed credit by an assessee, pertained to a period when the documents have

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allegedly been processed by the applicant. What he states is that he was not the Sector Officer in the concerned Range at the relevant time and the respondents have not been able to ^{dis}prove it by records. He had also requested for conducting an oral enquiry in the matter where documents could be produced and tested but the same has not been considered and the proceedings have been gone through with the Disciplinary Authority going ahead to dispose of the case and the Appellate Authority upholding it with marginal modification. This has caused him considerable prejudice as he has been punished unheard. Hence his request that the injustice be undone.

3. Shri R.R. Bharati, learned counsel appearing on behalf of the respondents, contends that this is a case where the applicant has acted against the interest of revenue which as a Govt. functionary he was called upon to protect and, therefore, the proceedings have been initiated at the culmination of which a very lenient punishment has been imposed on his by the Disciplinary Authority which has been further reduced by the Appellate Authority. Shri Bharati states that in the circumstances of the case, the decision of the original authority to go ahead with the proceedings without holding an oral enquiry was justified and was fully authorised in terms of the instructions of the DOP&T, which have also been endorsed by Courts and Tribunal from time to time. Reasons for such a decision have also been explained both by the Disciplinary and the Appellate Authorities. There was, in the circumstances, no ground for any grievance for the

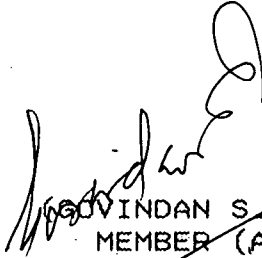
applicant. The application, therefore, deserves to be rejected, prays Shri Bharati.

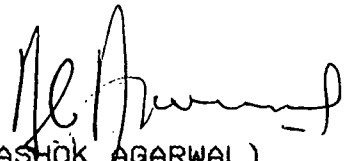
4. We have carefully considered the matter and have also perused the documents brought on record. We observe that from the very beginning the applicant has been making a case that he was not the Officer Incharge of the Sector in which the delinquent ^{Central Extra} ~~CCF~~ Unit fell and he has been asking the respondents to produce evidence to the contrary. He has also, in the circumstances, made a request that an oral enquiry under rule 14 of the CCS (CCA) Rules be held. The same has not been done. In the disciplinary authority's order there is a bald mention that the applicant was the relevant Sector Officer, who processed the return which resulted in the mistake which has occurred. It is not indicated as to how this fact has been proved. With regard to the request for an oral enquiry, the disciplinary authority has averred that as per the applicant's own admission, the issue was more than 9 years old and it was not possible for him to recall the facts in the case. Holding an enquiry after such a long time when the officer himself was not in a position to recall the facts will not serve any purpose. Further as only a minor penalty was proposed, the disciplinary authority stated that an oral enquiry was not mandatory and accordingly the proceedings were gone through. This is a highly unsatisfactory state of affairs. When an officer is being charge sheeted and the main evidence on which the charge is sought to be proved itself is challenged, it was necessary that an oral enquiry should

have been conducted where the evidence could have been placed and the applicant could have been confronted with the same. Not doing so and taking shelter behind the charged officer's plea that the matter was quite old and he himself did not recall much of it, was not something we expected ~~from~~ a senior functionary like the disciplinary authority to do. This ~~portion of the~~ order is, therefore, ^{not} speaking. ⁱⁿ The appellate authority has tried to improve upon the situation by indicating that in terms of the office order dated 21.9.1988 the charged officer was the Section Officer and it was also indicated in the report dated 19.7.1994 by the concerned Assistant. This is a better attempt than ^{the one by} the Disciplinary Authority, but inasmuch as these facts were not supplied to the Charged Officer, ~~and~~ providing him an opportunity to agree with or dispute it, the proceedings had suffered from violation of the principle of natural justice. The fact that the appellate authority had reduced the severity of the punishment also does not alter the fact that procedure prescribed has not been gone through. It is not sufficient to make a reference to the DOP&T's instructions and state that an oral enquiry was not mandatory but the same has to be seen against the circumstances of the individual case. And the circumstances of the case demanded that an oral enquiry be held. Not holding such an enquiry has vitiated the process, in our view.

5. In the above view of the matter, the application succeeds and is allowed. The impugned orders are quashed and set aside. This does not, however,

preclude the Disciplinary Authority from going ahead with the proceedings, if so advised, by holding an oral enquiry after the applicant is supplied with the copies of all the documents which the Disciplinary Authority is relying upon, so that he would have a legitimate opportunity to challenge them and prove his case, if he has one. No costs.


(GOVINDAN S. TAMPI)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

(pkr)