

Central Administrative Tribunal
Principal Bench

O.A. No. 863 of 1999

New Delhi, dated this the 3rd MAY, 2001

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

Shri John Lal Ngilneia,
S/o Shri Rev. N. Luaia,
Addl. Commissioner,
Central Excise,
Satyajit Ray Sahani,
City Centre,
Durgapur-713216,
West Bengal.

.. Applicant

(By Advocate: Shri N.K. Khetarpal with Shri Sachin
Chouhan)

Versus

1. Union of India through
the Secretary,
Ministry of Finance,
New Delhi.

2. The Commissioner,
Central Excise,
Bolpur.

.. Respondents

(By Advocate: Shri R.R. Bharti)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the Enquiry report dated 29.5.96 (Annexure C); the order dated 9.7.98 (Annexure D); and the disciplinary authority's order dated 29.5.98 (Annexure A). He seeks a direction that no adverse orders may be passed against him during his entire career on account of the enquiry initiated against him, resulting in the impugned order dated 29.5.96 and dated 9.7.98.

2. Applicant was proceeded against departmentally under Rule 14 CCS (CCA) 1965 vide Memo dated 22/24.11.93 on the charge that while working as

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Addl. Collector, Central Excise, Belgaum, he

- i) Under the direction of Shri G.V. Naik the then Collector of Central Excise, Belgaum conspired with him; and
- ii) Influenced and connived with Shri G.S. Shivakeri, Inspector of Central Excise.

in producing a bogus informer and recorded from such informer an antedated ^{and} ~~and~~ doctored information, with an intent to make it appear as if the case of seizure of 76 bars of silver valued at Rs.2.28 crores with the truck at Nipani on 24.2.92 was a case resulting from such bogus information, and with an intent to defraud the Government and to misappropriate the consequential reward of Rs.27.55 lakhs. In so doing applicant fabricated and falsified records and reports to suit his intent and influenced his subordinate to fabricate and falsify records and reports.

3. Applicant denied the charges upon which an enquiry was conducted by an officer from the office of Commissioner of Departmental Enquiry.

4. The I.O. in his report dated 29.3.96 held that the allegation against applicant of falsely creating an additional source of information and antedating it was substantially valid. As to the motive, the evidence indicated that applicant himself being an Addl. Collector was not entitled to any reward, and it was also difficult to be categorical about the fact that he had done this on his own

without being inveigled or pressurised by the Collector. Therefore, it was not possible to go so far as to say that applicant had the motive to defraud the Government, but all the same his conduct remained reprehensible.

5. A copy of the I.O's report was furnished to applicant for representation if any vide letter dated 1.8.96 (Annexure C).

6. Applicant submitted his representation in December, 1996. The disciplinary authority after considering the same, as also the other materials on record, and after consulting the UPSC, by impugned order dated 29.5.98 imposed the penalty of reduction in pay by three stages from Rs.15,900/- to Rs.14,700/- in the time scale of Rs.14,300-18,300/- for a period of three years w.e.f. 1.6.98 during which period applicant would not earn increments of pay and on the expiry of which the reduction would have the effect of postponing his future increments of pay. Pursuant to the aforesaid order dated 29.5.98 respondents issued impugned order dated 9.7.98 giving rise to the present O.A.

7. The first ground taken is that the impugned orders are perverse and display non-application of mind. This ground has not been substantiated and hence fails.

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8. The next ground taken is that the E.O. did not give applicant notice under Rule 14 (11) CCS (CCA) Rules for inspection of documents not relied upon by the prosecution but necessary for his defence. Even if notice was not given applicant has not established which particular document not relied upon by the prosecution, but essential to his defence could not be inspected by him which prejudiced him in the D.E. Hence this ground also fails.

9. The next ground taken is that inspection of certain vital documents was denied to applicant as a result of which the proceedings are vitiated. In this connection it is stated that the E.O. had himself recorded in order dated 21/22.9.95 at the time of final hearing that applicant's defence assistant had complained that in the absence of these documents he was unable to put up a proper defence, and the presenting officer had also stated that despite his persistent efforts, he had received only a lukewarm response regarding making available the documents asked for by applicant, and had further recorded that upon the failure to supply those documents to applicant, an adverse inference would be drawn. It is urged on behalf of applicant that despite the aforesaid violation of the principle of natural justice being placed before the E.O. at the time of submission of defence plea/ brief, the same was not considered, nor any adverse inference drawn and the proceedings are vitiated on that account.

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10. To examine how far this ground is valid, it would be useful to dwell briefly on the course of events. Applicant who at the relevant period was Addl. Collector, Central Excise, Belgaum was conveyed on telephone on 23.3.92 at about 3.30 P.M. by Shri A.K. Dhar, Addl. Collector of Customs, Bangalore, the information received from Shri C. Mathur, Dy. Director, Revenue Intelligence, Bangalore that three truck loads of contraband silver were likely to be transferred within the next 24 hours. The details furnished to applicant included the number of the suspect trucks and the point at which they were required to be intercepted. Shri G.S. Shivakeri, Inspector received the information from applicant over the telephone at about 4.30 P.M. on the same day, and the preventive staff for the seizure operation was assembled at about 6.00 P.M. at the Divisional Office and despatched to Nipani at about 7.00 P.M. that evening, as directed by the Addl. Collector. They intercepted one of the suspect trucks at Nipani in the early hours of 24.2.92 and seized 2755 Kgs. of contraband silver. Although the silver was seized on the basis of the information furnished by Shri A.K. Dhar the then Addl. Collector, Central Excise, Bangalore, an attempt was made to establish that the seizure was made on the basis of a private informer one Shri Basav Raj at 12.30 P.M. on 23.2.92.

11. If indeed it is Shri Basav Raj who had furnished the information at 12.30 P.M. on 23.2.92, and not Shri A.K. Dhar at about 2.30 P.M. that day,

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applicant has not successfully countered the statement dated 3.7.92 made by Shri Shivakeri the seizing officer admitting that he had received the information actually over phone from applicant at about 4.30 P.M. on 23.2.92 and that after the seizure operation he was pressurised by the Collector and the Addl. Collector to state that the seizure had been made on local information basis. Applicant has also not successfully countered Shri Shivakeri's further revelation that he had brought a friend of his named Basav Raj who was running a medical shop at Belgaum to applicant's residence on the morning of 25.2.92 when Shri Basav Raj was made to write a purported information in Hindi on a sheet of paper given to him by applicant in which the date was given as 23.2.92 though it was actually written on 25.2.92.

12. Further applicant himself in his statement dated 27.7.92 admitted that he did not receive any other information on 23.2.92 other than the information received from Shri A.K. Dhar of the movement of the contraband silver and it was on the basis of the information furnished by Shri Dhar that the contraband silver was seized. He had given details as to how the Collector of Central Excise, Belgaum Shri Naik kept on pressurising him several times on 24.2.92 to make the seizure of silver as if made on local information. No doubt during the enquiry before the E.O. applicant ^{retracted} ~~retracted~~ from his own statement dated 27.7.92 through an affidavit dated 7.9.94 sworn after a lapse of over two years,

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wherein he took the plea that his earlier statement dated 27.7.92 was extracted from him under threat and inducement but as correctly pointed out by respondents in their reply, there is no explanation how he being a senior officer, could be coerced by threat and inducement to make an ^{incriminating} ~~incriminating~~ statement against himself, and why it took more than two years for him to retract from it.

13. In the light of the above facts, even if the E.O. were to have drawn an adverse inference against respondents owing to non-supply of certain documents to applicant, he cannot be faulted for not taking that adverse inference so far as to exonerate applicant from the charge of misconduct, and coming to the conclusion summarised in Para 4 above.

14. It has next been contended that Basava Raj was not produced to testify although his statement made before the vigilance officials was relied upon, which cast doubts whether any such person actually existed. It is applicant who had contended that the information about the transport of the contraband silver had been given to him by one Shri Basava Raj at about 12.30 p.m. on 23.2.92 and indeed it was open to applicant to have called that person as his defence witness if indeed he had furnished the information to him at 12.30 P.M. on 23.2.92 as claimed. Hence this ground also has no merit.

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15. Various other grounds have also been taken by applicant which involve reappreciation of evidence, which we, not being an appellate forum are not competent to reappreciate. In this connection the scope of judicial review in disciplinary cases has been laid down by the Hon'ble Supreme Court in B.C. Chaturvedi Vs. Union of India 1996 (1) SCSLJ Page 9. It has been held therein that judicial review is not an appeal from a decision but a review of the manner in which the decisions is made to ensure that the individual has received fair treatment. In particular the Court/Tribunal has to determine whether the inquiry was held by a competent officer; whether principles of natural justice have been complied with; whether the findings or conclusions are based on some evidences; and whether the authority entrusted with power to hold the enquiry has jurisdiction and authority to reach a finding of fact or conclusion.

16. The foregoing discussion reveals that on none of the the aforesaid points can the departmental proceedings be faulted so as to warrant judicial interference. The penalty imposed on applicant also cannot be said to be disproportionate to the misconduct alleged.

17. In this connection we were informed that departmental proceedings were also initiated against Shri G.V. Naik, the then Collector of C.E., Belgaum which had resulted in imposition of a penalty. He challenged the aforesaid decision before CAT, Chennai

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Bench in O.A. No. 942/98 which was allowed by order dated 16.3.2000 (copy taken on record), and the impugned penalty quashed and set aside. We were informed during hearing that the aforesaid order of CAT, Chennai Bench in Naik's case (supra) has been challenged in ^{Madras,} ~~Chennai~~ High Court where the matter is awaiting adjudication. The finds of CAT, Chennai Bench in Naik's case (supra) are relevant to the particular facts and circumstances of that case and are not a binding precedent upon us, as we have to decide the present O.A. on the particular facts and circumstances before us.

18. In this connection we further note that by order dated 8.5.2000 (copy taken on record) respondents have sanctioned criminal prosecution of applicant under Section 19 (1)(a) Prevention of Corruption Act in regard to the same set of events.

19. The O.A., ^{is} ~~was~~, dismissed. No costs.

A. Vedavalli
(Dr. A. Vedavalli)
Member (J)

S.R. Adige
(S.R. Adige)
Vice Chairman (A)

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