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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA 1362/2000

New Delhi this the 24<sup>th</sup> day of February, 2014

**Hon'ble Mr. V. Ajay Kumar, Member (J)  
Hon'ble Mr. P.K. Basu, Member (A)**

Dr. G.D. Sootha,  
Adviser (Retd),  
M/o Non Conventional Energy Sources  
Resident of A-4/77, Konark Apartments,  
New Delhi-110019 ... Applicant

(Through Shri Anjani Kumar Singh, Advocate)

Versus

Union of India  
Through the Secretary,  
Ministry of Non Conventional Energy Sources,  
14, CGO Complex,  
Lodhi Road,  
New Delhi-110003 ... Respondents

(Through Ms. Priyanka Bhardwaj, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The genesis of this matter is that during the period 1985-1990, three officials of the Solar Energy Centre (SEC) under the Department of Non-conventional Energy Sources (now Ministry of Non-conventional Energy Sources) were alleged to be involved in irregularities in six cases involving private firms. One of the officials was the applicant, the then Advisor (since retired on superannuation). Of the other two officers, one Shri S.K. Gupta was the Principal Scientific Officer (since compulsorily retired) and the other was Shri T.P. Chatterjee, Stores Officer (since

removed from service). The main charge against the applicant is that in six cases, he issued false Customs Duty Exemption Certificates to private firms for the import of materials, components and equipments for solar energy devices stating the imports under OGL were for the research and development activities of the SEC whereas in reality they were meant for the use of private companies engaged in commercial activities. These companies imported these items to fulfill their contracts with the MP Urja Vikas Nigam. The matter was referred to the Central Vigilance Commission (CVC) for their advice in 1990. The CVC, after examining these cases, referred them to the CBI in November, 1990. The CBI registered six cases and conducted detailed investigation before submitting a report in January, 1994. The CBI found that there was arbitrary use of power in the issue of Customs Duty Exemption Certificate and in all the six cases the certificates were false. The report of the CBI was referred to the CVC in March 1994 which tendered its advice in May, 1994 recommending major penalty proceedings against the above three officials. As stated earlier, Shri Chatterjee has been removed from service and the applicant and Shri S.K. Gupta were placed under suspension with effect from 19.08.1994 until it was revoked on 15.11.1996 after a review by the disciplinary authority. Charge sheet was issued to both the applicant and Shri Gupta and after considering their representation, the disciplinary authority had decided to inquire into the matter. The Commissioner of Departmental Inquiries of the CVC conducted the inquiry in which both these officers participated.

The report concluded that all the six charges against the applicant had been proved. The CVC sent its advice accepting the inquiry report in both the cases and imposition of major penalty on Shri Gupta (who was compulsorily retired) and suitable cut in pension for a period of five years on the applicant, who in the meantime had retired from service on 31.08.1997. A copy of the inquiry report dated 25.07.1997 was sent to the applicant and representation made by him was considered by the disciplinary authority in consultation with the UPSC and thereafter 25% cut in pension for a period of five years was imposed on the applicant vide order dated 14.03.2000. The applicant did not submit any revision petition or memorial against the order dated 14.03.2000 but filed OA 1362/2000 before this Tribunal. The OA was rejected vide order dated 24.07.2000 and while rejecting the OA, the Tribunal observed as follows:

"Penalty imposed, if at all errs, errs on the side of leniency."

2. The applicant thereafter approached the Hon'ble High Court and the High Court disposed of the matter vide order dated 5.10.2009, setting aside the order of the Tribunal on the ground that it was completely non-speaking and remitting the matter back to the Tribunal for fresh consideration on merits. This is the background in which this matter is being heard now.

3. The respondents in their counter reply have brought this fact to our notice that the amount of customs duty which was

foregone by the government on the strength of the certificate given was to the tune of Rs.1.44 crores, which had no approval by the then Secretary or any other authority for the issue of Custom Duty Exemption Certificates.

4. The applicant's prayer in the OA is twofold:

(i) To quash impugned order dated 14.03.2000;  
and

(ii) Interest @ 18% on the outstanding dues admissible to the applicant such as gratuity, 50% of salary for the first three months of suspension from 19.08.1994, 25% of salary for remaining period of suspension upto 14.11.1996, which has been withheld.

5. Following grounds have been raised by the applicant in support of his claim:

i) Inquiry report dated 25.07.1997 is not based on any actual information and the IA had not followed the procedure laid down for the purpose as several material witnesses, though mentioned in the list of witnesses, were not examined;

ii) The CBI could not prove any "quid pro quo" in this case and, therefore, there was no question of applicant's gaining from anything;

- iii) That a high powered committee consisting of experts in the subject had investigated charge no.1(iii) pertaining to import of 3000 solar collectors by M/s Surya Jyoti Devices India (P) Ltd. and concluded that no undue advantage had been given to the supplier;
- iv) That the disciplinary authority did not apply its mind in implementing the inquiry report even after sitting over it for three years and finally agreed with the Inquiry Officer without analyzing the final report which is bad in the eyes of law;
- v) The disciplinary authority ignored the comments of the UPSC to the effect that no loss to the government and no gain to the applicant namely, "it is not possible to calculate the losses to government on customs duties as it is not known whether, if the normal procedures had been followed, the Ministry of Finance would have granted the waiver to any of these five companies;
- vi) The applicant in his representation dated 31.10.1997 sought a personal hearing to be given to him before rendering any orders on the inquiry report, which he was denied and which was violative of law laid down by the Hon'ble Supreme Court in **Management of**

 M/s M.S. Nally of Bharat Engineering Company

**Vs. State of Bihar and others**, (1990) 2 SCC 48;  
and

vii) That no disciplinary proceedings could be initiated pending investigation of criminal offences as it was violative of law laid down by the Hon'ble Supreme Court in **Kausheshwar Dubey Vs. Union of India**, AIR 1988 SC 2118

Hence it was argued that the disciplinary proceedings are *ab initio* illegal.

6. The reply of the respondents is that it is completely wrong on the part of the applicant to state that a high powered committee has exonerated him, for the simple reason that charges were framed later on and during the inquiry, there was sufficient material to prove the charges against the applicant. As per notification No.70/81-Custom dated 26.03.1981, Director (Social Energy Centre) had the power to issue custom duty exemption certificates for equipments imported by the Research Centre for its research work and not for consignments by private parties for their own commercial activities. Therefore, this is clear violation of rules by the applicant. The applicant in his reply does not state that these certificates were not issued. During the course of arguments, he only stated that he was Director at that time and therefore, based on Not Manufactured in India Certificate (NMIC) issued by Directorate General of Technical Development (DGTD), the applicant just signed the Customs Duty Exemption Certificates for such import and if

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at all, it was DGTD and its supporting staff, who was to be blamed. It is stated that inquiry was held by the Commissioner of Inquiries and only after giving full opportunity to represent against the inquiry report, was the final decision taken after consultation with the UPSC, as required by rules.

7. We have heard both sides and perused the facts. It would be clear that fraud has been committed by the applicant and two of his colleagues and the department incurred a loss of about Rs.1.44 crores as custom duty foregone. The department handed over the matter to the CBI but the evidence was evidently not sufficient to file a criminal case. Therefore, the departmental proceedings were started against the applicant. We have also perused the inquiry report. It is wrong on the part of the applicant to say that the inquiry report was without any application of mind and going into evidence. The inquiry report indicates that several exhibits and witnesses were examined and one thing which cannot be controverted at all by the applicant is that he did allow import of materials exempting them from import duty certifying that they were meant for R&D work whereas they were actually meant for private parties and that is the main charge. Needless to say that the applicant was a very senior officer and it was his duty to ensure that even his subordinates are not permitted to undertake such fraudulent activities using his approvals but in this case, the inquiry has proved that with full knowledge, he himself has permitted exemption from import duty for materials which were not meant for R&D work but for private parties. To now say that he was a

senior officer who could not be held responsible as he just signs the papers, is not a defence that he could take. There was fraud, he was party to it and put the government to loss by his actions. We completely agree with the order dated 24.07.2000 that penalty imposed, if at all errs, errs on the side of leniency.

8. As regards judgment of the Hon'ble Supreme Court in M.S. Nally (supra), the Hon'ble Supreme Court has held in this case that what is important is the fairness of procedure and elimination of elements of arbitrariness. The State functionaries must act fairly and reasonably. In this case, the applicant was given full opportunity of being heard during the inquiry and on the inquiry report. On the question of whether departmental proceedings can go on simultaneously along with criminal proceedings, the law is settled [**Ajit Kumar Nag Vs. General Manager (PJ), Indian Oil Corpn. Ltd., Haldia and others**, (2005) 7 SCC 764] that it can, unless both the proceedings are based on same set of facts and witnesses. In this case he was proceeded for violation of departmental rules and procedures whereas the criminal case was to establish "quid pro quo", if any.

9. Learned counsel for the applicant has also cited the decision of the Hon'ble Supreme Court in **Kranti Associates (P) Ltd. Vs. Masood Ahmed Khan**, (2010) 9 SCC 496. In para 23 of the said judgment, the Hon'ble Supreme Court observed that "reasons for the proposed supersession" should not be mere rubber-stamp reasons. He also cited the judgment of the

Hon'ble Delhi High Court in **Shri Chara Singh Vs. BSES Yamuna Power Limited**, WP© 645/1994 decided on 14.03.2011 in which it has been held that the disciplinary authority is not only required to consider the record of inquiry but is also obliged to record its findings on each charge.

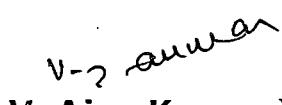
10. It would be seen that the order dated 14.03.2000 is a detailed order and both the inquiry officer's report and the representation of the applicant had been carefully considered and various points raised were duly examined in the light of the records of the case. Therefore, to say that the disciplinary authority had not applied his mind to each and every issue, is not borne out of documents. Thus the ratio of judgments in both Kranti Associates (supra) and Chara Singh (supra) have been followed. The short point is that the fraud committed by the applicant has been proved beyond doubt and this has resulted into a loss to the government. UPSC's comment on loss not being clear is not germane to the issue of violation of rules and procedures. So this argument of the applicant we do not find as relevant. Unless such senior officers are given harsh punishments for such blatant and daring acts of defiance of government instructions in order to favour private parties, it is well nigh impossible to curb corruption in the society.

11. Having heard both the parties in detail and gone through the documents, we are satisfied that the punishment is fully

justified and this Tribunal should not interfere into it. The OA is, therefore, dismissed. As regards payment for his suspension period the respondents would dispose of that matter as per rules. No costs.



( P.K. Basu )  
Member (A)



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( V. Ajay Kumar )  
Member (J)

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