

Central Administrative Tribunal
Principal Bench

O.A. No. 930 of 2000

New Delhi, dated this the 11 - JANUARY 2002

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

Shri Jwala Parshad,
R/o 154, Maitri Apartments,
Plot no.28, Patpar Ganj,
Delhi. Applicant

(By Advocate: Shri O.P. Gehlaut)

Versus

1. Union of India through
the Joint Secretary (U.T.),
Ministry of Home Affairs,
North Block, New Delhi.
2. Govt. of National Capital Territory
of Delhi through
the Chief Secretary,
5, Shamnath Marg,
Delhi. Respondents

(By Advocate: Shri George Paracken
and Shri P.P. Relhan proxy counsel
for Shri J.B. Mudgil)

ORDER

S.R. ADIGE, VC (A)

Applicant impugns the Charge Memo dated 27.6.96 (Annexure A/2); the inquiry report dated 2.2.99 (Annexure A/3) and the disciplinary authority's order dated 6.1.2000 (Annexure A-1).

2. Applicant was proceeded against departmentally vide Charge Memo dated 27.6.96 on the allegation that after taking over as Sales Tax Officer in Ward 15 (old) on 16.5.88 he had issued 70 ST-35 Forms to M/s Ajay Metal Stores without ensuring the safeguard of Government revenue or invoking the provisions of Delhi Sales Tax Act 1975 and thereby

put the Government revenues at stake, the said dealer being involved in nefarious activities, and thus caused a loss of approximately Rs.60 lakhs to Government revenue.

3. Applicant retired on superannuation on 30.6.96, upon which the proceedings were continued under Rule 9 CCS (Pension) Rules. The E.O. in his report dated 2.2.99 divided the charge into four parts as under:

- i) Applicant had issued 70 ST-35 forms to the dealer without ensuring the safeguard of Government revenues;
- ii) He did not invoke the provisions of Section 18 Delhi Sales Tax Act 1975;
- iii) He did not check the nefarious activities of the dealer; and
- iv) His aforesaid negligence caused a loss of about Rs.60 lakhs to Government revenue.

4. The E.O. in his aforesaid report dated 2.2.99 held that parts (ii) and (iv) were proved while parts (i) and (iii) were not proved. However in regard to part (iv) of the charge, the E.O. also observed that the loss of approximately Rs.60 lakhs to Government revenue mentioned in the charge sheet was the total of the additional demand created in the assessment orders for the years 1987-88 to 1989-90 which were all done ex parte, and as demand generated in ex parte assessments were generally on the high side, it could not be said that the loss caused by

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applicant was actually to the extent of demand created in the assessment orders. Since the sale was based on the purchases, and the total purchases made by the dealer on the strength of ST-35 forms came to Rs.3.15 crores (mentioned as Rs.10.75 crores in Annexure II of the charge sheet), it would have been more realistic if the revenue loss was calculated on the basis of purchases.

5. A copy of the E.O's report dated 2.2.99 was furnished to applicant for representation, if any.

6. Applicant submitted his representation on 8.6.99, upon which advice of UPSC was sought who furnished their advice on 7.12.99, (Annexure A-8) in which it was stated that the ends of justice would be met in this case if the penalty of 10% cut in pension otherwise admissible was imposed upon applicant for a period of five years.

7. Thereupon the disciplinary authority, after considering the materials on record and the facts and circumstances of the case, issued impugned order dated 6.1.2000 imposing the penalty of 10% cut in applicant's pension for a period five years under Rule 9 CCS (Pension) Rules, 1972.

8. We have heard applicant's counsel Shri Gehlaut and respondents' counsel Shri Paracken.

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9. The first ground taken in the O.A. is that the charge sheet is deliberately and malafidely vague in as much as it does not indicate the dates on which the said forms were issued and how many forms were issued, as a result of which applicant was not able to defend himself properly. The number of ST forms issued are mentioned in the statement of imputation of misconduct annexed with the charge memo. It is true that the date(s) on which these forms were issued have not been mentioned, but a perusal of the E.O's report and indeed of the UPSC's advice letter dated 7.12.99 makes it clear that the absence of these dates by itself did not hamper applicant in his defence. It is clear that applicant issued these 70 ST Forms over a period of two months of his taking over as STO in Ward 15(old) on 16.5.88. Hence this ground fails.

10. The next ground taken is that which clause of Rule 3 CCS (Conduct) Rules has been violated, has not been specified in the charge memo. The charge against applicant is failure to maintain absolute integrity which falls under Rule 3(1)(1) CCS (Conduct)Rules. Hence this ground also fails and applicant cannot claim that he was not made aware which sub-clause of Rule 3 CCS (Conduct)Rules he had to defend himself against.

11. The next ground taken is that although respondents were aware of the facts well before applicant's retirement, they malafidely raked up those charges just on the eve of his retirement, to

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deny him his pensionary benefits. In this connection reliance has been placed on the ruling in Zile Singh Vs. Delhi Administration 1998 (1) ATJ 511, While it is nobody's case that a Government servant should be subjected to harassment on the eve of his retirement, it is also true that deliberate acts of omission and commission on the part of Govt. employees involving loss of considerable sum of Government revenue cannot be ignored or disregarded, even if action is to be taken against that employee on the verge of his retirement. In this context applicant's counsel Shri Gehlaut also raised the ground of delay in initiating the disciplinary proceedings, pointing out that the alleged misconduct went back to 1987-88 while the disciplinary proceedings themselves were initiated as late as 27.6.96 and the penalty itself was imposed after another four years on 6.1.2000. Here again while delays in conducting proceedings should be avoided as far as possible, it cannot be denied that in certain cases, it takes time to detect the charges. In Secretary to Government, Prohibition and Excise Department Vs. L. Srinivasan 1996 (1) ATJ 617 the Hon'ble Supreme Court came down heavily upon the Tribunal for quashing the departmental enquiry on grounds of delay alone. Hence this ground fails.

12. The next ground taken is that there has been non-observance of Rule 14 (16), 14 (17) and 14 (18) CCS (CCA) Rules. Rule 14 (16) has been observed, in as much as applicant has given his defence statement in writing which has also been

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discussed by the E.O. in his report. In so far as Rule 14(17) is concerned, there is nothing to indicate that applicant was denied opportunity to examine himself or ~~any one~~ of his defence witnesses were denied examination. As regards Rule 14 (18), it is true that applicant was not generally questioned as to the circumstances appearing against him in the evidence, but in para 20 of a very recent ruling of the Hon'ble Supreme Court in State of U.P.Vs. Harendra Arora & Another 2001 (2) SCSLJ Page 29 decided on 2.5.2001, this very issue was dealt with. In Para 20 of the aforesaid ruling in Aroraa's case (supra) their Lordships have cited with approval the case of S.K. Banerjee Vs. State of West Bengal & others (1980) 3 SCC 304 wherein a departmental proceeding a question was raised that the delinquent who had not examined himself, was not questioned by the E.O. on the circumstances appearing against him in the evidence, for the purpose of enabling him to explain the same, as required under Rules. The Court held that as the delinquent was fully alive to the allegations against him and had dealt with all aspects of the allegations in his written defence, he was not prejudiced by the failure of the E.O. to question him and the Court refused to interfere with the punishment imposed. It is not applicant's case that his written defence did not deal with all aspects of the allegations against him, and hence this ground also fails. Applicant had cited the rulings in Ministry of Finance &Anr. Vs. S.B. Ramesh 1998 SCC (L&S) 865 and S.R. Shivharan Vs. Union of India ATJ 2001 (1) 335 to support his

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arguments on this ground, but in the light of the aforesaid ruling in Arora's case (supra) which is more recent in point of time, and is squarely on the point raised, those rulings do not advance applicant's claims.

13. The next ground taken is that the enquiry was not taken up on earlier fixed dates, which kept applicant harassed and on tenter hooks. A perusal of the copy of the ordersheet which is ~~on~~ ^{present} record reveals that applicant was ~~absent~~ on each date of hearing and he, therefore, cannot complain that it was conducted behind his back. Respondents have pointed out that due to administrative reasons the inquiry had to be postponed on some occasions by the E.O. which cannot be termed wilful delay on his part and as applicant was present on each date the inquiry was held, it cannot be said that any prejudice serious enough to vitiate the proceedings was caused because of any postponement. Hence this ground also fails.

14. The next ground taken is that applicant was not supplied copies of the ordersheet, and the same were declined to be supplied to him, vide respondents' letter dated 25.5.99, which he received on 28.5.99, as a result of which he was forced to submit his representation on the E.O's report on 8.6.99 without being able to make use of the E.O's orders on the ordersheet in his defence. He states that he received copies of the ordersheet only vide letter dated 9.6.99 and he was thereby deprived of

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dealing with the legal infirmities in these proceedings and showing how the E.O. conducted the proceedings according to his whims and fancies and against the rules. In this connection we note that applicant's signature was taken on each date the orders were recorded in the ordersheet. He thus cannot claim to have been aware of the order recorded by the E.O. in the ordersheet and indeed if there had been any serious infirmity in the conduct of the proceedings so as to prejudice him in his defence, it was open to him to have ~~refused~~ [^] to sign the ordersheet or at any rate ~~emphasise~~ that his submissions also be recorded in the ordersheet for that day. The fact that he did not do so, reveals [^] ~~he had no complaint regarding?~~ that he ~~was not satisfied~~ by the conduct of the inquiry. Hence this ground also fails.

15. The next ground is that the E.O. in his report dated 2.2.99 has relied upon unfounded and ~~unadmitted~~ inadmissible documents. In this connection it is contended that in Para 4 of the report the E.O. has stated that he has taken all the 6 listed documents on record, whereas the proceedings of regular hearings show that the documents listed as SI. No. 4 & 5 of Annexure III to the chargesheet were never produced, while documents at SI. No. 1 to 3 were neither proved for admission in evidence nor were they taken in evidence with applicant's consent. Respondents in their reply deny these contentions.

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16. In this connection we note that the Charge Memo dated 27.6.96 (Annexure A/2) itself refers to the list of documents by which the article of charge were proposed to be proved (Annexure III to the Charge Memo). This Annexure III lists 6 documents. As per rules copies of relied upon documents are to be furnished to the charged officer at the commencement of the departmental enquiry, and if at the time applicant received the Charge Memo dated 27.6.96, copies of 6 listed documents were not enclosed with the Charge Memo, he should have pointed out this omission to the E.O. There is nothing to indicate that he did so. Furthermore in his representation dated 8.6.99 addressed to the Chief Secretary, GNCT against the E.O's findings (Annexure A/7) applicant doe not state that the listed documents were not produced. What he states (Page 3 of that representation) is that the documents on which the E.O. has based his findings were not proved as genuine or original or true copies thereof, in accordance with the Rules before taking them on record and relying on them. In other words the complaint is not regarding the non-production of the listed documents but alleged non-genuinness. The listed documents were all official documents and *prima facie* there is no reason to doubt their genuineness. Hence this ground also fails.

17. The next ground taken is that applicant examined two witnesses, Smt. Kamla Bhalla, STO Ward 19 (New) and Shri Ajay Sachdeva although earlier he had held that their evidence wouldnot be relevant.

We note that the witnesses who feature in the list of witnesses by whom the articles of charge were proposed to be sustained (Annexure IV to Charge Memo), were ASTO Ward 23, and Record Keeper Ward 23 maintaining the Ward File of 'A' alphabet. The order sheet dated 4.9.97 shows that the Record keeper of Ward 23 maintaining the file of 'A' alphabet appeared. Applicant was also present. The record keeper stated that there was no such file in Ward 23. The Presenting Officer stated that the file was with Vigilance Branch and probably belonged to Ward 19 (Old 15). Accordingly in applicant's presence summons were issued to the record keeper of concerned ward to bring the relevant file. On 16.4.98 Smt. Kamla Bhalla STO Ward 19 (New) as well as Shri Ajay Sachdeva, Record Keeper of the said Ward appeared. Applicant was also present and it is true that they stated before applicant that they were not posted as respective STO/ASTO/Record Keeper during the relevant period, upon which it was ordered that summons be issued to ASTOs and Record Keepers of the ward after ascertaining their names and present posting from the Establishment Section. Thereafter on 17.6.98. Smt. Kamla Bhalla as well as Shri Ajay Sachdeva appeared. On that date applicant was also present. Smt. Kamla Bhalla and Shri Ajay Sachdeva were examined in applicant's presence and were cross-examined and also re-examined. The order sheet shows that applicant did not complain of any prejudice caused to him in his defence. In the absence of any prejudice which has been shown to have been caused to him, it cannot

be said that the examination of Smt. Bhalla and Shri Ajay Sachdeva vitiates the enquiry. Hence this ground also fails.

18. The next ground taken is that the E.O's findings are inconsistent and are based on his own presumption and assumptions. The sum and substance of the charge against applicant is that he showed negligence and dereliction of duty in issuing as many as 70 ST Forms to M/s Ajay Metal Store who were engaged in nefarious activities and thereby caused heavy loss to Government revenue. It is not denied that M/s Ajay Metal Stores was registered on 10.2.1988 and at that point of time it had declared the start of business with a meagre investment of Rs.8000/-. Yet between 1/7/88 and 16.9.88, that is within a period barely 2 1/2 months applicant issued to this firm as many as 70 ST forms on the basis of which the firm made concessional purchases of material to the tune of Rs.3.15 crores without having to pay sales tax on the same. During routine inspection by a Sales Tax Inspector, the firm was found closed on 18.1.89 and meanwhile applicant had himself stopped issuing forms to it on 13.10.88, upon some fault being found in a specific application submitted by it. Moreover applicant himself subsequently cancelled its registration on 31.7.89. It is thus clear that on the basis of the 70 ST forms issued by applicant to the firm between 1.7.88 and 16.9.88, it made purchases to the tune of Rs.3.15 crores without paying sales tax, and as it closed down on 18.1.89, the sales tax on Rs.3.15 crores was

evaded by M/s Ajay Metal Stores and was lost to the authorities. As correctly pointed out by UPSC in Para 7.5 of their advice letter dated 7.12.99

"there is no doubt that the Charged Officer was grossly negligent in not safeguarding Government's interest as he continued to issue an extraordinarily large number of forms thereby ultimately enabling an unscrupulous trader to evade taxes calculated at a later date by the assessment authorities to be about Rs.60 lakhs The charge of gross negligence is, therefore, proved against the Charged Officer.

19. Applicant has contended that he issued these 70 ST Forms to M/s Ajay Metal Stores in the exercise of his quasi-judicial powers and his judicial discretion which cannot constitute misconduct. We are unable to agree with this contention. If exercise of quasi-judicial powers and/or judicial discretion leads to massive loss of revenue to Government, it is certainly a case of negligence if not something worse, and would come squarely within the scope and definition of misconduct. Under the circumstances it cannot be said that the findings of the E.O. and the decision of the disciplinary authority is inconsistent or perverse or based upon their own presumptions/assumptions.

20. Lastly it has been contended that the penalty of cut in pension was recommended by Chief Secretary, Govt. of NCT of Delhi who influenced the Disciplinary Authority. This ground is baseless. Applicant was working in Govt. of NCT of Delhi at the time and it was only natural that the papers

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would have been sent by Govt. of NCT of Delhi to the Disciplinary Authority (Government of India). There is nothing to indicate that Government of India was influenced by any recommendations made by the Chief Secretary, Govt. of NCT of Delhi.

21. We may summarise. It is not denied that during the short span of 2 1/2 months between 1.7.88 and 16.9.88 applicant issued to M/s Ajay Metal Stores a firm that was registered as recently as 10.2.88, as many as 70 ST Forms on the basis of which that firm made concessional purchases (without payment of Sales Tax) to the sum of Rs.3.15 crores. Upon some fault being found on a specific applications applicant himself stopped issuing further forms on 13.10.88 and on 18.1.89 during routine inspection the firm was found closed. The firm thus successfully evaded payment of sales tax on the purchases worth Rs.3.15 crores, and that sum was thus loss to the authorities through applicant's negligence in issuing such a large number of ST forms to M/s Ajay Metal Stores without due care and caution, which is punishable under Rule 9 (1) CCS (Pension) Rules. Applicant got full opportunity to defend himself; the penalty is one that could be legally imposed and cannot be said to be excessive considering the magnitude of the loss of revenue; and was imposed by an authority competent to impose the same.

22. In the result the O.A. warrants no interference. It is dismissed. No costs.

A. Vedavalli

(DR. A. VEDAVALLI)
MEMBER (J)

/gk/

S. R. Adige
(S. R. ADIGE)
VICE CHAIRMAN (A)