

V
18
CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

O.A. NO. 1655/91

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

New Delhi, this 16th day of December, 1997

Shri B.S.Dayal
s/o Ch. Siri Chand
Ex-Superintendent of Central Excise
Central Excise Collectorate
Chandigarh
R/o 150, Munirka Enclave
NEW DELHI - 110 067.

... Applicant

(By Shri R.P.Oberoi, Advocate)

Vs.

1. Union of India through
Secretary
Ministry of Finance
Department of Revenue
Central Secretariat
North Block
NEW DELHI - 110 001.
2. Union Public Service Commission
through Secretary
Union Public Service Commission
Dholpur House
NEW DELHI - 110 001.
3. Collector of Central Excise
Chandigarh. ... Respondents

(By Shri R.R.Bharati, Advocate)

ORDER

Hon'ble Shri R.K.Ahooja, Member(A)

The applicant, who is working as Superintendent of Central Excise, Group 'B' post was proceeded against on the following charges(Annexure II):

ARTICLE - I: That the Applicant was in possession of assets(movable & immoveable) disproportionate to his known sources of income to the tune of Rs. 1,43,136.90 and thus exhibited lack of integrity and contravened provisions of Rule 3(1)(i) of the CCS (Conduct) Rules, 1964.

ARTICLE- II: That the Applicant failed to report to and did not obtain permission of the competent authority regarding the undermentioned transaction of property and thereby contravened Rule 18(2) and (3) of the CCS (Conduct) Rules 1964 :-

(i) He purchased a Bajaj Chetak Scooter No.DEN 4093 against Foreign Exchange on 25.7.1980.

Contd. 2/-

(ii) He imported a 'National Air-conditioner and paid a Customs duty of Rs.850/- on 22.9.1984.

(iii) His wife purchased a plot measuring 202.5 Sq. Yards. with construction thereon at N-161, Gautam Nagar, New Delhi, for a sum of Rs.19,500/- on 1.12.1978.

2. The enquiry authority held that Article-I of the charge was proved to the extent of Rs.62,940.03 as disproportionate assets and Article - II of the charge proved partly to the extent that the applicant failed to intimate the gift of 'National' Air Conditioner from his in-laws, as per rules. Agreeing with the findings of the Inquiring Authority, Disciplinary Authority, i.e. the Collector of Central Excise, Chandigarh passed an order dated 04.05.1989 (Annexure V) removing the applicant from service. The applicant preferred an appeal dated 4.5.1989 to the President of India which was referred by the Government of India to the Union Public Service Commission which gave their findings and advice on 22.3.1991(Annexure VII). The UPSC found the applicant in possession of assets disproportionate to the extent of Rs.27,604.19 and this being within the range of 10% of his total income concluded that the Article of charge was not conclusively proved against the applicant. Regarding Article-II, the UPSC held that the charge was not proved in respect of first two transactions. Agreeing with the observation of the UPSC, the President passed the impugned order dated 21.6.1991(Annexure I) modifying the penalty of 'Removal from Service' to that of 'compulsory retirement'. The applicant claims that the impugned order is bad in law since the UPSC exonerated him from the first charge of disproportionate assets ~~and~~ ^{but} relied on the third part of second charge(Article II(iii)) on which he had already been exonerated by the disciplinary authority.

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The applicant alleges that he was given no opportunity to defend himself against the finding of the UPSC in respect of part iii of the second charge and ~~that~~ this was not part of his appeal before the President since the enquiry officer had already exonerated him of this part of the charge.

3. We have heard the counsel on both sides. The learned counsel for applicant has taken us through the report of the enquiry officer as well as the advice tendered by the UPSC. He has dilated at length regarding the conclusion of the Inquiring Officer on the question of the purchase of a plot by his wife measuring 202.5 Sq. Yds. for the sum of Rs. 19,500/- He pointed out that the Inquiring Officer had concluded that the sale of the plot was not proved and this conclusion had been accepted by the Disciplinary Authority in para 7 of his order (Annexure AV) On the other hand, the UPSC had expressed the opinion that while charges Article II(i) and (ii) were not proved, charge (iii) regarding purchase of plot be held to be proved. He submitted that the appeal was against the adverse conclusions reached by the Inquiring Officer and the disciplinary authority and not against the conclusions which were in favour of the applicant. The imposition of penalty on the basis of those charges which were held not proved by the enquiry authority as well as the disciplinary authority meant that the applicant was deprived of an opportunity to appeal against the same. There was thus denial of natural justice. In case the appellate authority differed with the disciplinary authority then an opportunity should have been afforded to the applicant to defend himself.

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4. We have carefully considered the pleadings and arguments on both sides. The first question can be summarily disposed of as it relates to the appreciation of the evidence before the enquiry officer. Based on that evidence the Enquiry officer came to certain conclusions and the UPSC came to different conclusions. The Tribunal cannot now inject its own appreciation since it is not an appellate authority. It is settled law as held by the Supreme Court in Union of India Vs. K.V. Perumal, 1996(4) SC 603 that the Tribunal is not the appellate authority over the department. The only question before us therefore, is whether reliance placed by the appellate authority on the advice of the UPSC has lead to the denial of natural justice to the applicant. Rule 27 of CCS (CCA) Rules, 1965 deals with the consideration of an appeal. Sub-rule 2 thereof provides that in the case of an appeal against an order imposing any of the penalties specified under Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider:-

Rule 27(2) (a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and

(c) whether the penalty or the enhance penalty imposed is adequate, inadequate or severe;

and pass orders:-

(i) confirming, enhancing, reducing, or setting aside the penalty;

or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of these cases;

Contd...5/-

provided that:-

- (i) the commission shall be consulted in all cases where such consultation is necessary;
- (ii) if such enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has not already been held in the case, the appellate authority shall, subject to the provisions of Rule 19, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of Rule 14 and thereafter, on a consideration of the proceedings of such inquiry and make such orders as it may deem fit;
- (iii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (v) to (ix) of Rule 11 and an inquiry under Rule 14 has already been held in the case, the appellate authority shall, make such orders as it may deem fit; and
- (iv) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be, in accordance with the provisions of Rule 16, of making a representation against such enhanced penalty.

5. It would be seen that the appellate authority is quite competent, after assessing the evidence on record and consulting UPSC to either confirm or enhance, reduce or set-aside the penalty. There is no provision that before doing so any further opportunity is to be provided to the charged officer to present his case. The fact however remains that the appellate authority has accepted the plea of the applicant in respect of the adverse findings against him but has held the other charges of which he had been acquitted by the disciplinary authority to be proved against him. The applicant had no opportunity to explain his case against such a finding and therefore has lost an opportunity of appealing against the same. In the interest of natural justice, such an opportunity had to be provided to the applicant. In case the appellate authority has come to

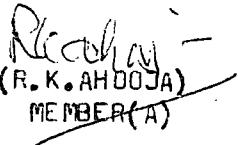
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(B)

a conclusion that on the evidence against him of charges which had been established, and we repeat established, there was a ground for enhancing the penalty, then no further opportunity is required to be given to the applicant. Here, the whole texture of the decision is affected since the conclusion of the appellate authority is based not on the charges held to be proved against him by the enquiry officer and the disciplinary authority but on a reappreciation of the evidence outside the knowledge of the applicant on matters on which he had good reason to conclude were already settled in his favour.

6. In view of the above position, we consider that the applicant had a right to show cause against the penalty proposed on the basis of the finding which was not earlier in his knowledge. Accordingly, we set-aside the order of the appellate authority and direct that a show cause notice be given to the applicant in respect of charges now held by the appellate authority to be proved against the applicant and only thereafter the appellate authority shall pass the final orders. We further direct that show cause notice be given to the applicant within one month from the date of receipt of ~~a copy of this order~~ ~~the applicant's reply to the notice.~~

7. The OA is accordingly disposed of. Parties will bear their own costs.


(R.K. AHDOJA)
MEMBER (A)


(A.V. HARIDASAN)
VICE - CHAIRMAN (J)

/rao/