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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI**

O.A. NO.1494/2004

This the 7th day of February, 2005.

HON'BLE SHRI V. K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE SMT. MEERA CHHIBBER, MEMBER (J)

Mukesh Bansal,
Inspector of Customs and Central Excise,
Technical Branch (Central Excise Delhi-I),
C.R.Building, I.P.Estate,
New Delhi-110002. ... Applicant

(By Shri B.S.Mainee, Advocate)

versus

1. Union of India through
Secretary, Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Commissioner of Central Excise (Delhi-I),
First Floor, C.R.Building, I.P.Estate,
New Delhi-110002.
3. Additional Commissioner of Central Excise (Delhi-I),
First Floor, C.R.Building, I.P.Estate,
New Delhi-110002.
4. Dy. Commissioner of Central Excise (CCU),
(Inquiry Officer), First Floor,
C.R.Building, I.P.Estate,
New Delhi-110002. ... Respondents

(By Shri R.N.Singh, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Vice-Chairman (A) :

Through this OA has been challenged Annexure A-2 which are record of proceedings dated 12.5.2004 in disciplinary proceedings against applicant. It has been alleged that respondents are proceeding with holding the disciplinary enquiry without supplying applicant necessary additional documents.

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2. The learned counsel of applicant pointed out that vide Annexure A-6 dated 24.6.2003, the enquiry officer had held that documents stated at Sl. No.7, 8, 9, 11, 12, 17 and 19 were held to be relevant for defence of applicant as charged officer stating that these documents were being requisitioned from the concerned authority. Yet, these documents were not requisitioned from the concerned authority and on the same date, i.e., 24.6.2003 another order was passed by the enquiry officer (Annexure A-7) to the effect that he would be holding day-to-day enquiry from 30.6.2003. Applicant is aggrieved that the enquiry officer decided to proceed against applicant to conduct the enquiry without making any serious attempt at requisitioning the additional documents and without supplying them to applicant as charged officer. Referring to paragraph 4.9 of the counter reply of respondents, the learned counsel stated that though applicant had specified the sources of the additional documents from whom they were to be requisitioned, the Additional Commissioner (P&V) wrongly took up the issue with the Assistant Commissioner (Central Intelligence Unit) who did not have the custody of the demanded documents. As such the Assistant Commissioner (CIU) could never have supplied the documents, which were in the custody of other officers. The learned counsel further stated that as the wrong officer had been addressed to supply the additional documents, he expressed his "inability to arrange for the documents". The learned counsel stated that the concerned officer did not state that the documents were not available. In this light, the learned counsel maintained that it would be illegal for the enquiry officer to proceed in the matter without supplying the additional documents to applicant.

3. The learned counsel of respondents on the other hand contended that this Tribunal has no jurisdiction to interfere with disciplinary proceedings at an interlocutory stage. He further pointed out that earlier on applicant had moved OA No.1368/2004, which was dismissed being without merit and as such if applicant had not sought the relief claimed in the present OA in the earlier OA, he

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has acquiesced his right and as such, this OA is not maintainable. The learned counsel further stated that while the relied upon documents have already been supplied to applicant, applicant's insistence to provide additional documents before the start of the enquiry is wrong and a calculated tactic to delay the enquiry.

4. We have considered the contentions raised on behalf of both sides and also perused the material on record. In the earlier OA No.1368/2004 which was dismissed in *limine* being without merit, applicant had sought stay of the departmental proceedings in view of the criminal case pending against him. The issue taken up in the present proceedings regarding supply of additional documents was allowed by the Court to be taken up by filing a separate petition. As such, we do not agree with the learned counsel of respondents that applicant had acquiesced his right regarding the issue of supply of additional documents.

5. Annexure A-6 dated 24.6.2003 establishes that the enquiry officer had agreed that additional documents stated at Sl. Nos. 7, 8, 9, 11, 12, 17 and 19 were relevant for defence of applicant and that the same be requisitioned from the concerned authorities. By Annexure A-7, the enquiry officer issued another order on 24.6.2003 itself that he would proceed with the enquiry from 30.6.2003 failing which it would be presumed that applicant had nothing to say in defence and the matter would be decided *ex parte*. These orders issued on the same day as Annexure A-6, do not state anything about the supply of the additional documents, which was agreed by the enquiry officer. There is no denying the fact that normally the Tribunal should not interfere with disciplinary proceedings at an interlocutory stage, but it would be illegal on the part of the enquiry officer to proceed with the enquiry in the manner stated in Annexure A-7 without supplying the additional documents. We find that applicant had clearly stated the sources from where these additional documents could be obtained. Asking the Assistant Commissioner (CIU) to supply these documents when he is not concerned with

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those documents would amount to a superficial attempt on the part of respondents for taking action for supply of the additional documents, which had been accepted as relevant for defence of the charged officer. The argument of the learned counsel of respondents that these documents could be supplied to applicant even after closure of the prosecution case is not acceptable as even though respondents were not to rely upon the additional documents in bringing home the charge against applicant, these documents could be used by applicant for his defence in cross examining the prosecution witnesses etc. It is not the stand of respondents that the additional documents were requisitioned from the concerned officers but they are not available. Respondents have solicited the additional documents from the source, which was not concerned with them. As such expression of inability of an unconcerned officer to arrange for the documents is not a proper ground for non-supply of the additional documents which were considered relevant ^{by} 1b the enquiry officer and ought to have been supplied to applicant before holding the enquiry any further.

6. From the above discussion, the inevitable conclusion is that respondents have not made any serious attempt in supplying the additional documents to applicant, which were considered relevant for defence of applicant by the enquiry officer. As such, Annexure A-2 dated 12.5.2004 by which the enquiry officer has taken a decision to finalise the enquiry without supplying the additional documents to applicant is quashed and set aside. Respondents are further directed to supply the additional documents as stated above to applicant before proceeding with the enquiry any further.

7. OA is allowed accordingly, however, without any order as to costs.



(Meera Chhibber)
Member (J)

/as/



(V. K. Majotra)
Vice-Chairman (A)

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