

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 9th day of January, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.
HON. MR. D. R. TIWARI, A.M.

O.A. No. 1044 of 2001

S.D. Bhanu S/O Late Shri Madho Ram R/O Sheel Bhawan, MIG-76
Bara-II, Sector-3, Kanpur Nagar.....

....Applicant.

Counsel for applicant : Sri S.D. Dubey.

Versus

1. Union of India (Government of India), Ministry of Finance,
Department of Revenue, New Delhi through Secretary.

2. The Secretary, Central Board of Excise and Customs,
New Delhi.

3. Commissioner, Central Excise, Kanpur.

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.....Respondents.

Counsel for respondents : Sri G.R. Gupta.

O R D E R (ORAL)

BY HON. MR. JUSTICE S.R. SINGH, V.C.

Heard Sri S.D. Dubey, learned counsel for applicant,
and Sri G.R. Gupta, learned counsel appearing for respondents
and perused the record.

2. The applicant was served with a memo of charge bearing
No.II(10)Vig/28/87/2272 dated 25.11.87 containing the following
articles of charge :-

"ARTICLE NO.I : That Shri S.D. Bhanu failed to handover the
charge to Shri S.C. Jain, Superintendent, by the afternoon of
21.07.87 consequent upon his transfer and despite the order of
the Assistant Collector, Central Excise Division, Aligarh dated
20.7.87 to this effect which had been received by him on
20.07.87. Further, he created obstruction in the smooth
functioning of the Divisional Office by writing to the Manager,
S.B.I., Aligarh proclaiming himself as D.D.O.

ARTICLE NO.II : That after Shri S.D. Bhanu, was treated as
relieved in the afternoon of 21.07.87 under the orders of
Assistant Collector, Central Excise Division, Aligarh, he did
not join at his new place of posting at Kanpur and remained
unauthorisedly absent from duty up to 18.10.87. Further, he
failed to submit any leave application for the said period.

(R.S.)

ARTICLE NO.III : That Shri S.D. Bhanu committed serious irregularities by not putting up the cash book to the Head of Office for verification of cash balances on the last day of the month and, thus, kept undisbursed Government cash beyond 3 months from the date of receipt/drawal.

ARTICLE NO.IV : That Shri Bhanu did not report serious shortages of the dead stock articles for taking necessary action by the higher authority. Further, he failed to observe the irregularities in the dead stock articles record though it was obligatory on his part to do so.

ARTICLE NO.V : That Shri S.D. Bhanu did not get the Event Register of the T.A. Bills maintained date wise. Further, he kept five T.A. Bills pending for periods ranging from 4 months to one and half years with ulterior motives.

ARTICLE NO.VI : That Shri S.D. Bhanu failed to maintain Medical Event Register date wise and serious irregularities in Medical Claims were committed by him by not putting his signatures on one bill and by passing the other claims after a lapse of more than 2 Years without verification and without pre-auditing. Further, he passed Medical Claims indiscriminately during the month of May and July, 1987 to the tune of Rs.28,117.90 and Rs.34,413.00 respectively on the date when he had already been asked to hand over the charge. Moreover, on 21.07.87, one claim for Rs.902.00 and other bills for Rs.14,083.00 were sanctioned hastily by him."

3. An enquiry in the manner prescribed under CCS(CCA) Rules 1965 was conducted and the Enquiry Officer, in his report, found Charge No.I as 'sustained';, Charge Nos.II & VI as 'conclusively proved' while Charge Nos.III and IV as 'partially proved'. Benefit of doubt was given to the applicant in respect of Charge No.V. The Disciplinary Authority namely Collector, Central Excise, Kanpur accepted the findings of the Enquiry Officer in respect of each Article of Charge and by order dated 10.10.90 issued under endorsement C.No.II(10)Vig./28/87 imposed the following punishment :-

"The pay of Shri S.D. Bhanu presently posted as Administrative Officer in the Revenue Branch of Headquarter Office be reduced by one Stage Rs.2300 to Rs.2240/- in the time scale of Rs.2000-60-2300-EB-75-3200-100-3500 for a period of two years w.e.f.

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the date of this order. It is further directed that Shri S.D. Bhanu will not earn any increments of pay during the period of reduction and thereafter reduction will have the effect of postponing future increments as well."

4. The applicant filed appeal before the Chief Vigilance Officer, CBEC, New Delhi against the punishment order dated 10.10.90 of the Disciplinary Authority. The appeal was rejected vide order dated 24.4.95 on the grounds that the finding of the Enquiry Officer as accepted by the Disciplinary Authority in respect of Charge Nos. I, II, III & VI were backed by sufficient evidence on record. The Appellate Authority held that the penalty imposed by the Collector of Central Excise, Kanpur vide order dated 10.10.90 was not excessive and that the UPSC was consulted in the matter and the order passed by the Disciplinary Authority was in conformity with the advice given by UPSC. The Appellate Authority held that the appeal lacked merit and accordingly rejected the same being devoid of merit vide order dated 24.4.95. In between it appears that the period of absence from duty from 22.7.87 to 18.10.87 covered under Article II of the charge, was sanctioned as earned leave by the Collector, Central Excise, Kanpur vide order dated 22.10.93. The applicant preferred O.A. No. 1122/95 wherein he prayed for the relief of quashing the order dated 24.4.95 and of a direction to the respondents to refix his salary and allow the consequential benefits etc. etc. and also to pay arrears and interest thereon. It was contended on behalf of the applicant, relying upon the order regularising the absence of the applicant from duty, that the applicant stood exonerated from the Article of Charge for which he was punished and there remained nothing for which he would suffer for withholding of three increments. It would, thus, appear that punishment order was challenged as if it was passed only on one charge of unauthorised absence from duty. However, the Tribunal disposed of the O.A. in terms of the following order :-

"The applicant has filed this O.A. seeking relief to the effect that the respondents shall re-fix his salary and allow the consequential benefits in his retiral benefits and also to pay the arrears and interest thereon.

As per applicant's case, he was transferred from Aligarh to Kanpur but he did not comply the same because the order was not coming from the competent authority, which resulted displeasure of the officer in the department who subjected him to disciplinary proceedings and consequently withholding of 3 increments which affected his pensionary benefits. Learned counsel for the applicant mentions that during pendency of this O.A. and the developments as came out after regularisation of his alleged absence and his exoneration from the article of charge for which he was punished, there remains nothing for which he shall suffer for withholding of those three increments.

From the above, we find that the controversy remains very short and the departmental authority are only to enforce the orders passed within department and, therefore, we finally dispose of the matter with the directions as under :-

'In case the applicant files a representation before the competent authority in the respondents establisment within 2 weeks, the same be disposed of by the respondents within 8 weeks from the date of receipt of copy of this order by passing detailed, reasoned and speaking order.'

In case some grievance remains to the applicant out of the order passed by the departmental authority in view of the above direction, the applicant may approach again through fresh O.A. for fresh cause of action.

If possible copy of the order, applied as per rules, may be furnished within current week to the learned counsel for the applicant."

5. Since it was observed by the Tribunal that in case some grievance was remained out of the order passed by the Departmental authority in view of the above direction, the applicant might approach again through fresh O.A. for fresh

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cause of action, the applicant preferred representation dated 5.3.2001 requesting therein that the increments in pay, which had been stopped and the pay which had been reduced by one stage in accordance with the order of the Disciplinary Authority dated 10.10.90, be restored on the grounds that :-

- "(a) The period of absence from 22.7.87 to 18.10.87 has already been regularised by the Collector, Central Excise, Kanpur by sanction of Earned Leave and that the leave salary for this period has been paid to him.
- (b) The sanction of Earned Leave for the aforesaid period has the effect of exonerating him from the article of charge for which he was punished and the remaining part of the order has become infructuous".

6. The Commissioner, Central Excise, Kanpur considered the representation and found no merit therein and accordingly disposed it of by order dated 20.4.2001, aggrieved by which the applicant has preferred the instant O.A.

7. Sri S.D. Dubey, learned counsel for applicant has contended that the effect of regularisation of unauthorised absence from duty from 22.7.87 to 18.10.87 have had the effect of exonerating the applicant from the Articles of Charge for which he had been punished. Submission made by the learned counsel cannot be countenanced. In Maan Singh Vs. Union of India & others, 2003(3) SCC 464, the appellant therein was dismissed from service on the charge of unauthorised long absence from duty. The period of absence from duty was subsequently treated as leave without pay and on that basis it was contended that the said treatment amounted to condonation of charge of unauthorised absence from duty. The Hon'ble High Court repelled the contention, and dismissed the appeal. Thus, the contention that regularisation of the period of absence from duty had the effect of exonerating the charge of unauthorised absence levelled against the applicant cannot be accepted. That apart, the Commissioner, Central Excise has

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rightly held that the penalty has been imposed on the applicant not only on the charge of unauthorised absence from duty but for all the charges which had been 'partly' or 'conclusively' proved.

8. Sri S.D. Dubey then tried to urge that the finding on other charges were not sustainable. The submission made by learned counsel cannot be accepted firstly, for the reason that the Tribunal has no jurisdiction to sit in appeal over the appraisal of evidence by the departmental authority except where the decision of the departmental authority is found to be vitiated by procedural impropriety, malice or perversity. The findings on various charges held established are based on appraisal of material on record and the Tribunal, it is well settled, exercises only the secondary role in which the Tribunal only examines if there had been any error in the decision making process. In the instant case, learned counsel for applicant has not been able to point out any error in decision making process neither has he been able to make out a case that the findings arrived at by the Enquiry Officer and accepted by the Disciplinary Authority are ^{perverse &} in the sense of being based on no material. That apart the applicant cannot be permitted to raise any ground which he did not raise in the representation filed on 5.3.2001 and in the earlier O.A. No.1122/95. The applicant would be deemed to have given up the plea not raised in the earlier O.A. The plea of malafide sought to be raised by learned counsel is not sustainable and cannot be accepted for the reason that the authority against whom the allegation of malafide were made in the representation is not impleaded eo-nomine a party to the O.A.

9. In view of the above discussion, the O.A. fails and dismissed with no order as to costs.

Asthana
A.M.

R.S.
V.C.