

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO.1224 OF 2001
ALLAHABAD THIS THE 31st DAY OF MARCH, 2003

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A.K. BHATNAGAR, MEMBER-B

Mritunjay Tripathi,
a/a 31 years,
Son of Sri G.P. Tripathi,
Resident of F-174 Shastrinagar Meerut,
(Ex Inspector, Central Excise, and Meerut)
In the Office of Commissioner of
Central Excise, Meerut (I)Applicant
(By Advocate Shri Sudhir Agarwal)

Versus

1. Union of India,
through the Secretary,
Central Board of Excise and Customs,
North Block, New Delhi.
2. The Commissioner,
Central Excise,
Meerut "I".
3. The Joint Commissioner (P&V),
Central Excise,
Meerut (I).
4. Sri B.K. Juneja,
Joint Commissioner (P&V)
Central Excise, Meerut "I",
Presently posted as Addl. Commissioner,
Central Excise, Meerut-II.Respondents
(By Advocate Shri Ganga Ram Gupta)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-B

The applicant has filed this Original Application

against the dismissal order dated 1.3.2000 issued by the Joint Commissioner (P & V) Central Excise, Meerut "I", dismissing the applicant from the post of Inspector, Central Excise, invoking the powers under Rule 19 (2) of CCS (CCA) Rules, 1965 read with Clause -(b) of IIInd Proviso to Article 311 (2) of the Constitution i.e. without holding any departmental inquiry on the ground that it would not be reasonably practicable to hold inquiry. The applicant has also challenged the appellate order dated 13.7.2001 passed by the Commissioner, Central Excise, rejecting the applicant's appeal against the aforesaid dismissal order.

2. The case of the applicant is that he was appointed as direct recruit on the post of Inspector, Central Excise, vide appointment order dated 13.5.1994 issued by the Additional Commissioner (P & V) Central Excise, Meerut, in pursuance whereto the applicant joined the service on 30th May 1994. The applicant has totally unblemished service record and character roll entries in the category of 'Excellent' and 'Out-standing' and he was also awarded Honorarium of Rs.6000/- . The applicant was elected as General Secretary of the recognized Employees Association namely 'Central Excise Executive Officers Association' for Meerut 'I'. In discharge of his duties as Office bearer^l of the Association the applicant used to represent the matter before the higher authorities. In February 2000 one Sri Sadhbag Pandey, Supdt. Central Excise, was suspended and for the purposes of serving the suspension order on Sri Pandey his wife was summoned in the Office of Deputy Commissioner, Central Excise Moradabad, where she was humiliated as per direction of the Deputy Commissioner, Central Excise, Moradabad. This led to an objection and agitation by the All India Federation of Central Excise Gazetted Executive Officers Association and

the General Secretary Sri Vimal Kumar sent Memorandums dated 10.02.2000 and 11.02.2000 to the authorities concerned in this regard. The Union of India filed Civil Suit No.154 of 2000 Union of India Vs. Federation of Gazetted Executive Officers, Meerut Branch on 20.02.2000 seeking an injunction against any obstruction in the office functioning, wherein the Civil Court granted injunction restraining the defendants in that case not to hold any demonstration within 50 yards of the office premises. Suddenly, respondent no.,3 on 1.3.2000 passed an order dismissing the applicant from the post of Inspector, Central Excise, by invoking powers under Second Proviso to Clause-b sub-Article (2) of Article 311 of the Constitution of India, holding that due to atmosphere created by the applicant the witnesses are not likely to depose statement against him due to fear and hence it would not be reasonably practicable to hold enquiry against him. On the same date Criminal complaint no.,443 of 2000 was also lodged against the applicant and another office bearer Sri Vimal Kumar in the court of Chief Judicial Magistrate, Meerut and first information report was also lodged against the applicant Vimal Kumar and others. The applicant has placed on record the fact that identical Criminal complaint no.,443 of 2000 lodged against Sri Vimal Kumar, has been quashed in Criminal revision no.76 of 2001 by 12th Additional District Judge, Meerut vide order dated 29th May 2001 and in respect to the FIR the police submitted final report which was accepted by IInd Additional District CJM vide order dated 1st May 2001. Thus, the applicant submits that the respondent no.3 being the authority subordinate in rank to the authority by whom the applicant was appointed, has no jurisdiction to dismiss the applicant and the impugned dismissal order is violative of Article 311 (1) of the Constitution. The applicant further

submits that there was no inquiry or material on record to hold that departmental inquiry was not reasonably practicable and, therefore, the impugned dismissal without departmental inquiry is violative of the principles of natural justice.

3. On the other hand Sri G.R. Gupta, learned counsel for the respondent has made his oral submissions. He submits that since the applicant was admittedly office bearer of the employees of the Officers Association, there was no possibility of any witness deposing any evidence against him and it is a matter of common knowledge that the office bearers create an atmosphere of terror. In the circumstances the orders passed against the applicant are correct and should not be interfered with by this Tribunal.

4. We have heard learned counsel for the parties and perused the record.

5. Before considering the matter on merits it is necessary to point out that the Original Application was admitted on 5.11.2001 and four weeks time was allowed to the respondents to file counter affidavit. Thereafter on 8.1.2002 again four weeks time was allowed for filing counter affidavit. Lastly on 18.3.2002 this Tribunal passed a stop order giving last opportunity to the respondents to file counter affidavit within three weeks and the Original Application was directed to be listed for final hearing on 13th May 2002. No counter affidavit was filed by the respondents till date and when today the matter came up for hearing in the revised list, learned counsel for the respondents again requested for grant of some time to file counter affidavit. In view of the aforesaid facts, since more than ample opportunity was given to the respondents to file counter affidavit, and they have not chosen to respond, we rejected the request of

counsel for the respondents and proceed to hear the matter on merits on the basis of material available on record.

6. Sri G.R. Gupta, learned counsel for the respondent has made his submission on the basis of material available on record opposing the Original Application.

7. The first question to be considered is whether dismissal of the applicant is violative of Article 311 (1) of the Constitution. The appointment letter dated 13.5.1994, Annexure-3 to the Original Application, clearly shows that the petitioner was appointed by the Additional Commissioner (P & V) Central Excise, Meerut, in his capacity as appointing authority. The post of Joint Commissioner is lower in rank and the Pay scale to the post of Additional Commissioner, as is apparent from the hierarchy of officials placed on record in para 4.26 of the Original Application quoted below:-

Assistant Commissioner (JTS)

/

(Assistant Commissioner)(STS)

(Now designated as Dy. Commissioner)

/

(Additional Commissioner) (SAG)

/

(Commissioner)

The applicant has also stated in para 4.27 that Sri B.K. Juneja, Joint Commissioner (P & V) Meerut who has passed the dismissal order dated 1.3.2000 was promoted to the post of Additional Commissioner in the Pay Scale of Rs.14300/- 18300/-

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vide notification dated 6.12.2000. Thus, obviously on the date when the impugned dismissal order was passed, the respondent no.3 was holding the post lower in rank and Pay scale of the post of Additional Commissioner. Learned counsel for the respondents however, vehemently argued that since at the time when the impugned order of dismissal was passed, the power of appointment on the post of Inspector, Central Excise, ^{hence} vested in the Joint Commissioner, Central Excise and therefore, dismissal order is valid. The argument is misconceived. Article 311 (1) of the Constitution of India stated ^{hence} as follows:-

"311 (1)-No person who is a member of Civil service of the Union or an All India Service or Civil Service of a State or holds a Civil post under Union or a state shall be dismissed or removed by an authority subordinate to that by which he was appointed."

The aforesaid provision clearly shows that it is the authority who has actually appointed a Government servant which is relevant to determine as to the authority competent to pass the order of dismissal or removal. Admittedly the Additional Commissioner appointed the applicant on the post of Central Excise, hence respondent no.3 has no authority to dismiss the applicant. ^{hence} The order is violative of Article 311 (1) of the Constitution, and a nullity in the eyes of law. The Hon'ble Apex Court in the case of Krishna Kumar Vs. Divisional Assistant Electrical Engineer, Central Railways (A.I.R. 1979 SC 1912) has clearly held that power of dismissal under Article 311 (1) of the Constitution has to be considered with reference to the point of time when a Government servant was appointed. The mere fact that subsequently the subordinate authority also got the power of appointment will not empower him to dismiss a Government Servant who was actually appointed by the officer of the higher rank. We are, therefore, clearly of the opinion, that the impugned order of dismissal is illegal, and ^{hence} not being

unconstitutional and violative of Article 311 (1) of the Constitution of India.

8. The second issue as to whether the impugned dismissal made without holding any inquiry is valid and the opinion formed by the authorities that holding of departmental inquiry was not reasonably practically possible, can be sustained, on the facts and circumstances of the present case. It is no doubt true that the power to dismiss or remove a person without holding departmental inquiry is vested under Article 311 (2) (b) 2nd proviso read with Rule 19 (2) of CCS (CCA) Rules, but the said provision cannot be invoked in ordinary circumstances. The imposition of punishment after affording opportunity of defence is the normal rule. A Government servant has a constitutional right of reasonable opportunity of defence before he is dismissed, removed or reduced in rank. Thus, the aforesaid right should not be denied to a Government servant lightly and the Government must ensure compliance of the aforesaid Constitutional protection available to a Government servant unless the facts and circumstances in a given case justify the action without inquiry. In the present case respondent no.,3 has, in the impugned order given following reasons for not holding departmental inquiry:-

"Whereas the said Sri Mritunjay Tripathi has Created an atmosphere of violence and general indiscipline and has bred insubordination and has created conditions so as to terrorise and threaten and intimidate the witnesses who were likely to depose against him with fear of reprisal and social ostracism and they are likely to be prevented from giving evidence against him."

Whereas it is apprehended that if prompt action is not taken it may result in the situation to worsen and ultimately becoming uncontrollable which will jeopardise the interest of State in as much as the revenue collection which is the most important activity of state will be adversely affected.

Whereas the undersigned keeping in view the above facts and circumstances is of the considered opinion that it would not be reasonably practicable to hold the enquiry as envisaged under 14 of CCS (CCA) Rules, 1965

and it is a fit case for revoking clause (b) of second proviso to Article 311 (2) of the Constitution of India read with Rule 19 (ii) of CCS (CCA) Rules, 1968."

9. Learned counsel for the applicant has brought to our notice that on the same date i.e. 1.3.2000 in the Criminal Complaint lodged against the applicant before the C.J.M. Meerut, names of four official witnesses have been given who were ready to depose against the applicant in the aforesaid Criminal complaint. This is apparent from the Criminal complaint no., 444 of 2000 dated 1.3.2000, which is on record as Annexure-6. It is inconceivable that four witnesses were ready to depose statement and render evidence against the applicant in a Criminal complaint lodged on 1.3.2000 itself but they were afraid of the applicant for depositing evidence against the applicant in the departmental inquiry. This is self-contradictory and belies the reason recorded by the respondent no., 3 in the impugned order of dismissal and also shows non-application of mind by the appellate authority while passing the appellate order. Even a perusal of the order passed by the ACJM Meerut accepting final report in respect to the first information report lodged against the applicant and others show that certain departmental witnesses gave evidence in support of the first information report although it was not accepted by the ACJM Meerut while accepting the final report. Thus the material on record clearly shows that the opinion recorded by respondent no. 3 that departmental inquiry was not reasonably practicable since no witness was likely to depose evidence against the applicant, is neither bonafide nor based on any inquiry made even in this respect.

10. At this stage learned counsel for the applicant has also placed before us the copy of the order dated 3.8.2002 passed by the Principal Bench of the Tribunal in O.A. No. 2457 of 2001 Vimal Kumar Vs. Union of India and Others, wherein



dismissal order of Vimal Kumar who was also dismissed along with the applicant, for the similar reasons, has been considered and the Principal bench of the Tribunal has allowed the Original Application, quashing the order of dismissal as well as the appellate order of Sri Vimal Kumar. The aforesaid order of the Principal Bench of Tribunal is squarely applicable in the present case also as the facts and circumstances as well as even the grounds mentioned in the dismissal order of the applicant and Sri Vimal Kumar are virtually similar and, therefore, we are in respectful agreement with the view taken by the Principal Bench of the Tribunal in the aforesaid case and hold that impugned dismissal order dated 1.3.2000 issued by respondent no.,3 as well as the appellate order dated 4.7.2001/3.7.2001 passed by respondent no.,2 are illegal and are liable to be quashed.

11. Learned counsel for the respondents has also not been able to place anything on record to show that the satisfaction recorded by the respondent no.,3 in passing the impugned order is based on objective facts and is not an outcome of whims and capricious. It is well settled that independent material must be available on record justifying dispensation of the departmental inquiry as envisaged under Article 311(2) of the Constitution. ^{We take the aforesaid view as per law laid down by Hon'ble Apex Court} in the following cases:-

(1) A.I.R. 1991 SC 385 Jaswant Singh
Vs. State of Punjab and others.

(2) A.I.R. 1991 SC 1043 Chief Secutiry Officer
Vs. Singhasan Ravi Dass and others.

12. For the reasons stated above Original Application succeeds and is allowed. The appellate order dated 4.7.2001/13.7.2001, Annexure-A2 passed by respondent no.,2 as well

as the order of dismissal dated 1.3.2000 passed by respondent no.3 are quashed. The applicant would be deemed to continue in service with all consequential benefits of arrears of salary and seniority etc. which the respondents will allow to the applicant within three months from the date of communication of this order. However, the respondents would be at liberty to take such action as advised and permissible in law against the applicant in accordance with CCS (CCA) Rules, 1965 and law on the subject as well as fresh instructions.

13. There will be no order as to costs.



Member-C



Member-A

/Neelam/