

68

OPEN COURT

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.1231 of 2005.

Allahabad, This the 13th day of November, 2007.

Hon'ble Dr. K.B.S. Rajan, Member-J
Hon'ble Mr. K.S. Menon, Member-A

Prabhu Nath Ram, Aged about 54 years, S/o late Shri
Jawahar Prasad, R/o 619 Nai Basti, Shiv Nagar,
Maswanpur, District Kanpur.

..Applicant.

(By Advocate : Shri B.N. Singh)

Versus

1. Union of India through Secretary, Ministry
of Finance, Government of India, New Delhi.
2. The Chief Commissioner, Central Excise
Lucknow Zone, 7 Ashok Marg, Lucknow.
3. The Commissioner, Central Excise, Saroday
Nagar, Kanpur.
4. The Commissioner, Central Excise, 7 Ashok
Marg, Lucknow.

Respondents.

(By Advocate : Shri S.C. Mishra)

O R D E R

BY DR. K.B.S. RAJAN, MEMBER-J

During the course of hearing, the counsel for the
respondents was not present, taking into account the
nature of the case, the O.A. has been heard. Thus,
provision under Rule 16(2) of CAT (Procedure) Rules,
1987 has been invoked in passing this order.

*"An inadvertent error emanating from non-adherence to
rules of procedure prolongs the life of litigation and
gives rise to avoidable complexities. The present one
is a typical example wherein a stitch in time would
have saved nine."*

*Apex Court in Lakshmi Ram Bhuyan v. Hari Prasad
Bhuyan, (2003) 1 SCC 197*

2. This case proves as a classic example to fit in the above observation of the Apex Court.

3. The Facts: The applicant was posted as Inspector Superintendent in Central Excise Division Farrukhabad under the Jurisdiction of the Commissioner of Central Excise Lucknow in 2002. He was issued a show cause notice under the provisions of Customs Act, vide Annexure A-2 issued by the Commissioner of Central Excise, Lucknow, in connection with alleged fraud in export. The notice directed the applicant to furnish his explanation to the Commissioner of Customs and Central Excise, Kanpur. The applicant, vide Annexure A-2 gave his explanation supplemented by Annexure A-3 explanation. Vide Annexure A-4, a Memorandum dated 01-04-2003, was issued by the Commissioner Central Excise Kanpur levelling certain charges against the applicant. The applicant had, vide Annexure A-5 submitted that he coming under the jurisdiction of Commissionerate of Central Excise, Lucknow, his Disciplinary Authority is Commissioner of Central Excise Lucknow and this aspect be examined. He has also submitted that since the show cause issued under the customs Act has not been finalized, the issue of the Memorandum is premature. The applicant has also denied the charges. Vide Annexure A-8, the Commissioner Central Excise, Kanpur had, stating that common proceedings have been ordered against the applicant and some other officers, and accordingly appointed a Presenting

Officer to prosecute the case. On the same basis, vide Annexure A-9, I.O. was also appointed. (Vide Annexure A-19, the I.O. was changed due to administration reasons). The applicant, vide Annexure A-10 reiterated his contention that the D.A. in his case being Commissioner of Central Excise, Lucknow, the C.C.E. Kanpur cannot proceed with the matter. In response, the Asst. Commissioner, Central Excise, Kanpur had, vide Annexure A-11 stated that the Commissioner Central Excise, Kanpur had sought the consent of Commissioner, Central Excise, Lucknow for holding the proceedings. Not being satisfied with the above, the applicant had approached the Chief Commissioner of Central Excise, Lucknow for intervention especially with reference to the locus of Commissioner of Central Excise Kanpur in taking up disciplinary Action against the applicant, vide Annexure A-12. In response, the office of Chief Commissioner of Customs and Central Excise, Lucknow informed that there is no violation in such an action being taken by Commissioner of Central Excise, Kanpur. Annexure A-13. The applicant had, without prejudice to the above contention about the authority competent to take action, informed the I.O. about the list of witnesses from defence side, vide Annexure A-14. The applicant has also, vide Annexure A-29 requested the Commissioner of central Excise, Lucknow, to specify the authority under which a different disciplinary Authority could

(11)


proceed against the applicant. The Commissioner, Lucknow, had, by Annexure A-30 informed that there is no violation in this regard. The applicant has come up against the initiation of proceedings, appointment of I.O. and the P.O. in this O.A.

4. Respondents have contested the OA. According to them, the action is not illegal, as contended by the applicant. Factual parts of the OA have all been admitted.

5. Applicant has filed Rejoinder, in which also he had contended that there is no provision for initiation by the Commissioner, Central Excise, Kanpur against the applicant, when admittedly, the applicant comes under the administrative control of the Commissioner, Central Excise, Lucknow.

6. In the reply to the Rejoinder, the respondents have referred to Rule 18 and stated that the Commissioner, Central Excise, Lucknow has given consent.

7. Counsel for the applicant has in the argument too, invited the attention of the Court to those paragraphs of the OA which revolve round the competent authority to initiate action against the applicant. Counsel for the respondents, likewise, justified the action.

 8. Arguments were heard and documents perused. Rule 18 and its interpretation are involved in this case. Rule 18 reads as under:-

(12)

"18. (1) Where two or more government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.

Note .-If the authorities competent to impose the penalty of dismissal on such government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.

(2) Subject to the provisions of sub-rule (4) of Rule 12, any such order shall specify-

(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;
 (ii) the penalties specified in Rule 11 which such disciplinary authority shall be competent to impose;
 (iii) whether the procedure laid down in Rule 14 and Rule 15 or Rule 16 shall be followed in the proceeding."

9. The Apex Court in the case of **A.R. Shakywar v. Comptroller & Auditor General of India, 1999 SCC (L&S) 649** had occasion to interpret the provisions of the aforesaid Rule and the Court has stated as under:-

The note, however, to Rule 18 makes it very clear that in the case of a joint enquiry in the case of two persons, if the disciplinary authority for each is different, the disciplinary action should be by the higher authority with the consent of the other. The first order dated 19-5-1986 on which the appellant relies, was not passed by the appellant's disciplinary authority with the consent of the disciplinary authority in the case of Muni Lal. Between the two disciplinary authorities, Munilal's was higher. The higher disciplinary authority directed a further enquiry pursuant to which the impugned order came to be passed. The Tribunal has rightly come to the conclusion that the orders which have been passed pursuant to the further

(13)

enquiry cannot be considered as violative of Rule 18.

10. In reply to the rejoinder, the respondents have stated, "As per Rule 18 of CCS(CCA) Rules, if the authorities competent to impose the penalty of dismissal on such Government servant are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the other. Excise Commissionerate, Lucknow had agreed for institution of common disciplinary proceedings, as proposed by the then Commissioner, Central Excise, Kanpur".

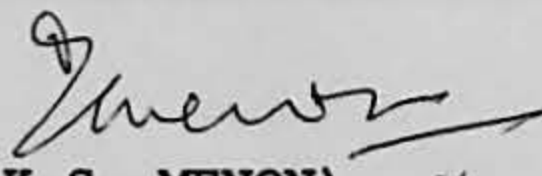
11. The question is whether the above consent by Commissioner of Central Excise Lucknow would suffice to meet the requirement of Rule 18. So far as the post of Commissioner of Central Excise is concerned, there cannot be any intermediate degree of one being higher in rank than the other. May be that one Commissioner is senior to the other. Here the requirement is "the Higher Disciplinary Authority." It is not the case of the respondents that the Commissioner Central Excise, Lucknow is higher than the Commissioner of Central Excise, Kanpur. Had the case been that one of the Disciplinary Authorities is Chief Commissioner and the other is Commissioner, then direction by the Chief Commissioner could take action, with the consent of the other. Here the case is not as such. Hence, the insistence of the applicant, right from the beginning, has not been properly appreciated. Legal


(14)

advice from the Ministry of Law or internal legal wing of the Ministry of Finance could have been obtained before taking action. This has not been done. It is on account of this reason, that reference to the observation of the Apex Court had to be made.

12. In view of the above, Annexure A-4, A-6, A-8, A-9 and A-19, impugned herein are all quashed in so far as these relate to the disciplinary proceedings against the applicant is concerned. The Chief Commissioner, Lucknow may consider issue of fresh orders in respect of the applicant being proceeded against for the alleged charges. If so, the entire action has to begin right from the beginning and the defence disclosed, in the earlier proceedings, if any, shall not be used against the applicant. As sufficient time has lapsed, the authorities may, in case of initiation of the proceedings against the applicant, may ensure that the proceedings are concluded within a reasonable period say eight months from the date of communication of this order.

13. OA is disposed of on the above terms with no order as to costs.


(K.S. MENON)
MEMBER-A


(DR. K.B.S. RAJAN)
MEMBER-J

GIRISH/-