

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated the Tuesday, 30th day of March Two Thousand And Twenty One

PRESENT:

THE HON'BLE SHRI S.N. TERDAL, MEMBER(J)

THE HON'BLE SHRI C.V. SANKAR, MEMBER(A)

M.A.458/2019

In &

O.A.310/01097/2019

B. Balamurugan,
Assistant Commissioner of Customs,
127/D, Ellaimman Koil Street,
Thiruvottiyur,
Chennai- 600 019.

.....Applicant in both MA & OA

(By Advocate: M/s. Hari Radha Krishnan)

Vs

1. The Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi;
2. The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.

...Respondents in both MA & OA

(By Advocate: Mr. V. Sundareswaran)

CAV On :16.03.2021

ORDER

(Pronounced by Hon'ble Mr. C.V. Sankar, Member(A))

The relief prayed for in this OA is as follows:-

“to quash the charge memo No. 42/2009 dated 18.06.2009 and also to set aside the consequential Final order No. 24/2014 dated 08.08.2014 and order consequential benefits and issue such further order as this Hon'ble Tribunal finds fit and proper in the facts and circumstances of the case and thus render justice.”

2. The applicant joined the Customs Department as Appraising Officer in 1993, was promoted to the Indian Revenue Service in the year 2003 and was posted as Assistant Commissioner of Central Excise and Customs at Salem and Mumbai during the relevant period. Vide Annexure-A1 Memorandum dated 18.06.2009, two charges were framed against the applicant, one relating to remaining absent from duties from 05.01.2009 without prior permission or sanction of leave from the competent authority to grant leave till the date of issue of the memorandum i.e. 18.06.2009 and the second Article of Charge relating to writing a letter to the President of the All India Congress Party wherein he criticized certain Government Policies and decisions relating to the

Indo-Sri Lankan Peace Accord. It was also stated in the charge memorandum that the applicant observed Hunger fast in his native town with a view to pressurize the Central Government to take steps to end the war in Sri Lanka. The respondents had cited certain rules of the CCS(CCA) Rules which the applicant was allegedly in violation of. After a detailed process of inquiry, the applicant was also given an opportunity to reply to the inquiry report and final orders were issued vide order No. 24/2014 dated 08.08.2014 which is impugned in this O.A. The applicant is stated to have filed a representation with the President of India on 25.06.2015 Annexure-A4 which the respondents are stated to have not received. He sent a further representation requesting to quash the disciplinary proceedings vide his letter dated 16.4.2019 which has so far not been replied to. The respondents in their reply, however, state that his representation dated 16.4.2019 is under consideration of the disciplinary authority.

3. In effect, an order dated 08.08.2014 has been implemented by the respondents and the applicant based on his request for certain information under RTI has got a reply on 05.02.2019 based on which he has filed the present O.A.

4. The respondents have made an initial objection stating that the order issued in 2014 has already been implemented and the delay in filing of this OA should not be condoned.

5. The applicant as part of the written submissions has filed a letter dated 20.01.2020 issued by the respondents wherein it is stated that recovery of Rs. 1, 59,619/- will be recovered from the salary of the applicant starting from the month of January, 2020. The penalty imposed against the applicant was one of reduction to a lower stage in the time scale of pay by three stages for a period of two years. Therefore, it appears that a certain recovery order has been issued with effect from January, 2020. We are not aware of the circumstances under which this order has been passed and, therefore, we are not able to come to any conclusion regarding the actual status of the implementation of the order dated 08.08.2014 or otherwise. However, in the interest of justice, M.A. 458/2019 filed for condonation of delay is allowed.

6. The main contention of the applicant is that while the approval of the disciplinary authority, namely, the Finance Minister was obtained for the initiation of disciplinary proceedings, no such separate approval was obtained for the charge memo given to him.

In support of his case, he has cited the main case of ***Union of India & Ors. v. B.V. Gopinath*** in Civil Appeal No. 7761 of 2013 along with certain other Civil Appeals ordered by the Hon'ble Supreme Court on 05.09.2013. The crux of the order of the Hon'ble Supreme Court is in para -45 where the Hon'ble Apex Court has stated as follows:-

".....Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of Ms. Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo."

The applicant based on this order mainly, has vehemently argued that in any case of disciplinary action against officers such as the applicant, there shall be two stages:-

Stage I:- Granting of approval for initiation of disciplinary proceedings; and

Stage II:- approval of framing of charges.

In support of his arguments, the applicant has cited the case of ***Kumar Vivek v. Indian Counsel of Agricultural Research passed*** dated 09.11.2016 in O.A. 3040 of 2013 by the Principal Bench of Central Administrative Tribunal (CAT) wherein it was concluded that the final charge sheet was not approved by the disciplinary authority and, therefore, the application was allowed.

The applicant has also cited the case of ***Dr. Sahadeva Singh v. Union of India*** vide order dated 13.07.2016 in WP(C) No. 3676 of 2013 of the Hon'ble High Court of Delhi wherein the Court came to the conclusion that after the approval of the initiation of disciplinary proceedings, the file was not sent to the Minister for approval of the Charge-memo. The Hon'ble Delhi High Court noted in para-10 that after the Minister had granted his approval, a separate note was prepared with the Draft memo and order of suspension and this was not taken up for the approval of the disciplinary authority and, therefore, in this case, the contention of the petitioner was accepted by the Hon'ble High Court.

7. The applicant has further cited the case of ***Vikram Singh vs. Union of India & Anr.*** before the Hon'ble High Court of Delhi vide order dated 24.08.2015 in W.P(c) No. 6694 of 2014. In that case, the Hon'ble High Court noted that the orders of the disciplinary authority were solicited for initiation of disciplinary proceedings and issue of the charge sheet. The Hon'ble High Court took objection to the point that the charge sheet was approved on the same date which could not have been approved in view of the settled position of law in the case of *Union of India v. B.V. Gopinath (Supra)*. In all these cases, the main issue to be decided was whether there is

adequate material available to show that the disciplinary authority had applied his mind before the initiation of disciplinary proceedings as well as before the issue of the charge memorandum.

8. The respondents, on the other hand have also cited certain cases to prove the point regarding the importance of the substance of the allegations and the procedure involved. They have cited the case of ***Sharath Srinivas v Union of India*** in W.P. Nos. 7367 and 7368 of 2015 wherein the Hon'ble High Court of Madras vide its order dated 25.3.2015 came to the conclusion in para -18 that *"when the substance of the allegations for which approval has been granted by the Minister, do not vary from the Articles of charges, the petitioner cannot contend that the procedural safeguard available to him was made a dead letter. No prejudice could be pleaded by the petitioner in cases of this nature."* In that particular case, the substance of the allegations was forwarded to the Minister on 01.11.2014 and approved by him on 5.11.2014. However, the charges were framed separately on 18.11.2014. The Hon'ble High Court decided that *"this is not a case where the dicata laid down by the Supreme Court in B.V. Gopinath, could be taken to be applicable. In B.V. Gopinath, there were two sets of persons,*

one to be prosecuted before the Criminal Court and other to be proceeded departmentally. Therefore, the Supreme Court considered as to whether the decision taken was with particular reference to the allegations or not. In this case, the approval granted by the Minister on 05.11.2014 was with particular reference to the substance of the allegations, which have now been made into a charge memo.” The Hon’ble High Court of Madras, therefore, dismissed the W.P.s. To clarify further, it could be seen that even in the case where the charge memo was not actually approved by the disciplinary authority, the Court interpreted the B.V. Gopinath’s case in such a way that if the charge memo reflects the substance of the allegations on which the disciplinary proceedings were initiated, there would be no procedural infirmity and that the safeguard available to the person proceeded against was not affected in any way. The respondents have further cited the case of ***Dinesh Singh vs. Union of India & Ors.*** decided by the Hon’ble Principal Bench of Central Administrative Tribunal in OA 2772/2017 order dated 22.08.2019 wherein the issue of a separate approval for charge sheet was considered in detail and the Principal Bench noted in Para-30 that “.... *From a reading of paragraph 50 of the judgment (B.V. Gopinath), it becomes clear*

that defect was on account of there being no approval of the charge memo, at all." The Principal Bench also cited the case of **Vikram Singh v. Union of India & Anr** (W.P.(C) No. 6694/2014) decided on 24.08.2015 wherein the Hon'ble Delhi High Court took a view that the approval for initiation of disciplinary proceedings on the one hand and approval of charge memo on the other, need not be separate. The Principal Bench of CAT noted that the same was further explained in **Suresh Sharma v. NTRO through its Chairman & Others** (W.P. (C) No. 3937/2017 and connected matters) decided on 18.08.2017. Therefore, in this case, we have to see whether as claimed by the applicant, there was no approval of the charge memo by the disciplinary authority, Finance Minister.

9. The extract from file No. C-14011/6/2009-Ad.V., with the note file in this regard has been reproduced by the applicant as well as by the respondents. The note available from pages 12 to 14 specifically mentions about the draft charge memorandum in para-2 wherein the details of alleged misconduct by the applicant are elaborated in two pages. At the conclusion of the note at page-14, the department specifically requested "for the approval of the Hon'ble EAM/FM for initiation of major penalty proceedings under Rule 14 of the CCS(CCA) Rules and to take other ancillary action

against Sri Balamurgan. Draft charge Memorandum is also place below.” The note continues in page-15 where the Chief Vigilance Officer, CBEC starts his note as follows:-

“Detailed notes at pages 12-14/N refer”.

He also solicits the approval of initiation of disciplinary proceedings.

The applicant would contend that since this note does not say anything about the charge-memo, the approval of the Finance Minister, the disciplinary authority dated 14.06.2009 would only relate to initiation of disciplinary proceedings and not the charge memo.

10. It is patent that the draft charge memo is not only discussed in detail in the note pages-12 and 13, but it is also specifically referred to in the note at page 14. The Chief Vigilance Officer refers to the detailed notes at pages 12-14 in his note at page 15 and, therefore, we are unable to appreciate the point that the disciplinary authority had not applied his mind with respect to the charge memo issued against the applicant. There is no material available to show that the draft charge memo was not perused by the disciplinary authority to contend that just because of the absence of a specific mention about the charge in page -15, it

would amount to any non-application of mind or decision on the part of the disciplinary authority at the time of issue of charge memo. While it is to be accepted that the two stages are contemplated to cater to the situations wherein if the disciplinary proceedings are initiated and based on the explanation of the officer, there could be a decision not to issue a charge memo at all. However, in the present case, the details of the misconduct are elaborated as part of the draft charge memorandum by the respondents and the same has also been approved by the disciplinary authority. It is not a case wherein the draft charge memorandum was not placed before the disciplinary authority or a case where, after the approval of the initiation of the disciplinary proceedings, the charge memo was not sent to the disciplinary authority for approval as in the cases cited by the applicant.

11. We have seen the judgment of the Hon'ble High Court of Madras wherein primacy was given to the substance of charge memo being in consonance with the approval obtained from the disciplinary authority. It is also seen that the representation made by the applicant vide his letter dated 16.4.2019 is still under consideration by the disciplinary authority as stated by the respondents. We also note that even though certain recoveries are

ordered to be recovered from the applicant in January, 2020, we are not able to come to any conclusion whether the order of penalty was implemented or not for whatever reason the respondents may have had.

12. For all the above reasons, we find no merit in the OA. It is dismissed. No costs.

(C.V. SANKAR)
MEMBER(A)

(S.N. TERDAL)
MEMBER(J)

30.03.2021

Asvs.