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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (O.A.) No. 514 of 1986

S.P. Srivastava Applicant.

Versus

Union of India & others Respondents.

Hon'ble G.S. Sharma, J.M.
Hon'ble K.J. Raman, A.M.

(Delivered by Hon. K.J. Raman, A.M.)

In this application, filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant, Sri S.P. Srivastava, a Deputy Superintendent (Executive), District Opium Office, Faizabad seeks to get set aside the order of punishment dated 29.4.1983 in a disciplinary proceedings against him, together with the appellate order thereon as well as an order on a petition from him to the President of India in the same matter. The respondents are - Union of India, Central Board of Excise and Customs, and the Narcotics Commissioner of India..

2. The facts of the case, in brief, are that the applicant was posted as Deputy Superintendent (Executive) (DS(E)) at Chittaurgarh Division in January, 1977. He was required to look after the work of District Opium Officer (DOO) at that place and orders specified his functions and duties were issued on 20.1.1977 by the Deputy Narcotics Commissioner (DNC). He was thus functioning as DOO till January, 1978 after which he was transferred to Jodhpur. In March, 1978 he was placed under suspension in contemplation of a disciplinary proceeding against him. He was reinstated in May, 1979. The charge-sheet was issued to him in May, 1981. The statement of articles of charge against the applicant contains several charges alleging that the applicant failed to maintain absolute integrity and devotion to duty and committed misconduct, inasmuch as he had

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granted several licences to cultivators, who were either proscribed permanently or were not eligible for grant of licences, etc. and that he demanded and accepted several sums of money as illegal gratification from various cultivators during the period he was working at Chittaurgarh. The applicant denied the allegations and an enquiry was conducted by a Commissioner for departmental enquiries of the Central Vigilance Commission (CVC), New Delhi. After conducting the enquiry the Enquiry Officer submitted his report, which concluded that the applicant was indeed guilty of some charges and he was not guilty of the others. The Disciplinary Authority (the Narcotics Commissioner of India) thereafter issued an order in which he accepted the enquiry report in toto and imposed a punishment of reduction of pay by one stage from Rs.750/- to Rs.725/- in the time scale of Rs.550-900 for a period of one year without cumulative effect. His pay and allowances during the period of suspension was limited to his subsistence allowance. The applicant thereafter preferred an appeal and the appellate authority (CBEC) rejected the same. A petition to the President by the applicant also failed and the punishment was upheld. It is against this that the applicant has preferred this application.

3. The applicant has urged a number of grounds for interference by this Tribunal in the matter of his punishment. The respondents have filed a reply refuting the various allegations contained in the application. A rejoinder affidavit has also been filed by the applicant. The case was heard when Sri B.P. Srivastava, learned counsel for the applicant and Sri K.C. Sinha, learned counsel for the respondents, were present and argued their case. We have carefully considered their arguments and pleadings. ^{One} ~~The~~ ^A main contention urged by Sri Srivastava and in the application ^{is} ~~are~~ that he was not a fulfledged DOO (a Gazetted Post) but only a Deputy Superintendent. It is apparently implied that for this reason, the

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full rigour of the responsibilities and requirements of a DOO should not visit him or ~~should not visit him~~ or should not be expected of him. The respondents have averred that he was posted at Chittaurgarh and ordered to look after the work of DOO and a written order was issued on 20.1.1977. A copy of this order is annexed to the application by the applicant. In para 1 of this order the applicant is described as "Incharge DOO, Chittaurgarh, Division I". In para 2 it is stated that the duties and responsibilities with regard to cultivation and field work will be carried out by the DS(E). It is thus evident that at the time of his posting at Chittaurgarh, the authorities left no room for doubt that he was "Incharge DOO" entrusted with the duties and responsibilities of a DOO. If the applicant ~~felt~~ ^{fails} that he was not upto the mark and such duties were too much for him, he should not have accepted such posting, but asked for some other posting. Having accepted the posting, he has ^{to} ~~played~~ the game and not allowed ^{to} ~~the~~ public interest to suffer by non-performance of the duties of a DOO fully and squarely. This contention of the applicant is, therefore, not acceptable.

4. Another contention made is that some 43 prosecution witnesses were listed but only 8 called and some specified witnesses were not called at all. The enquiry report shows that many witnesses did not attend and only a small number of witnesses were examined. But the applicant has not shown that any conclusion has been arrived at against him without examination of any witnesses. If the witnesses did not turn up, it is the charge-sheet that suffers and not the applicant. At any rate the applicant has not shown otherwise. Since ^{been} no prejudice is shown to have caused to the applicant by the non-examination of some witnesses, it cannot be said that either the proceeding or the order is vitiated.

5. The main contention advanced, more than once in the application and during the arguments, is that the charge-sheet never alleged any carelessness and negligence on the part of the applicant in the discharge of his duties. The applicant calls this as a new

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charge of carelessness and negligence for which the applicant was never given any opportunity ^{of defence} ~~to~~. Without such mention in the charge-sheet, the Enquiry Officer and the Disciplinary Authority have held him guilty of carelessness and negligence and punished him on that basis. The learned counsel for the applicant argued at length on this point and cited AIR 1963 ¹⁹⁶² Tripura 20, which rules that a Government servant cannot be punished for negligence when there is no specific allegation to that effect in the charge-sheet. The applicant argued ^{on} that the Enquiry Officer as well as the disciplinary authority having held that the allegation of corruption ^{had not} ~~had~~ been proved against the applicant, there was no charge left, particularly since he had performed his duties in good faith.

6. Sri K.C. Sinha, learned counsel for the respondents, also dwelt at length in refuting these contentions. He stated that the statement of articles of charge contained several charges which clearly stated that the applicant had granted licences to cultivators, who were either prohibited permanently from obtaining licences, ^{or} ~~or~~ ^{were} otherwise not eligible for grant of licences. It is clearly mentioned in the charges that this was against the rules and regulations. The charge-sheet clearly alleges that on account of such action, the applicant failed to maintain absolute integrity and devotion to duty and committed misconduct. He also read out the portions of the Enquiry Officer's report where the Enquiry Officer has clearly stated that he held the various charges as proved against the applicant. After having stated that the charges were proved, the Enquiry Officer has, no-doubt, further said that the applicant committed this misconduct due to negligence and carelessness. The learned counsel, therefore, stated that there was no fresh charge made against the applicant.

7. The above contention regarding negligence and carelessness has to be seen with reference to the charge-sheet and the imputations, the enquiry report and the order of the disciplinary authority. The very first para in the statement of articles of charge ^{is}

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alleges that the applicant failed to maintain absolute integrity and devotion to duty and committed misconduct, inasmuch as he did certain things which are specified in that statement. The various items specified include, on the one hand instances of grant of licences against rules, regulations and prohibitions, and on the other, allegations of receiving bribes. It is ~~true~~ ^{seen} that the imputation of misconduct gives further details of the same instances. It is true that there is no specific allegation of carelessness and negligence, but the allegation of non-maintenance of devotion to duty will cover negligence and carelessness. A person devoted to duty will not be negligent or careless. It is, therefore, not entirely correct to say that the charge-sheet does not include a reference to negligence and carelessness. Such lack of devotion to duty could also be due to mala fide intentions and corruption. It is this possibility that the Enquiry Officer has ruled out as a result of his enquiry. It is for emphasising this fact that ^{after} ~~after~~ holding that the charges have been proved, the Enquiry Officer has stated more than once that this has happened because of negligence and carelessness on the part of the applicant. This is clear from paras 5.4, 10.1, 12, 15 and 18.1 of the enquiry report. This is also made clear in paras 5 and 6 of the order of the disciplinary authority. It is stated that "However, the ~~enquiry~~ ^{CB} Inquiring Authority has held him responsible for grant of licences to certain proscribed and delicensed cultivators..... The Inquiring Authority came to the finding that this happened because Sri Srivastava was careless and negligent in not having properly verified the prescribed records, etc." It is thus clear that the high-lighting or specifying of negligence or carelessness by the Enquiry Officer and the Disciplinary Authority is only to show that the charge of corruption has not been proved against him and to extend to him a more lenient treatment. Negligence and carelessness ^{are} ~~which~~ shown to be reasons for the misconduct of the applicant; or negligence and carelessness are the inference from the misconduct. A perusal

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of the proceedings and the orders, as above, do not show that there was any question of ~~levying~~ ^{levelling} any fresh charge. There is no-doubt that the Enquiry Officer and the Disciplinary Authority found the charge, as stated in the charge-sheet, to have been proved to the extent mentioned in the enquiry report. The Appellate Authority has clearly observed that in the absence of direct evidence proving mala fide intentions the conclusions would be that Sri Srivastava was grossly negligent and showed utter disregard in the matter of discharge of duties.

8. In the circumstances, the contention of the applicant in this respect cannot be accepted. The applicant has mentioned a few other points also in the application, but none of them are tenable.

9. In the light of the discussions above, we find no justification for interference with the impugned orders passed in this case. The application accordingly fails and is dismissed with no order as to costs.

(Signature)

MEMBER (A).

Dated: August 8, 1989.

(Signature)

MEMBER (J).

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