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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK.

Original Application No.133 of 1987.

Date of decision : February 10, 1989.

Sudarsan Das, son of Paramananda Das,
Inspector, Customs House, At/P.O.Paradeep,
Dist.Cuttack.

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Applicant.

Versus

1. Union of India through the Finance Secretary, Govt. of India, New Delhi.
2. Chairman, Central Board of Excise and Customs, Govt. of India, New Delhi.
3. Collector, Central Excise and Customs, At/P.O.Bhubaneswar, P.B.No.166, District-Puri.
4. Assistant Collector, Central Excise and Customs, Sambalpur Division, At/P.O./Dist-Sambalpur.

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Respondents.

For the applicant ... Mr.G.A.R.Dora, Advocate

For the respondents ... Mr.A.B.Mishra, Esq.
Sr.Standing Counsel (Central)
Mr.Tahali Dalai,
Addl. Standing Counsel (Central)

C O R A M :

THE HON'BLE MR.B.R.PATEL, VICE-CHAIRMAN

A N D

THE HON'BLE MR.K.P.ACHARYA, MEMBER (JUDICIAL)

1. Whether reporters of local papers may be allowed to see the judgment ? Yes.
2. To be referred to the Reporters or not ? No
3. Whether Their Lordships wish to see the fair copy of the judgment ? Yes.

JUDGMENT

K.P.ACHARYA, MEMBER (J) In this application under section 19 of the Administrative Tribunals Act, 1985, the order passed by the reviewing authority withholding promotion of the applicant for a period of one year contained in Annexure-5 is under challenge.

2. Shortly stated, the case of the applicant is that he joined as an Inspector, Central Excise & Customs on 6.11.1975 and in course of time the applicant was confirmed on 11.8.1979. While the matter stood thus, on 28.7.1978 it was required of the applicant to supervise physical clearance of 130 petras of biris from Non-duty paid godown to the duty paid godown. From the relevant documents it is revealed that the applicant did not visit the godown from which the petras were cleared and the applicant is said to have given a certificate to the above effect by staying in his Office, ^{and} thereby the applicant is said to have misconducted himself and it was further alleged that the applicant had violated Rule 3(1)&(2) of the Central Civil Services (Conduct) Rules, 1964. and Article 2 of the charge indicates that while the applicant was posted at Jharsuguda Range Office the applicant though was directed to certify the stock of duty paid biri tobacco in factories/warehouses at Rengali as on 28.2.1979/1.3.1979, he did not actually conduct the physical verification but endorsed wrong statement in the factories books of account. On the basis of these charges, an enquiry was held and ~~on his~~ ^{in his} turn the enquiring officer submitted a report finding that both the

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charges had not been established. The disciplinary authority found the applicant guilty of charge no.1 and agreed with the finding of the enquiring officer that the applicant was not guilty of charge no.2, and while holding that the charge no.1 had been established against the applicant, the Disciplinary authority did not think it worthwhile to impose any penalty over the applicant because of the long pending case. Some how, this attracted the attention of the reviewing authority who suo motu started a case and while disagreeing with the disciplinary authority, the reviewing authority, the Collector, Central Excise & Customs vide Annexure-R-5 ordered issuance of notice to the applicant to show cause as to why adequate penalty should not be awarded ^{against} to him. After receiving the show cause, the reviewing authority vide Annexure-A/5 held that the charge no.1 had been established and further ordered that the promotion of the applicant be withheld for a period of one year. Hence, this application with the aforesaid prayer.

3. In their counter, the respondents maintained that no illegality having been committed during the course of enquiry and principles of natural justice having been strictly followed and the procedure envisaged under the Central Civil Services (Conduct) Rules having been strictly observed, the order of punishment should not be unsettled - rather it should be sustained and there being no merit in this case, it is liable to dismissed.

4. We have heard Mr.G.A.R.Dora, learned counsel for the applicant and Mr.Tahali Dalai, learned Additional

Standing Counsel (Central) at some length. We have also perused the averments in the application under section 19 of the Act and also the averments in the counter and we have given our careful consideration to the documents forming subject matter of the record. The enquiring officer found that the applicant should be exonerated from the charge because the departmental witness himself stated in categorical terms that the applicant had visited the spot and had given clearance for movement of biris from Non-duty paid godown to Duty paid godown. Even though the standard of proof required in a criminal trial may not be as same as that of the standard of proof required in a departmental proceeding yet, if the delinquent officer is successful in bringing some evidence from the mouth of any prosecution witnesses substantiating his defence, the court cannot but act on such evidence if it appears to be satisfactory. In the present case, one departmental witness having stated that the applicant had visited the godown and had given clearance sufficiently substantiates the contention of the applicant that he had visited the spot and we think rightly the enquiring officer had come to such a conclusion. Mr. Tahali Dalai, learned Additional Standing Counsel (Central) vehemently submitted before us that preponderance of probabilities and the evidence on record which has been thoroughly scanned by the disciplinary authority conclusively indicates that the charges had been brought home against the applicant as he had not visited the spot at all and therefore the punishment should be sustained.

We have given our careful consideration to this part of

argument advanced by Mr. Tahali Dalai and we have also given our careful attention to the reasonings assigned by the disciplinary authority and that of the reviewing authority. From the trend of discussion of both the authorities it appears to us that on mere suspicion both of them have come to a conclusion that the charge had been established and the finding of the enquiring officer has been set aside. In our opinion, grave mistake has been committed by both the authorities at this stage because law is well settled in a case reported in AIR 1964 SC 367 (Union of India v. H.C. Goel) that however strong the suspicion may be, it cannot take the place of proof even in a departmental proceeding. Being bound by the dictum laid down by Their Lordships in the above mentioned case and finding that there is no credible evidence to substantiate the charge against the petitioner we do hereby set aside the order of the disciplinary authority and that of the reviewing authority holding the petitioner guilty of the charge no.1 and so also the punishment imposed by the reviewing authority. To sum up our conclusion, the applicant is exonerated of all the charges.

5. It was submitted before us by Mr. Dora that due to pendency of the disciplinary proceeding the applicant was not allowed to cross the efficiency bar on the due date i.e. in 1981 and he was also not given promotion from the due date because of the pendency of this proceeding. The applicant having been exonerated of the charges and there being no ~~dirty~~ linen pending against the applicant on the relevant

date it is now left open for the consideration of the competent authority to adjudge the suitability of the applicant and if found suitable, allow him to cross the efficiency bar and give him promotion with effect from the due date. So far as the suitability of the applicant is concerned we would state that the competent authority would take into consideration that once promotion was given to the applicant. We would not like to give any direction in this matter as adjudication of the suitability of the applicant lies within the province of the competent authority. In this case, the applicant would be well advised to file a representation before the competent authority to the above effect who should dispose of the representation according to law within two months from the date of filing of the application. If the applicant is allowed to cross the efficiency bar and is allowed promotion then all consequential benefits should also be given to the applicant from such dates.

6. Thus, this application is accordingly disposed of leaving the parties to bear their own costs.

K. G. Patel
10-2-89
Member (Judicial)

B.R.PATEL, VICE-CHAIRMAN,

I agree.

Anand
10-2-89
Vice-Chairman

Central Administrative Tribunal
Cuttack Bench, Cuttack.
February 10, 1989/Sarangi

