

17

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

ORIGINAL APPLICATION NO. 495 OF 2001  
cuttack, this the 22nd day of March, 2002

RAJAN SURI.

....

APPLICANT.

VERSUS

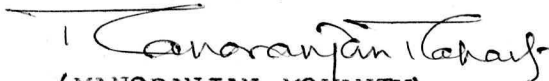
UNION OF INDIA & ORS.

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RESPONDENTS.

FOR INSTRUCTIONS

1. whether it be referred to the reporters or not? yes
2. whether it be circulated to all the Benches of the Central Administrative Tribunal or not? yes

  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL) 22/03/2002

  
(M. P. SINGH)  
MEMBER (ADMINISTRATIVE)

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18

CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 495 OF 2001  
Cuttack, this the 22nd day of March, 2002.

C O R A M:

THE HONOURABLE MR. M.P. SINGH, MEMBER (ADMINISTRATIVE)  
AND  
THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.)

....

RAJAN SURI,  
Aged about 45 years,  
S/o. Sri R.L. Suri, at present  
working as Additional Commissioner,  
Central Excise and Customs,  
Bhubaneswar-II Commissionerate,  
Rajaswa Vihar, Bhubaneswar-4,  
DISTRICT: KHURDA.        ....        ....        APPLICANT.

By legal practitioner :    M/s. Ashok Mohanty,  
   J. Sahu, T. Rath,  
   H.K. Tripathy,  
   J.K. Samantsinghar,  
   M.K. Rout, J.P. Patra,  
   A d v o c a t e s.

- VERSUS -

1. Union of India represented through Secretary to Government, Ministry of Finance, Govt. of India, Central Secretariat, North Block, New Delhi-2.
  2. Chairman,  
Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Govt. of India, North Block, Central Secretariat, New Delhi-2.
  3. Member (P & V),  
Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India, North Block, Central Secretariat, New Delhi-2.
  4. N. Raja,  
Director General of Vigilance (CVO), Customs and Central Excise, 2nd Floor, C.R. Building, I.P. Estate, New Delhi-2.
  5. Sri V.P. Arora,  
Under Secretary to Govt. of India (Ad-v), Ministry of Finance, Department of Revenue, Central Board of Excise and Customs,
- ML*

4th floor, Jeevan Deep Building,  
Parliament Street, New Delhi-1.

.... Respondents.

By legal practitioner : Mr. Anup Kumar Bose,  
Senior Standing Counsel (Central).

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O. R D E R

( ORAL )

MR. M.P. SINGH, MEMBER (ADMINISTRATIVE) :-

In this Original Application, under section 19 of the Administrative Tribunals Act, 1985, the Applicant has challenged the Office Memorandum dated 21st September, 2001 communicated vide letter dated 28.9.2001 (Annexure-3) and has prayed for quashing the said charge-memo (Annexure-3) whereby in pursuance of the said charge-memo enquiry has been initiated against the Applicant.

2. The Applicant is working as Additional Commissioner, Central Excise and Customs, Bhubaneswar-II Commissionerate Bhubaneswar. The Respondents vide their Memo dated 21st September, 2001 have drawn up certain charges against the Applicant. The charges levelled against the Applicant are as follows:

\* That Shri Rajan Suri while posted and functioning as Joint Commissioner, Central Excise (Technical), Calcutta-I Commissionerate during the period from 15.6.99 to 30.4.2001 committed gross

misconduct

inasmuch as he had removed/destroyed certain official classified documents containing in Ministry's File No.C-14011/29/99-Ad.v which were apparently unfavourable to him and/or posed a threat to his successfully challenging the charge Memo dt.16.11.1999 issued to him for his misconduct in another case, the issue of which was subjudice before CAT, Kolkata Bench.

That Shri Rajan Suri, thus misused his official power in handling the Ministry's F.No.C-14011/29/99-Ad.v pertaining to the aforesaid case filed by him before the CAT, Kolkata which contained presidential sanction to initiate disciplinary proceedings followed by the Charge Memo as aforesaid issued to him and consequently the said documents (which were supposed to be produced before the CAT on 15-1-2001 as per order of the CAT dated 31-7-1999) could not be so produced and thus it was observed inter alia by the CAT that prior sanction of the authority concerned while proceeding the aforesaid disciplinary case against Shri Suri was not obtained and accordingly issued orders on 16, 18th and 19th of June, 2001, in favour of him.

That such an act of misusing official power as Joint Commissioner as well as removing/destroying certain most vital and classified official documents amounts to gross misconduct on the part of Shri Rajan Suri and therefore, he had acted for his personal gain which is unbecoming of a Govt. Servant in contrary to the provisions of Sections 3(1) (i) (ii) & (iii) of CCS (Conduct) Rules, 1964\*.

3. Heard Shri Ashok Mohanty, Learned Counsel for the Applicant and Shri Anup Kumar Bose, learned Senior Standing Counsel (Central) appearing for the Respondents and perused the records .

4. Learned Counsel for the Applicant has stated in that the charge-sheet issued by the Respondents, it has been

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stated that the Applicant has removed certain official classified documents contained <sup>2</sup> in the Ministry's file No.C-14011/29/99- Ad.V which were apparently unfavourable to him and/or posed a threat to his successfully challenging the charge Memo dated 16.11.1999 issued to him for his misconduct. In this connection, learned Counsel for the Applicant has drawn our attention to the contradictory statements made by Shri R.K.Malhotra, Under Secretary who had brought the file relating to the disciplinary proceedings against the Applicant and the statement made by the Inspector Shri Salui. Shri Malhotra, in his statement has stated that after 6.00 p.m. on 15th January, 2001 when he was sitting in the Office of the Applicant, the Applicant has left his office as certain guests have arrived at his residence. On the other hand, Shri Salui, the Inspector, who was to carry the file to the Chamber of Government Advocate to brief him, has stated that the said file was asked by the applicant after 6.15 p.m. on the same day. Therefore, it is submitted by learned counsel for the Applicant that because of the contradictory statements made by the aforesaid officers, there is no evidence against the Applicant and he has been charged only with a view to adversely affect his promotional avenue as the Applicant is now due for next higher promotion i.e. for the post of Commissioner, Central Excise and Customs. Learned Counsel for the Applicant has also

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drawn our attention to the judgment of the Calcutta Bench of the Central Administrative Tribunal dated 19th January, 2001 in Original Application No. 809/2000 in which the Calcutta Bench of the Tribunal has held as follows:

\*However, from certain records produced before us today, we find a letter bearing No. W/CEX- 53, dated 4-12-2000 written by Servesh Kumar, Director Central Vigilance Commission, New Delhi addressed to Shri H. Raja, DG(Vig.) CBEC, New Delhi wherefrom it appears that it was observed by the Commission that the note sheet was in the file when it was inspected by the charged officer and it is believed that the charged officer removed it during the inspection and that the logical conclusion was that the Presenting Officer was careless when he provided the inspection to the CO. Although the name of the CO was not disclosed in this letter, but it appears that period in question mentioned therein may relate to Smt. Dolly Saxena. So, we are satisfied that the file is missing. Since the file rather the note sheets are missing, we have no other alternative but to hold that the Presidential sanction regarding initiation of DA proceedings against the Applicant was not obtained by the competent Authority though the charge-sheet was issued in the name of the President. Therefore, we have to infer adverse presumption against the respondents in this regard.

5. In the above case, the Applicant has challenged the Charge-sheet issued to him earlier by the Respondents on 16-11-1999 in Calcutta Bench of the Tribunal in OA No. 809/2000. In that case, the applicant was charged for misconduct under Rule 3(1) (i) (ii) and (iii) of CCS (Conduct) Rules, 1964. It is with reference to that disciplinary proceedings, where the note-sheet of the file containing the Presidential sanction has been missing/lost and the applicant is allegedly suspected to have removed it for his own advantage.

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6. Learned Counsel for the Applicant has further stated that in view of the findings of the Calcutta Bench of the Tribunal that the note-sheet of the file which contained the Presidential sanction was missing, even at the time when one Shri Servesh Kumar, Director Central Vigilance Commission, New Delhi has brought out this fact to the notice of Director General (Vig.) C.B. E.C. in December, 2000. Therefore, the question of removing the note-sheets by the Applicant from the file on 15th January, 2001 does not arise. Hence, it is a case of no evidence and therefore, the charge sheet issued to the Applicant needs to be quashed and set aside.

7. On the other hand, learned Senior Standing Counsel appearing for the Respondents has drawn our attention to the aforesaid judgment of the Calcutta Bench of the Tribunal stating that the Tribunal has only made observation that the certain papers are missing from the file. It is not certain as to whether the same very notesheet which contained the Presidential sanction with regard to the Applicant was missing and this has to be ascertained during the course of the enquiry by the Inquiring Officer and it is also not ruled out that the applicant might be, on the basis of the evidence, to be adduced during the enquiry, is exonerated. Therefore, at this interlocutory stage, the Tribunal should not interfere in the matter and it is proper to leave the matter to the Respondents to find the truth.

or otherwise of the charges framed against the Applicant, under Annexure-3.

8. On perusing the records, placed before us, we find that there are contradictory statements of Shri Salui, the Inspector and Shri Malhotra, Under Secretary, who have allegedly handled the file and given it to the Applicant on the date and time as alleged. Moreover, there is a specific finding in the judgment of the Calcutta Bench of the Tribunal dt. 19th January, 2001 that as early as 4th December, 2000 the Director in the office of the Central Vigilance Commission, New Delhi has drawn the attention of the Department and has also specifically pointed out the carelessness of the Presenting Officer in whose custody the file was kept to the fact that the note-sheet was missing. In other words, the note sheet of the said file might have been lost/missing before 4th December, 2001.

9. We are conscious that the Hon'ble Supreme Court in a catena of judicial pronouncements has laid emphasis that normally the Courts/Tribunals should not interfere with the Disciplinary Proceedings or charge-sheet at an interlocutory stage. However, the Hon'ble Supreme Court has also observed that, if there is a case of no evidence and if the Tribunal/Court finds that the charge-sheet has been issued on frivolous ground, without any evidence, the same can be quashed and set aside.

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10. In this case, we find that the charges have been framed against the Applicant on mere suspicion on the face of the records as there is no evidence, as per the detailed discussions made above. A similar issue came up before the Constitution Bench of the Hon'ble Supreme Court in the case of Union of India vrs. H.C. Goel - reported in AIR 1964 SC 364 for consideration and Their Lordships of the Apex Court, in para 27 of the Judgment have held as under:

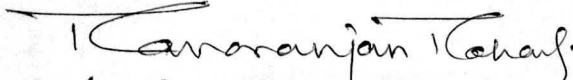
\*Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to the disciplinary enquiries held under the statutory rule\*.


11. We, therefore, find force in the submissions made by the learned Counsel for the Applicant that the charge-sheet has been issued to the Applicant (under Annexure-3) by the Respondents without any iota of evidence with a view to throttle the promotion of the Applicant, which is due to the next higher grade of Commissioner <sup>2</sup> and amounts to a colourable exercise of power. We are taking this view keeping in mind the fact that earlier also a charge-sheet was issued to the Applicant, when he was due for promotion to the post of NSF Grade and the same <sup>2</sup> ~~and the same~~ was challenged

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and adjudicated by the Calcutta Bench of the Tribunal in OA No.809/2000 and it was only after quashing of the said charge-sheet, the Applicant was promoted to the NSF grade.

12. In the light of the above detailed discussions, we allow the Original Application, quash and set-aside the charge-sheet issued by the Respondents on 21st September, 2001 and communicated to the Applicant on 23.9.2001 (Annexure-3) <sup>also</sup> and any action in pursuance thereof. No costs.

  
(MANORANJAN MOHANTY) 22/03/2002  
MEMBER (JUDICIAL)

  
(M. P. SINGH)  
MEMBER (ADMINISTRATIVE)

KNM/CM.