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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK

ORIGINAL APPLICATION NO. 675 OF 2002
Cuttack this the 30th day of July 2004

Amiya Kanti Patnaik ... Applicant(s)

-VERSUS-

Union of India & Ors. ... Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ? No

2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? No

30/07/04

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

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CORAM:

THE HON'BLE SHRI B.N. SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDICIAL)

...

Sri Amiya Kanti Patnaik, aged about 48 years, S/o. Late Subal Ch.Das, at present working as Superintendent, Central Excise & Customs, Bhubaneswar-1 Commissionerate, Bhubaneswar Dist - Khurda

... Applicant

By the Advocates M/s.A.K.Mishra
J.Sengupta
P.R.J.Dash
D.K.Panda
G.Sinha

- VERSUS -

1. Union of India represented through its Secretary Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi
2. Commissioner, Central Excise and Customs, Orissa Bhubaneswar-II Commissionerate, Bhubaneswar, Dist-Khurda
3. Commissioner, Central Excise and Customs, Orissa, Bhubaneswar-I Commissionerate, Bhubaneswar, Dist-Khurda
4. Sri B.K.Mallick, Dy.Commissioner of Central Excise, B & F Division, 169-A.J.C.Bose Road, Kolkata-14, West Bengal
5. Union Public Service Commission represented through its Special Secretary, Sahajahan Road, New Delhi-11

... Respondents

By the Advocates Mr.A.K.Bose, S.S.C.

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O R D E R

MR.B.N.SOM, VICE-CHAIRMAN : Applicant (Shri Amiya Kanti Patnaik), Superintendent, Central Excise & Customs, Bhubaneswar-I-Commissionerate has filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of punishment passed by the Commissioner of Central Excise & Customs, Bhubaneswar-II

Commissionerate, Bhubaneswar, on the ground that he is not the disciplinary authority in respect of him and that the order of punishment also suffers from various irregularities and arbitrary exercise of power. He has also challenged the order of the appellate authority dated 19.6.2002, who has been alleged to have rejected his appeal in a mechanical manner.

2. The case of the applicant is that while he was working as Inspector of Central Excise & Customs, Central Preventive Unit (in short CPU) during 1989-90, on 28.12.1989, a search was conducted by a team of officers of the CPU in the site office of M/s.Precision Engineering Works located inside the Rourkela Steel Plant Ltd. The team was headed by Shri J.S.Mantry, Superintendent(Prev.) under the overall supervision of Shri F.Lakra, Asst. Collector(Prev.) The allegation is that the applicant had acted as seizing officer. The team had selected 40 documents which were found relevant to the proceeding and those documents apparently revealed duty evasion to the tune of Rs.1.5 creres approximately. It is alleged a Panchanama by listing 40 documents was prepared duly signed by the applicant, representative of the firm and witnesses. It has been pointed out that the applicant was required to take up the follow up actions, i.e., after scrutiny of the documents the seizure report was to be submitted to the higher authorities within 24 hours of the search, which he did not do. It is also alleged that he did not enter the offence in the 335-J Register with ulterior motive. It has further been alleged that he did not process the case

for adjudication of the proceedings inspite of instructions issued to that effect by the Superintendent(Prev.) and Assistant Collector (Prev.). Lastly, that on 19.2.1990 when he moved out of CPU on promotion to the rank of Superintendent, he did not account for those documents nor did he handover the charge of those documents to his successor. It is alleged that the seized records were no more traceable.

2. The applicant has assailed the disciplinary proceedings on the ground that he was not supplied with the basic documents, even the listed documents in spite of his repreated representations with reference to the charge to supply him the documents to which reference had been made in the charge sheet, and relied upon in the proceedings. Secondly, that although the incident had taken place on 28.12.1989, no disciplinary proceedings was initiated till 18.3.1997. It was more than seven years after the happening of the incident that a departmental inquiry was proposed to be held under Rule-14 of CCS(CCA) Rules. In fact the charge framed against him was at a time when he was ripe for promotion to the post of Asst. Collector. Thirdly, that the allegations brought against the applicant were based on xerox copy of a document, part of which was published in an Oriya Newspaper dated 19.9.1992 with the fake signature of the applicant. Fourthly, that the disciplinary authority at no point of time had made any serious attempt to record the statement of officers involved either at the time when it first came to the

notice or thereafter regarding the assessment of duties of M/s.Precision Engg. Works. The case was enquired into by the CBI during 1993 which recorded the statement of officers who were in the team and raided the Company after more than four years of the incident. Fifthly, that inspite of his repeated request, the proper Panchanama along with other relevant documents, to which there is reference in the articles of charge were never supplied to him. Sixthly, that although during the inquiry on 20.5.1998 the Inquiry Officer had held that certain documents requisitioned by the applicant were relevant for his defence and accordingly ordered that these to be supplied, he reversed his decision on 25.1.1999 without any valid ground and thereby the applicant was deprived of reasonable opportunity to examine or rebut the said documents which were being relied upon against the applicant behind his back. The documents involved are Panchanama, search warrant, search warrant register etc. In this connection a reference was made to the observation of this Tribunal in Original Application No. 328/2000 - disposed of on 18.6.2001 filed by the applicant seeking a direction of the Tribunal for expediting the departmental proceedings wherein it was observed as under:

> "We are aware that there is some controversy with regard to non-supply of documents as averred in the O.A. ... However, we make it clear that in case the applicant is held guilty, he will be at liberty to agitate this issue in a separate O.A. and the Respondents were directed to finalize the proceedings within a period of 90 days from the date of receipt of that order".

3. The applicant has further submitted that the incident had taken place in December, 1989, charges were

framed in June, 1995 and the order of punishment was passed in September, 2001, there has been no reasonable explanation available for such delay of about six years in initiating the disciplinary proceedings as well as six years therefrom in concluding/passing the impugned order of punishment. It has been submitted that the disciplinary proceedings was a product of bias on the part of the disciplinary authority as clear from the fact that although the CBI had closed the matter vide its order dated 3.2.1999 having found no prima facie case and/or sufficient material to proceed against the applicant, the departmental authorities proceeded against him contrary to the decision of the CBI; that the applicant had on 22.12.1999 submitted representation with regard to the bias of the I.O. and had requested for a change as he had found the I.O. to have acted as a zealous prosecutor and had practically conducted the case on behalf of the Department by using his knowledge and wisdom to see that the applicant is punished, but no remedial action was taken by the disciplinary authority. Further that the main document, i.e., Panchanama, had never seen the light of the day nor the same was exhibited during the enquiry. Finally, it has been submitted by the applicant that the Commissioner of Central Exchise & Customs, Bhubaneswar-II Commissionerate is not the disciplinary authority in his case and in effect the order of the disciplinary authority is bad in law.

4. The applicant has submitted that the charge memo issued to him was thoroughly misconceived. He was charged on the presumption that he was the seizing officer. The

applicant, on the other hand, has taken the stand that though he was a member of the raiding team, he had not acted as the seizing officer. To prove his point, he had demanded production of the search warrant, the warrant register and the Panchanama. However, none of these documents had been produced during the inquiry, and thereby it had crippled the applicant from proving his innocence. The inquiring authority in his report has not explained as to why these records which were vital to bring home the charges were not produced and that why those documents which were listed as exhibits for the prosecution could not be produced. The applicant, on his part, by referring to the deposition of P.W. 10 during the proceedings has stated that the P.W. 10 (Shri P.T.Sibarajan, the then General Manager, M/s.Precision Engineering Works) in reply to the question 'if you signed any Panchanama?, had replied "I have not heard anything about Panchanamma" has tried to disprove that he had kept any record with him or that the records prepared by the raid party on 28.12.1989 were not with the CPU. He, by referring to the cross-examination of P.W. 8 submitted that some more records of M/s.Precision Engg. Works were taken by them even six months after 28.12.1989, which would show that the allegation that the applicant had kept the records seized during the raid with him was incorrect. By referring to the remarks of the disciplinary authority in the punishment order, the applicant has submitted that the search warrant register and file for the said period could not be shown to him for his inspection

since those documents are secret and confidential in nature and that showing the same to the charged official would go against the public interest is enough to show that the entire proceeding was initiated with a pre-determined mind and violated the principles of natural justice. Again by referring to the deposition of PLW. 8 to prove that no such warrant was issued at all he stated that the said PW had deposed that they were told that such warrant would be issued only if the party did not produce the documents. There upon they had produced all the documents kept inside the office. From this, the applicant has submitted that the evidence of P.W. 8 was a clinching one that no search warrant was issued and that is why the prosecution was reluctant to show him the search warrant register and files connected therewith. He has further submitted that keeping in view the deposition of PW 8 the observation of the disciplinary authority that a search warrant was issued in the name of the applicant cannot hold the ground.

5. The Respondents-Department have contested the application by submitting a detailed counter. In the first instance they have reiterated that by order dated 25.6.2000 of the competent authority, i.e., Commissioner, Bhubaneswar-II was designated as the disciplinary authority for a group of employees including the Superintendent, Group-B. They have averred that the incident of search of the premises of M/s. Precision Engineering Works, Rourkela was reported in the newspaper which led to CBI, Bhubaneswar to inquire into the matter and it was on its recommendation, a major penalty proceedings was initiated against the applicant in consultation with the Central Vigilance Commission, in

of the applicant
1994. The Respondents have denied the allegation that the charges framed at the time when the applicant was ripe for promotion to the post of Assistant Commissioner and that adequate opportunities had not been provided to him to defend his case. They have also denied all other allegations brought by the applicant. The Respondents have also denied that the appeal petition submitted by the applicant to have been disposed of in a hasty manner. To the submission of the applicant that Panchanama was never supplied to him, the Respondents have submitted that such an argument was ridiculous as it was the applicant himself, who had not submitted the same to the Department. As regards the search warrant, they have stated that the then Asst.Collector Shri F.Lakra in course of inquiry had issued the search warrant in the name of the applicant and that the applicant had not returned the same to the issuing authority. They have finally admitted that the CBI in its report indicated insufficiency of evidence to establish the charges, but the CBI was very much aware of the fact that on account of lapse on the part of the applicant, the party concerned managed to evade of heavy amount of excise duty. They have also denied that the disciplinary authority had passed the order in a mechanical manner and that his allegation that personal hearing was not granted has no basis because there is no provision in the rules to grant such personal hearing before taking any decision in such cases. They have also refuted the allegation of non-application of mind on the part of the disciplinary authority.

6. We have heard the learned counsel of both the sides and perused the materials placed before us. The applicant has filed rejoinder as well as additional affidavit, written note of submission which have been taken on record. In support of his case, the learned counsel for the applicant has relied on the following case laws.

1. AIR 1961 SC 1623
2. AIR 1986 SC 2188
3. AIR 1998 SC 3038
4. 1985(1) OLR 438
5. 1979(Vol.47) CLT 5
6. AIR 2001 SC 343
7. AIR 2001 SC 24
8. AIR 1990 SC 1308
9. AIR 1998 SC 1833
10. AIR 1986 SC 1173
11. AIR 1991 SC 1507
12. 1998 SCC(L&S) 211

7. We have carefully considered the issues raised in this Original Application. The applicant has challenged the impugned orders on the following grounds:

i) Allegation of loss of revenue has not been proved. This has been admitted by the appellate authority.

ii) His right to defend his case reasonably was seriously prejudiced because some of the essential documents which were listed by the prosecution, i.e., Panchanama, search warrant and the search warrant register for proving the case were not supplied to him on the plea of confidentiality.

iii) Long delay of six years in initiating disciplinary proceedings and another six years in concluding the said proceedings vitiated the proceedings.

iv) Report of the IO is based on more on the personal knowledge and wisdom rather than on qualitative evaluation of the evidence produced during inquiry.

8. Law is well settled that non-supply of documents based on which the prosecution proposed to prove the

case vitiates the entire proceedings. This view has been taken by the Apex Court time and again in a catena of decisions, some of which are, AIR 1961 SC 1623, AIR 1986 SC 2188 and AIR 1998 SC 2038 etc. The learned counsel for the applicant submitted that non supply of preliminary inquiry report also vitiates the proceedings. However, we do not propose to go into this aspect of the matter, because, the Respondents have, in their counter, disclosed that they have framed the charges against the applicant on the basis of CBI report and not on the basis of the preliminary inquiry report and that no reference with regard to preliminary inquiry report having made in the charge sheet, it was not incumbent upon them to supply a copy of that report to the applicant.

9. We have carefully gone through the submissions made by both the parties and we have also considered the issues raised by the applicant as noted above. In the statement of articles of imputations of misconduct against the applicant, it was stated that because of the acts of omissions and commissions on the part of the applicant, the duty evasion to the tune of Rs.1.5 crores approximately could not be processed which resulted in a loss to the Govt.exchequer. The inquiry officer in his report with regard to finding on each of the articles of charge has not dealt with this part of the charge that because of the lapse on the part of the applicant in processing the document after seizure, the Govt. had to suffer a loss of revenue to the tune of Rs.1.5 crores. He has only stated at Para-10-6-5 of his report that it is proved beyond any doubt that the applicant

had not handedover any document seized from M/s. Precision Engineering Works. The disciplinary authority also agreed with the findings of the inquiry officer. It was when the matter was examined in appeal by the appellate authority in consultation with the U.P.S.C., then it was observed that there was no evidence on record to show that M/s. Precision Engg.Works had actually evaded payment of excise duty during the relevant period of time and if so, what was the extent of excess duty. With this the main charge against the applicant was extinguished. What remained was the procedural irregularities in the matter. For proving the role played by the applicant as a member of this search party required evidence taken with reference to the documents and registers maintained for this purpose and the statement of witnesses are indispensable. The allegation levelled against the applicant is that he did not put up the seized documents for follow up action after the return of the raid party from Rourkela on 29.12.1989. The applicant in his defence has submitted that to defend his case it was necessary for him to refer to the search warrant, search warrant register and also Panchanama. However, none of these documents, though listed as exhibits for proving the allegation against him was produced during inquiry nor was the applicant given access to inspect these documents on the ground of confidentiality. The applicant has also alleged that the his request to change the I.O. on the ground of bias and malicious intent was not responded by the Respondents. The Respondents too have admitted that the documents sought for by the applicant were not produced

on the ground of confidentiality and as it would be against the public interest. We are unable to follow the logic of this argument of the Respondents and we are constrained to observe that in the absence of those documents, out of which the article of charge emanates cannot be proved unless these are produced during inquiry and the charged officer(CO) is allowed the benefi benefit of cross examination of witness. In the circumstances, the prosecution could have hardly proved that allegation against the delinquent. In other words, denial of these documents was unreasonable and therefore, the objection raised by the applicant is valid.

10. It is also the case of the applicant that if he was responsible for the further processing of the seized documents, his signature would have been available in Panchamama Non-prosecution of these documents on the ground of confidentiality not only vitiates the disciplinary proceedings, it also creates apprehension regarding the motive of the prosecution for withholding these documents. In other words, if documents are not produced, the prosecution will hardly be able to prove the charge levelled against the applicant. The learned counsel for the applicant, by relying on the judgment in the case of State of U.P. vs. Satrughana Lal reported in AIR 1998 SC 3038 submitted that if the copies of the documents relied upon in the charge-sheet are not supplied, the principles of natural justice are violated and therefore, the Court/Tribunal would be justified in interfering with the matter. The learned counsel for the applicant also referred to the decision in the case of M.P.Chinatoniam Sadasiva Waishampayum reported in A.I.R. 1961 SC 1623 (Constitution Bench) and submitted that if

copies of the documents to which a public servant is entitled are not supplied, inquiry cannot be held to have been carried out in accordance with the principles of natural justice, and therefore, there should be nodoubt that the provisions of Article 311(2) have been violated both in letter and spirit. We are bound by the said dictum of their Lordships wherein it has been held that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence and that he should be given the opportunity of crossexamining the witnesses by that party and that no material should be relied on against him without his being given an opportunity of explaining them. The right to crossexamine the witness to give evidence against him is a very valuable right and if it appears that effective exercise of this right has been prevented by the inquiry officer by not giving necessary relevant document to which he is entitled, that invariably would mean that the inquiry had not been held in accordance with rules of natural justice.

11. In this case as the inquiry officer failed to ensure the production of documents referred to above, based on which the allegations against the applicant could be proved, we have no doubt in holding thqt the applicant was denied the most valuable right under the Constitution to defend his case effectively and that by withholding the most vital documents in this case, the prosecution did not act in a bona fide manner.

12. Another equally important allegation levelled by the applicant is the long delay in initiating as well as

concluding the disciplinary proceedings. The effect of long delay in the disciplinary matter has already been deprecated by the Hon'ble Supreme Court in the case of State of M.P. vs. Bani Singh reported in AIR 1990 SC 1308. In that case the disciplinary proceedings was initiated against the party after more than 12 years. The Court having not found satisfactory explanation for inordinate delay in issuing the charge-memo observed that it was unfair to prompt the departmental inquiry to be proceeded with. In another case reported in (1995) 2 SCC 570 (State of Punjab and Ors. v. Chamanlal Goyal) their Lordships of the Hon'ble Supreme Court observed as follows:

> "...There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of the charges in this case.
>
> XX XXX They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges...."

In this case, admittedly long years of unexplained delay is apparent.

13. With regard to shortcomings in the report of the inquiry officer as pointed out by the applicant, we tend to agree with what has been submitted by the applicant. It tentamounts to be less objective as the inquiry report is full of subjective observations. The report also lacks in analysis and to that extent it has not been upto the mark. The order of the disciplinary authority is verbose and is more or less a compilation of the I.O.'s report and the statement submitted by the applicant in his defence after receipt of the inquiry report.

The appellate authority rejected the appeal on the following ground :

> "...Thus the charge has been proved to the extent that the CO left the Union on promotion on 19.2.1990 without handing over charge of the documents".

14. Thus the appellate authority was convinced that the C.O. who seized the documents did not process those further nor did he handover these documents when he moved out of the unit on promotion on 19.2.1990. Whether the endorsement on the documents was proved or not, whether the applicant was designated as the Seizing Officer, whether the applicant had seized certain documents, these vital questions were not answered either by producing the relevant documents or with the help of the witnesses by the appellate authority. One of the members, viz., Shri D.K.Satpathy had deposed before the inquiry authority that the applicant was not the seizing officer and he had no role to play in the matter of seizing of documents. Further, another witness, i.e., (P.W. 8) had deposed that when the representative of M/s.Precision Engineering Works demanded to see the search warrant, they were told that the search warrant would be shown to them if they (Company) did not produce the documents for inspection and as all the documents were produced, there was no occasion to see the search warrant. Again it was deposed by P.W. 8 that some of the members of the seizure party had called for some documents for further inquiry six months after the raid was conducted. Referring to the deposition of P.W. 12 that no documents/register bearing signature of the applicant was ever seen by him as Superintendent(Anti-Smuglling), and he had reported this fact to the authorities also

at the material time. From the deposition of these witness the applicant has sought to prove that no search warrant was ever issued in the first instance, and, secondly, if the documents were not in possession of the Assistant Commissioner/Superintendent C.P.U., they could not have carried out further follow up action in respect of M/s. Precision Engineering Works, six months after the raid had taken place. It has also not been clarified either by the I.O. or by the disciplinary authority as to why the prosecution could not produce the original of Annexure-1, an issue which has been repeatedly pointed out by the applicant to show that the prosecution was not playing a fair and transparent game. Because of all these gaps in the inquiry in taking evidence, we are unable to hold that during inquiry it could be proved that the charged official was responsible for the seizing documents and/or in not taking further follow up action after going back to the headquarters. In the circumstances, the ground on which the appellate authority rejected the appeal of the applicant also fails to stand the scrutiny of law.

15. Having regard to what has been discussed above, we find it to be a fit case for the intervention of the Tribunal. Accordingly, we hold that unwillingness of the prosecution to produce vital documents, i.e., search warrant, search warrant register and panchanama etc. and the connected files in original has caused gross

violation of the principles of natural justice to the prejudice of the applicant. Apart from the above, the delay in initiating disciplinary proceedings against the applicant has not been explained nor has there been any material adduced before us to come to a conclusion that the delay on the part of the Respondents in initiating the disciplinary proceedings was reasonable.

16. For the foregoing, we have no option left but to quash the disciplinary proceedings initiated against the applicant holding him guilty of the charges. Ordered accordingly. Resultantly, the impugned order of punishment and the appellate order are also quashed.

17. In the result, the O.A. succeeds. No costs.

30/07/04

(M.R.MOHANTY)
MEMBER(JUDICIAL)

(B.N. SOM)
VICE-CHAIRMAN

BJY