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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK.


Original Application No. 479 of 2007
Cuttack, this the 10th day of September, 2008

Bhima Charan Behera Applicant
Versus
Union of India & Ors. Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the reporters or not?
2. Whether it be circulated to all the Benches of the CAT or not?


(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)


(C.R. MOHAPATRA)
MEMBER (ADMN.)

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O.A.No.479 of 2007

Cuttack, this the 10th day of September, 2008

C O R A M:

THE HON'BLE MR.JUSTICE K.THANKAPPAN, MEMBER (J)
A N D

THE HON'BLE MR. C.R.MOHAPATRA, MEMBER (A)

Bhima Charan Behera, Aged about 65 years, S/o. Late S.Behera,
At/Po/Dist. Udala, Dist. Mayurbhanj.

.....Applicant

Legal practitioner :M/s.P.B.Sahu, J.N.Behera, Counsel.

- Versus -

1. Union of India represented by the Secretary Central Board of Excise and Customs, North Block, Indraprasta Estate, New Delhi-110 001.
2. Commissioner of Central Excise and Customs, Bhubaneswar I Commissionerate, Rajswa Bihar, Bhubaneswar-4 Dist.Khurda.
3. Commissioner of Central Excise and Customs, Bhubaneswar II Commissionerate, Rajaswa Bihar, Bhubaneswar-4, Dist. Khurda.
4. Deputy Commissioner (Inquiry Officer), Central Excise and Customs, Bhubaneswar-II, Commissionerate, Rajswa Bihar, Bhubaneswar-4, Dist. Khurda.
5. Deputy Commissioner (Presenting Officer) Central Excise and Customs, Bhubaneswar-II Commissionerate, Rajswa Bihar, Bhubaneswar-4, Dist. Khurda.

....Respondents

Legal Practitioner :Mr.U.B.Mohapatra, SSC.

O R D E R

MR. C.R.MOHAPATRA, MEMBER (A):-

Applicant, a retired employee of the Central Excise and Customs, has filed this Original Application under section 19 of the Administrative Tribunals Act, 1985 assailing the order under Annexure-VI dated 31.05.2001 imposing the punishment of reduction of his pay by five stages in the time scale of pay of Rs.6,500-200-10,500/- fixing his pay at Rs.7,3000/- in place of Rs.8,300/- and further ordering that the applicant

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will not earn increment during the period of such reduction. The above punishment was imposed on the Applicant as a result of disciplinary proceedings initiated against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide Memorandum under Annexure-11 dated 10.09.1993. Appeal preferred by the Applicant was dismissed vide order under Annexure-I dated 31.01.2003. Hence, this OA with the following relief(s):

"The humble applicant prays for admit the present case and prays for quash/set aside/waive out major penalty imposed/awarded by the Commissioner of Central Excise and Customs, Bhubaneswar II under C.No.II (10) A-2/CON/93/331-C dated 31.05.2001 and Order in Appeal dated 31.01.2003 passed by the Under Secretary, Central Board of Excise and Customs, New Delhi communicated under F.No.C-16012/17/2001-AD-V(Pt.)/433-37 dated 31.01.2003. The aforesaid petitioner may kindly be allowed natural justice in this case. (Copy of the order I original dated 31.05.2001 enclosed in the Index as Annexure-VI)."

Following was the charges levelled against the Applicant-

"Article-I.

That the said Shri Bhim Charan Behera, while functioning as Administrative Officer, Central Excise and Customs, Rourkela at Rourkela Divisional Office, Rourkela during the period from 11.7.1990 to 29.10.1992 is alleged to have violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964 inasmuch as he appears to have committed gross irregularities and misconduct by way of misappropriation of Government funds by claiming and receiving Traveling Allowances in respect of tours which were neither approved by the competent authority nor performed by said Shri B.C.Behera.

Article-II

That the said Shri Bhim Charan Behera, while functioning as Administrative Officer, Central Excise and Customs, Rourkela is alleged to have violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964 inasmuch as he appears to have committed gross irregularities and misconduct by way of misappropriation of Government funds by manipulating

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the TTA Bill dated 5.2.1991 submitted by him to the effect of increasing the amount sanctioned by the competent authority and receiving the amount more than that sanctioned by the competent authority.

Article-III

That the said Shri Bhim Charan Behera, while functioning as Administrative Officer, Central Excise and Customs, Rourkela is alleged to have violated Rule 3(1) (i), 3(1) (II) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964 inasmuch as he appears to have committed gross irregularities and misconduct by way of sanctioning and paying for purchase of an executive table an amount in excess of the quoted/approved price resulting in loss of Government funds."

2. Respondents filed their counter in which it has been stated that on receipt of the charge-sheet dated 10.09.1993, the Applicant vide his letter dated 28.01.1997 & 04.02.1997 admitted all the charges framed against him and requested the Commissioner to excuse him since he committed the subject lapses. But subsequently the applicant changed his version by not admitting any of the charges. Hence the matter was duly enquired. During enquiry the Applicant was afforded all reasonable opportunity to defend his case. His desire to have the documents for submission of his reply was duly fulfilled by way of making him available all relevant documents. As the charges levelled against the applicant were serious in nature and proved during the enquiry, after following Rules on the subject and giving adequate opportunity to the Applicant, the disciplinary authority took a lenient view in the matter by way of imposing the punishment under Annexure-VI dated 31.05.2001 which was also confirmed by the Appellate Authority under Annexure-I dated 31st January, 2003. Further it has been brought to the notice of this Tribunal that earlier the applicant approached this Tribunal in OA No. 14 of 1995 seeking quashing of the charge-sheet dated 10.09.1993 on the ground of delay. But this Tribunal in order dated 2001 rejected this

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prayer of applicant with direction to the disciplinary authority to complete the proceedings within a period of 120 days. In view of the above, the Respondents have prayed for dismissal of this OA.

3. Arguments were heard and documents were perused.

4. The Applicant attacks the order of punishment on the ground that delay in framing the charges defeats justice and highly prejudiced him to defend his case and that non-supply all the documents prejudiced him to meet the charges framed against him effectively. Besides the above, his contention is that if there was any excess amount paid to him towards TA etc. that could have been recovered from him as per Rule 73 of the Central Government Accounts (Receipts and Payments) Rules, 1988, instead of taking disciplinary action but the Respondents have intentionally and deliberately initiated disciplinary proceedings under Rule 14 of the CCS (CC&A) Rules, 1965. It has been argued by him that the Appellate Authority in paragraph 11 took note of non-supply of documents etc. but without consulting the record reached the conclusion that there was no infirmity in the order of the disciplinary authority which needs to be quashed. On the other hand, Learned Counsel appearing for the Respondents while reiterating the stand taken in the counter giving details of the circumstances leading to framing of the charges etc. has stated that as there has been no miscarriage of justice in the decision making process of the matter, the order of punishment imposed by disciplinary authority and confirmed by the Appellate Authority needs to be maintained.

5. It is not the case of the Applicant that the Disciplinary Authority reached the conclusion contrary to record or report of the IO. Rather it is the

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specific case of the Respondents that the Disciplinary Authority reached the conclusion and awarded the punishment after due application of mind and based on the report of the IO which was prepared after giving due opportunity to the applicant and on the basis of the materials available on record. The main ground of challenge of the applicant is that he was not supplied some of the documents. But it has not been stated as to whether those records were the basis of the report of the IO and as to how he was **prejudiced** due to non-supply of those documents. It is trite law that unless prejudice is shown or proved, plea of violation of natural justice is not sustainable as has been held by the Apex Court in the cases of **Chandrama Tewari v Union of India & Ors.**, 1987 (Supp) SCC 518; **State of UP and others v Ramesh Chandra Mangalik**, (2002) 3 SCC 443; and in the case of **Pathrella v Oriental Bank of Commerce** (2007) 1 SCC (L&S) 224. In the present case, it is noticed that the Applicant has taken this point as one of the grounds in his appeal before the Appellate Authority and after taking note of such submission and in consultation with UPSC the appellate authority confirmed the order of disciplinary authority. In view of the above, there is hardly any scope for this Tribunal to take any other view than the view taken by the DA and confirmed by the Appellate Authority.

6. It has been held in various decisions of the Apex Court that the Courts/Tribunal should not interfere with the decision of the Administrator unless it was illogical or suffers from procedural impropriety or was shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards (Ref. **Union of India v Dwarka Prasad Tiwari**, (2006) 10 SCC 388). The scope of judicial review is limited to the deficiency

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in decision-making process and not the decision (vide **V.Ramana v S.P.SRTC and Others**, (2005) 7 SCC 338).

7. From the materials placed on record it is crystal clear that none of the provisions of the CCS (CC&A) Rules, 1965, has been violated; nor have principles of natural justice affording adequate opportunity to Applicant to defend his case been given a go-bye. The Applicant has been issued with the charge sheet along with list of documents and charges have been proved based on those documents. He was supplied with the copy of the report of the IO to which he submitted his reply. The Disciplinary Authority has passed a cogent reasoned order discussing all the points. The Appellate Authority has also discussed all the points taken by the applicant in his appeal memo. Therefore, there is hardly any scope for this Tribunal to interfere in the matter, as it is no more res-integra that Tribunal cannot sit as a Court of appeal over a decision based on finding of the inquiry authority in disciplinary proceedings (Ref: **Principal Secretary Govt. of AP v M. Adinarayana**, {(2004) 12 SCC 579); nor the Tribunal can re-appreciate the evidence and come to a different conclusion other than the conclusion reached by IO (Ref: **Lakshmi Narayan Shetty v Shantha and another**, (2003) 9 SCC 190. Also it is settled position of law that in departmental proceeding, strict proof of following Evidence Act is not required but preponderance of probability would suffice to impose penalty (ref: **Lalit Popli v Canara Bank and others**, 2003 (3) SCC 583, **Cholan Roadways Ltd v G.Thirugnanasambandam**, JT 2005(1) SC 116). So far as delay in issuing the charge is concerned, this has no force in view of the order dated

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27.04.2001 passed by this Tribunal declining to interfere in the earlier OA No.14 of 1995 filed by the Applicant.

8. In the aforesaid facts and circumstances and Law, we find no merit in this Original Application. Accordingly, OA stands dismissed. There shall be no order as to costs.

K a p p a n
(JUSTICE K. THANKAPPAN)
MEMBER (JUDICIAL)

h a p t a
(C.R. MOHAPATRA)
MEMBER (ADMN.)