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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
JODHPUR

Date of Order : 07.02.2002.

O.A.NO. 263/1998

Hukma Ram S/o Shri Hari Ram, aged about 40 years, resident of Vill. and Post Sinli, Distt. Jodhpur last employed on the post of Sepoy, in the Office of Assistant Commissioner, Central Excise and Customs (Erstwhile Asstt. Collector), Kuchawan House, Ratanada, Jodhpur.



.....Applicant.

VERSUS

Union of India through Secretary to Central Board of Direct Taxes, Ministry of Finance and Revenue, New Delhi.

2. The Commissioner (erstwhile known as Collector), Central Excise and Customs Collectorate, NCRB, Near Statute Circle, C-Scheme, Jaipur.
3. The Deputy Collector (P&V), Central Excise and Customs Collectorate, NCRB, Near Statute Circle, C-Scheme, Jaipur.

.....Respondents.

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CORAM :

Honourable Mr. Justice O.P.Garg, Vice Chairman

Honourable Mr. A.P.Nagrath, Administrative Member

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Mr. J.K.Kaushik, advocate for the applicant.

Mr. Vineet Mathur, advocate, for the respondents.

PER HON'BLE MR.JUSTICE O.P.GARG, VICE CHAIRMAN :

The applicant, Hukma Ram, was employed on the post of Sepoy in the office of Assistant Collector, Central Excise and Customs Department, Jodhpur. He has been removed from service by the competent authority by order dated 29.3.1995 (Annex.A/2), by invoking the provisions of Rule 11 (viii) of CCS (CCA) Rules, 1965 (for short 'the Rules'). The applicant filed an appeal as well as a review petition but was not met with any better luck as both of them were dismissed respectively on 6.8.1996 and 19.1.2001.

2. The gravamen of the charge against the applicant is that he, with a view to saving the offenders in a smuggling case of Charas, tried to demolish the prosecution launched by the department by giving oral evidence against the documentary evidence produced by the Prosecution in the Court of Law, and, that by tendering evidence against the department, he not only tarnished the image of the department but also contravened the provisions of Rule 3(1)(i), (ii) and (iii) of the Rules. The Criminal Court disbelieving the testimony of the applicant, convicted the accused persons.

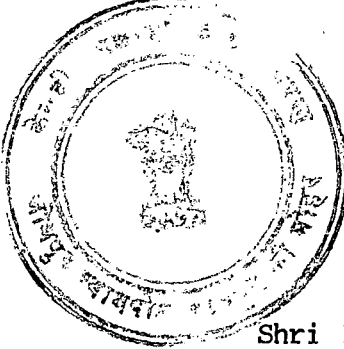
3. By means of this O.A. under section 19 of the Administrative Tribunals Act, 1985, the applicant has challenged the orders of punishment of removal passed by the disciplinary authority; rejection of the appeal as well as the revision petition and has prayed that he may be reinstated in service ignoring the above illegal orders.

4. A detailed reply has been filed on behalf of the respondents repelling the various averments made by the applicant.

5. Heard Shri J.K.Kaushik, the learned counsel for the applicant and Shri Vineet Mathur, appearing on behalf of the respondents, at

considerable length. We have anxiously waded through the record of the case.

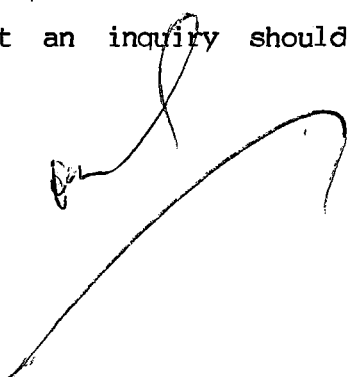
6. The first point canvassed by Shri Kaushik on behalf of the applicant is that the departmental inquiry against the applicant could not be commenced in view of the special provisions made in section 340 of the Code of Criminal Procedure, 1973 and the exception clause (e) of Rule 3 of the Rules bars the departmental inquiry. Rule 3(e) reads as follows :



"(e) any person for whom special provision is made, in respect of matters covered by these rules, by or under any law for the time being in force or by or under any agreement entered into by or with the previous approval of the President before or after the commencement of these rules, in regard to matters covered by such special provisions."

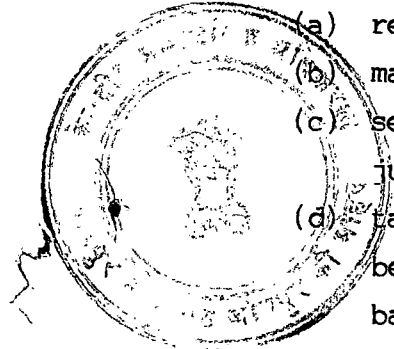
Shri Kaushik, elaborated the point that since for punishment of the offence of perjury, a special provision has been made in the Code of Criminal Procedure, the applicant could be proceeded against only under section 340 of the Code of Criminal Procedure and if the Court found it just and expedient, a criminal complaint could be lodged against him but certainly in view of Clause (e) of Rule 3 of the Rules, the applicant could not be subjected to departmental inquiry. This submission of the learned counsel for the applicant is wide off the mark and has been stated simply to be rejected. The submission is obviously illogical for one simple reason that the provisions made in the Code of Criminal Procedure, particularly Section 340 which runs as follows :-

"340. Procedure in cases mentioned in Section 195.-(1) When, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence



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referred to in clause (b) of sub-section (1) of Section 195, which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary,-



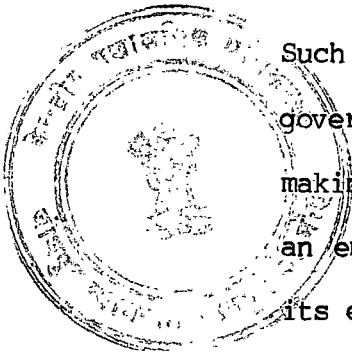
- (a) record a finding to that effect;
- (b) make a complaint thereof in writing;;
- (c) send it to a Magistrate of the first class having jurisdiction;
- (d) take sufficient security for the appearance of the accused before such Magistrate, or if the alleged offence is non-bailable and the Court thinks it necessary to do so, send the accused in custody to such Magistrate; and
- (e) bind over any person to appear and give evidence before such Magistrate.'

deal with those cases where the Court before whom, a false statement is made in some legal proceedings, considers it expedient and in the interest of justice to prosecute the person who has made a false statement, may file a complaint. After filing of the complaint the offender is tried as an accused under the criminal law of the land. The object and purpose of the inquiry under the provisions of Section 340 of the Code of Criminal Procedure, are entirely different i.e. to curb the evil of making a false statement before a Court. This section is intended to maintain purity of the administration of justice and to effectively deal with the offenders who are out to pollute the administration of justice. The provisions made in the Code of Criminal Procedure laying down the procedure for prosecuting the persons alleged to have committed the offence of perjury, would not in any manner come in the way of the employer to deal with a recalcitrant delinquent employee who has deliberately and wilfully with a view to damage the case of the prosecution and to tarnish the image of the department resorted to falsehood to confer advantage on the accused persons in a criminal trial. Reliance on the provisions of Clause (e)

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of Rule 3 of the Rules, is misplaced. The Rules apply to every government servant including every civilian government servant in the defence services but they do not apply to the specified classes of government servants in respect of whom special provisions have been made to proceed against them departmentally. In the case of an employee of the Central Excise and Customs Department, no separate special rules for disciplinary proceedings have been made and, therefore, all the employees of the Central Excise and Customs Department, including the applicant, would be governed in the matter of disciplinary proceedings by the CCS (CCA) Rules, 1965. The provisions of the Code of Criminal Procedure which deal with an offence, are applicable to all and sundry - whether he be a government servant or otherwise. If the submission of Shri Kaushik, is accepted then in that event every government servant, who has deliberately resorted to falsehood to any extent, would go scotfree, if the criminal court does not find it expedient and in the interest of justice to prosecute him. Such a conclusion would lead to patent absurdity inasmuch as the government servants would turn out to be unbridled and unshakled in making fake statements with all impunity. In any view of the matter, an employer is not debarred in initiating departmental action against its employee who has resorted to falsehood in a criminal case in which the interest of the department is at stake. This unfettered power to proceed against the delinquent employee departmentally, vests in the employer independent of the provisions made in the Code of Criminal Procedure.

7. Shri Kaushik, further vehemently argued that the applicant has committed no misconduct as he has stated the truth before the court and he could not be expected to support a false and manufactured case of the department. In substance, the submission of Shri Kaushik, is that an employee is not bound to support the case of the department against

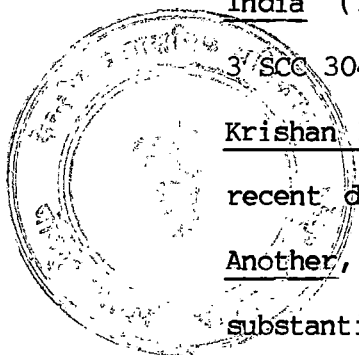


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his conscience. This submission lacks merit and loses sight of the fact that the statement of the applicant has been found to be false on scrutiny by the criminal court. The subject matter of inquiry into the conduct of the applicant was, whether he made a false statement to shield and protect the accused persons in a criminal case or his statement was trust- worthy? Independent of the findings of the criminal court, the inquiry officer has found that the applicant has deliberately made a statement in favour of the accused persons to damage the case of the prosecution and to sully the reputation and image of the department. The applicant has been found guilty of making a false statement with an avowed object of protecting the accused persons to the serious detriment of the stand taken by the department. It was not a case where the truth has fallen from the lips of the applicant. There can be no quarrel about the fact that no employee can be forced to tell a lie against his conscience with a view to lend strength to the manufactured or shady stand taken by the department. But, where an employee, for the reasons best known to him, damages the department by resorting to wilful falsehood, he is certainly amenable to disciplinary proceedings and resultant punishment.

8. Shri Kaushik pains-takingly argued that the whole inquiry against the applicant and the consequential order of punishment, stand vitiated on account of the fact that certain documents which were germane to the inquiry, were not supplied to the applicant. According to him, the site plan (Naksha Mauka) and the photographs asked for by the applicant indicating the alleged place of seizure of 16 packets of Charas from the possession of the accused persons, were not supplied. A close scrutiny of the facts would bear out that the site plan or the photographs, were not the material documents. The applicant has taken the stand that the incident of recovery had not taken place on 29.8.1988 but on 28.8.1988. He does not dispute the place of seizure

of the offending Charas from the person of the accused. Shri Kaushik, placed reliance on the two decisions of the Apex Court viz., AIR 1984 SC Page 1361 - A.L.Kalra Vs. Corporation of India Ltd., and 1995 (1) SLJ Page 156 - Committee of Management Vs. Shambhusaran Pandey, to fortify his statement that in those cases of disciplinary inquiry, where the documents have not been supplied, the departmental inquiry would turn-out to be bad in law and the punishment awarded to the employee has to be knocked off. There can be no quarrel about the law laid down in the aforesaid two decisions but, we would hasten to observe that much water has flown under the bridge and now, the law on the point is well embedded that the delinquent employee has to establish that he was seriously prejudiced on account of non-supply of the material documents. In this connection, a reference may be made to the earlier decisions of the Apex Court viz., Jankinath Sarangi Vs. State of Orissa (1969) 3 SCC 392; K.L.Tripathi Vs. State Bank of India (1984) 1 SCC 43; Sunil Kumar Banerjee Vs. State of W.B. (1980) 3 SCC 304, State Bank of Patiala Vs. S.K.Sharma (1996) 3 SCC 364 and Krishan Lal Vs. State of J & K (1994) 4 SCC 42, followed in the recent decision in the case of State of U.P. Vs. Harendra Arora and Another, (2001) 6 SCC Page 392, in which the application of 'theory of substantial compliance' or the 'test of prejudice', propounded in the case of Managing Director, ECIL Vs. B. Karunakar (1993) 4 SCC 727, was applied. It has now been authoritatively laid down by a catena of decisions of the Apex Court that non supply of certain documents, even though, material cannot be a factor, to ipso facto quash the order of punishment. A delinquent employee is obliged to show that by non furnishing of the documents, he has been seriously prejudiced. In the present case, we find the site plan or the photograph as immaterial documents. Non-supply of these documents did not in any manner affect the inquiry and in any case no prejudice was caused to the applicant on account of their non supply.



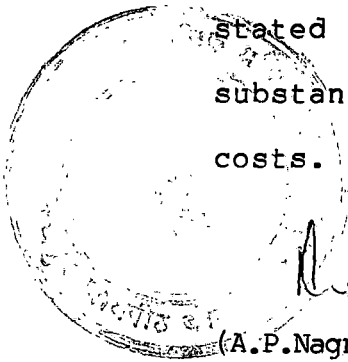
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9. In the ultimate analysis, we find that the disciplinary proceedings initiated and concluded against the applicant resulting in passing of the order of his removal, do not suffer from any legal or procedural infirmity. The disciplinary authority has taken a very rational view of the seriousness of the charge against the applicant who has obviously colluded with the accused persons against the interest of the department. In the given circumstances, the order of removal is not only justified but quite reasonable and apt.

10. It would not be out of place to remind ourselves that this Tribunal has no power to interfere with the findings of the disciplinary authority / appellate or the revisional authority by re-appreciating the evidence. Not only this, we can not sit as a Court of appeal over the decisions based on the findings of the competent authority in disciplinary proceedings. On this point, there are number of celebrated decisions of the Apex Court and to quote a few, they are, (1977) 2 SCC 491, State of Haryana Vs. Rattan Singh, (1994) 3 SCC 357, Union of India Vs. Upendra Singh, (1994) 6 SCC 302, State of T.N. Vs. T.V. Venugopalan, (1995) 6 SCC 749, B.C. Chaturvedi Vs. UOI & Ors., (1995) 1 SCC 216, Government of T.N. Vs. A. Rajapandian, (1996) 7 SCC 509, State of T.N. and Another Vs. S. Subramaniam and (1998) 2 SCC 394, Commissioner and Secretary to the Government and Others Vs. C. Shanmugam.

In the back ground of the above legal position, we are not inclined to disturb the findings and the conclusions arrived at by the disciplinary authority, particularly, when the appellate and the revisional authorities have affirmed the same.

11. In the result, the present O.A., for the reasons stated above, fails and being devoid of any merits and substance, is hereby dismissed without any order as to costs.



(Signature)
(A.P.Nagrath)
Adm.Member

(Signature)
(Justice O.P.Garg)
Vice Chairman

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