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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 181/2006

Date of Order: 02-8-2010

CORAM:

**HON'BLE MR. JUSTICE SYED MD. MAHFOOZ ALAM, JUDICIAL MEMBER
HON'BLE MR. V.K. KAPOOR, ADMINISTRATIVE MEMBER.**

Bhaga Ram Meghwal S/o Shri Sadul Ram Meghwal, by caste Meghwal, aged about 44 years, presently working as Superintendent, Central Excise (Law Branch), Resident of 56-A, Meghwal Basti, Masuria, Jodhpur.

.... Applicant

Mr. Manoj Bhandari, counsel for applicant.

VERSUS

1. The Union of India through the Secretary, M.O. Finance, Department of Revenue (Excise), North-Block, New Delhi.
2. The Commissioner, Central Excise, Jaipur-I, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur – 302005.
3. The Additional Commissioner (P&V), C/o Office of the Commissioner, Central Excise, Jaipur-I, New Central Building, Statue Circle, C-Scheme, Jaipur – 302005.
4. The Superintendent (Vig.), Central Excise, Jaipur.
5. The Dy. Commissioner, Central Excise, Jodhpur Division.
6. Shri S.R. Prasad, Dy. Director, DRI (Department of Revenue Intelligence), Ahmedabad.

.... Respondents.

Mr. M. Godara, proxy counsel for
Mr. Vinit Mathur, counsel for respondents.

ORDER

(Per Mr. V.K. Kapoor, Administrative Member)

The applicant, Shri Bhaga Ram Meghwal has filed present O.A., in which he has sought the reliefs that are as follows:-

- i). by an appropriate order or direction, the Order dated 8th Nov., 2005 (Annex-A/1), passed by the President of India as

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communicated by the Superintendent (Vig.) may kindly be declared illegal and be quashed.

- ii). by an appropriate order or direction, the communication dated 27.6.2003 (Annexure-A/2) passed by the Respondent No. 4 may kindly be declared illegal and be quashed.
- iii). by an appropriate order or direction, the communication of adverse entry dated 7.12.2002 (Annex-A/3) passed by the Respondent-3 may kindly be declared illegal and be quashed.
- iv). consequently, by an appropriate order or direction, the respondents be directed to consider and grant promotion to the applicant to the post of Superintendent w.e.f. 23.9.2002 and to assign seniority to the applicant accordingly with all consequential benefits.
- v). Any other appropriate order or direction which this Hon'ble Tribunal may deem fit just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant"

2. The factual matrix of the case is that applicant is working in the respondent-department as Superintendent, Central Excise (Law Branch), Jodhpur. While he was posted at Jodhpur in 2001-2002, an adverse entry was communicated to him on 07 Dec. 2002 to the effect that he was habitual in leveling false and frivolous allegations against his senior officials. While he was posted as Inspector in Central Excise Range at Pali, he brought to the notice of Assistant Commissioner that there was high evasion of excise duty by various assesses engaged in the manufacturing of textile processing. It was alleged that revenue collection dropped drastically in the months of May, August and December, 1998. The applicant brought the evasion of duty and loss in revenue collection vide letter dated 02.06.1999 (ann A-4). The applicant's endeavour was to work effectively and efficiently for department's benefit, he pointed out illegality being committed and perpetuated by higher authorities. He was given charge-sheet of major penalty under rule 14 of CCS (CCA) Rules, 1965 dated

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17.01.2000 (ann A-5) with specific charges that he raised bald allegations against some senior officials, which he denied vide reply dt 10.02.2000 (ann A-6). An Inquiry Officer was appointed and enquiry report was submitted on 17.12.2002 (ann A-7); he was exonerated from the charges levelled against him. The disciplinary authority disagreed with the findings of Inquiry Officer, gave a show cause notice and later imposed penalty of reduction by two stages in the time scale for a period of two years vide order dt 03.3.2002. An adverse entry was made by respondent-6 to the applicant in 2001-2002, communicated to him vide letter dt. 07.12.2002 by respondent-3. His representations were rejected vide order dated 27.6.2003. The appeal against this order was rejected on 04.12.2003 (ann A-11). The petition/memorial for expunging the adverse entries in the ACR for 2001-2002 was rejected on 08 November 2005 (ann A-1) without assigning any reasons. The applicant gave representation against these orders vide annexures A-8, 9 & 10. The applicant's seniority is affected and persons / staff junior to him stand promoted vide annexure A-12 to A-14. The applicant has prayed to declare illegal order dated 08 November 2005 (ann A-1), communication dated 27.6.2003 (ann A-2) and communication of adverse entry dated 07.12.2002 (ann A-3) and be quashed.

3 (a). The respondents' in reply has stated that junior persons promoted on the post of Superintendent over and above the applicant have not been made party respondents. The applicant has moved this O.A. for multiple reliefs, seeking direction to the respondent to promote him on the post of Superintendent w.e.f.



23 Sept. 2002. He is in habit of levelling frivolous and baseless allegations against his superior officials. The charge-sheet was given to him, the disciplinary authority imposed punishment of reduction by two stages in the time scale for a period of two years. He levelled various allegations against his senior officials while posted at Pali and repeated the same at Jodhpur. The respondent-6 made an adverse entry in his ACR for 2001-2002 and communicated to him vide letter dated 07 December, 2002. The applicant submitted representation, the competent authority after due consideration and application of mind, rejected the same. The applicant has never shown any concern about evasion of duty by the textile processors. The applicant instead of improving his behaviour, again made such type of similar complaint against his senior officers vide letter dated 18 July, 2001. An adverse entry was made in view of his conduct, performance and behaviour. The persons junior to him were promoted to the grade of Superintendent by the regular DPC dated 18/19 July 2002. The post of Superintendent Group 'B' is filled up by the selection method and Inspectors with 08 years regular service. The applicant displayed indiscipline & misconduct on his part leading to issue of the charge-sheet against him. His representations were turned down by the disciplinary authority, which were upheld in appeal. It is his demeanor and misconduct that was mainly responsible for major disciplinary action and penalty against him.

3 (b). Learned counsel for the applicant in rejoinder has stated that if adverse entries against him are expunged, then his case

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for promotion could be considered w.e.f. 23 September 2002. The respondents have shown a stubborn attitude, a clear case of malafide exercise of power. He has never levelled any false or baseless allegations against senior officials, they are trying to justify their own wrongs. There is no malafide intent on his part, the enquiry officer has exonerated him of all charges levelled against him (ann A-15). The disciplinary authority has awarded penalty upon him after disagreeing with the report of Inquiry Officer. As regards ACR entries during 2001-2002 & their subsequent rejection, the respondents have not passed reasoned order, which is a gross violation of principles of natural justice.

4 (a). Learned counsel for the applicant in arguments has stated that this is a matter of adverse entry vide letter dt. 07.12.2002 (ann A-3). There were evasion of taxes & loss in govt. revenue by the senior officers pointed out by him, vide letter dt. 18 July 2001 (ann A-8). The adverse remarks were given by respondent-6 and communicated to him vide letter dt. 07.12.2002 (ann A-3) were upheld by respondent-1 vide letter dated 27 June 2003 (ann A-2). On his representation dt. 02.06.1999, no effective action was taken. The charge-sheet was given on 17 January 2000 (ann A-5). The enquiry report was given by Inquiry Officer as per ann. A-6. In the enquiry report, it is mentioned that the fraud pointed out by the applicant had taken place. His representations were not heeded to. Applicant gave a petition/memorial, this was rejected vide order 08 November 2005 (ann A-1). It is not a reasoned order, made without an application of mind. The right of natural justice is violated; (2010) 3 SCC 732. Actually, double

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punishment is inflicted upon the applicant, by way of charge-sheet penalty of withholding two (02) increments is given; besides an adverse entry for 2001-2002, a clear case of double jeopardy. The adverse entry came in his way to promotion. The disciplinary authority disagreed with the report of Inquiry Officer, which is wrong itself. In support of his contentions, he has placed reliance on the citation of apex court (2001) 8 SCC 395 & (1996) 8 SCC 762. Besides, applicant has also quoted the apex court cases, namely 2005 (5) SCC 181, 1996 (5) SCC 103, AIR 1990 SC 1984, 2010 (3) SCC 732 to substantiate his contentions.

4 (b). Learned counsel for respondents in arguments has stated that against an adverse entry in 2001-2002, the applicant's representation was rejected. As per conduct of departmental enquiry, punishment was imposed on the applicant. Because of his bad habit of levelling allegations against his senior officers, he was reprimanded & his two increments were withheld. Even after punishment of withholding two increments, the applicant did not bring improvement in his conduct & behaviour. Thus, an adverse entry was made in his ACR for the year 2001-2002. In appeal, the adverse remarks against him were upheld. There are limited posts for promotions, as regular promotion list, the employees got selected & become senior to the applicant. In enquiry, a proper procedure is adopted & commensurate punishment is inflicted upon him. These are acts of his own creation which were responsible for disciplinary proceedings & penalty imposed upon him.



5. The applicant was posted at Jodhpur in 2001-2002, an adverse entry was communicated to him vide letter dt. 07.12.2002 by respondent-3. It is mentioned that the applicant was habitual of levelling false and frivolous allegations against his senior officials. He was given many opportunities to improve himself but there was no distinct improvement in his conduct. He was earlier posted at Pali range as Inspector in the Central Excise dept. He wrote a letter to the Assistant Commissioner that there was high evasion of excise duty, which was due to connivance of senior officers of Central Excise and Industrialists / Factories' owners. Thus, revenue collection came down drastically in the months of May, August and December, 1998. It was pointed out by applicant that these units evaded tax payment clandestinely.

• He levelled serious & rough allegations against the then Assistant Commissioner Shri S.R. Prasad, Additional Commissioner Shri Ram Prakash and Commissioner Central Excise, Jaipur Shri T.P. Singhal. The applicant gave representation dt. 02 June 1999 to Assistant Commissioner, Central Excise, Jodhpur. The statement of articles of charges were framed against applicant that he has failed to maintain absolute integrity, devotion to duty, indulged in acts of courtesy, indiscipline and gross misconduct and he acted in a manner which is totally unbecoming of a responsible Government servant. The applicant attempted to bring outside influence upon his superior authority to further his official interests. Thus the applicant has violated the provisions of Rule 3 (1) (i), (ii), (iii) and Rule 20 of Central Civil Services (Conduct) Rules, 1964. The charges of imputation are also narrated at length. The grounds put forth for relatively poor revenue recovery

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in May, August & December, 1998 were stricter control by Pollution Control Department, the recession period in the business of process fabrics and religious occasions and imposition of duty under compound levy scheme. There was some down fall in the revenue recovery but it was not due to undue interference of the higher authority. The officers of respondent-department have strongly reacted to the false, concocted and baseless allegations made by the applicant but they have also questioned his role as regards augmenting / enhancing revenue recoveries. The applicant has not submitted any documentary or otherwise evidence in support of allegations levelled against his senior officers. The reason for applicant levelling such frivolous charges against his superior officers for that he wanted to continue in Pali range. He was posted in the office of the Additional Commissioner, Customs, Jodhpur. The applicant sent representation dt. 10.02.2000 (ann. A-6) to the Additional Commissioner, Central Excise, Jaipur-II, reply of statement of articles of charges and list of documents were also enclosed. In enquiry conducted against applicant by Inquiry Officer has discussed evidence of these senior officers at length, besides reply put forth by applicant. The Inquiry Officer has come to the conclusion that there was loss of revenue during May, August and December 1998 as pointed out by the applicant. The Inquiry Officer has given the finding that complaint dt. 02.06.1999 made by applicant cannot be termed as false or act of courtesy or indiscipline or misconduct. The Inquiry Officer has also discussed the role of prosecution side. Thus, the Inquiry Officer has almost exonerated the applicant on the charges levelled against him but

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the disciplinary authority has held him responsible. The disciplinary authority has no reason to differ with this report, which is not corroborated by evidence. The applicant's contention is that penalty of withholding of two increments was given, besides an adverse entry for 2001-2002 which is a case of double jeopardy. The applicant is exonerated by Inquiry Officer from the said charges levelled against him, thus, the punishment of withholding two increments is fraught with double jeopardy.

6. The adverse remarks/entries in applicant's ACR for the year 2001-2002 are made by respondent-6. The applicant is in habit of making baseless and concocted complaints and levelling allegations against his senior officials. Thus, adverse remarks were given by respondent-6 and communicated to him vide letter dt. 07.12.2002 which were upheld by the competent authority after going through his representation. Thus, adverse remarks were rejected on 08.11.2005 on petition / memorial filed by him to the Hon'ble President of India. The adverse remarks communicated to him vide letter dated 07.12.2002 were upheld by the competent authority and memorial was also rejected, there is no justification in interfering into the adverse remarks given by respondent-6 to the applicant in 2001-2002 at this stage. The applicant has relied on the case of S.N. Mukherjee vs. UOI - AIR 1990 SC 1984 that deals with natural justice wherein it is mentioned that administrative action must be supported by reasons. Similar case is of State of NCT of Delhi and another vs. Sanjeev Alias Bittoo - (2005) 5 SCC 181 which spells that the judicial review in regard to administrative matters tells about


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irrational decision. Both these cases do not directly apply in the present case as applicant was given sufficient time & opportunity to defend himself and right of natural justice is provided to him. Applicant has also placed reliance on the case of Sukhdeo vs. Commissioner Amravati Division, Amravati and another - (1996) 5 SCC 103 - that spells about adverse remarks - desirability of affording prior opportunity is emphasised. Thus right to natural justice and hearing should be given to the affected party. In the case of State Bank of India and others vs. Kashinath Kher and Ors. - (1996) 8 SCC 762 the need of affording opportunity to concerned employee is highlighted. He has also quoted the case of Secretary and Curator, Victoria Memorial Hall vs. Howrah Ganatantrik Nagrik Samity and others - (2010) 3 SCC 732 which spells out about absence of valid reasons and speaks of judicial review, interference when warranted. This also throws light - as regards exercise of power - reasoned order necessity - reasons ensure clarity, objectivity, transparency and fairness in decision-making process - reasons show that there was an application of mind. The record shows that sufficient opportunity was afforded to the applicant to mend his behaviour; but he kept on levelling baseless & frivolous charges against his senior officers. Thus, adverse entry was made in his ACR of year 2001-2002, which is his own creation. The high handed and loud behaviour was unbecoming of a Govt. servant, in appeal, these adverse remarks were upheld. The adverse remarks is in the ACR of applicant for 2001-2002 are given because he was levelling baseless and frivolous allegations on senior officers. Accordingly the respondent-3 gave adverse remarks in his ACR and these remarks

Answer

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were upheld by the competent authority. There is no justification to interfere into these adverse remarks as they are as per findings of the competent authority pertaining to indiscipline, courtesy and gross misconduct, which are unbecoming a Govt. servant. The impugned order dt 07.12.2002 (ann A-3) requires no interference by this Tribunal as these are acts of his own creation and applicant was a responsible for disciplinary proceedings.

7. Even after issue of charge-sheet on 17 January, 2000 under rule 14 of CCS (CCA) Rules, 1965 for levelling baseless and concocted allegations against senior officers, he failed to improve his behaviour and repeated said misconduct. Therefore, an adverse entry was made in his ACR for the year 2001-2002. He directly held his senior officials responsible for revenue loss from processing units without supportive evidence. The adverse entry was recorded when the applicant did not improve his conduct despite issuance of charge-sheet. The charges of misconduct & indiscipline on applicant's part are confirmed by each authority, justifying the adverse entry made / recorded by respondent-6.

8. A regular DPC was held on 18-19 July, 2002 against vacancies for 2002-2003 to the post of Superintendent which is filled up by selection method. The findings in applicant's case were kept in sealed cover as charge-sheet against him was pending by DPC dated 18-19 July, 2002. The disciplinary authority imposed upon him a punishment of reducing his increments by two stages for a period of two years vide order 03 March, 2002 which was upheld in appeal. Thus, the applicant is not entitled to the grade of Superintendent Group 'B' w.e.f. 2002. Under these circumstances,



the applicant is not entitled to the grade of Superintendent from 2002 and his representation / application on this count cannot be accepted. This is worth finding mention that the applicant stands promoted on the post of Superintendent vide order dt. 07 July, 2006. Here, it is pertinent to mention that issuance of the charge-sheet and communication of adverse remarks in the ACR are two different issues & these cannot be inter-linked.

9. In the light of observations made above, no interference is called for in the order dated 08 November 2005 (ann A-1), communication dated 27.06.2003 (ann A-2) and communication of adverse entry dated 07.12.2002 (ann A-3). Accordingly, the present O.A. is dismissed with no order as to costs.

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[**VIK. Kapoor**]
Administrative Member

S.M.M. Alam
[**Justice S.M.M. Alam**]
Judicial Member

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मेरी अस्तित्व में दिनांक ११८८
को आग-११ व रात इन्द्र गण ।

अमृथान सर्विकरी
केन्द्रीय प्रशासनिक अधिकारण
लोधपुर न्यायालयीठ, लोधपुर