CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 25-5-1990

Present

Hon'ble Shri SP Mukerji, Vice Chairman

&

Hon'ble Shri AV Haridasan, Judicial Member

Original Application No.K-545/88
Original Application No.31/89
Original Application No.113/89
Original Application No.347/89

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| P Mani Paul | - | Applicant in OAK-545/88 |
| PS Philip | - | Applicant in OA-31/89 |
| KT Paul | - | Applicant in OA-113/89 |
| Nair Rajan Narayanan | - | Applicant in OA-347/89 |

V.

1. Union of India represented by the Secretary, Central Board of Excise & Customs, New Delhi.

2. The Collector of Central Excise, Catholic Centre, Broadway, Cochin-682 031.

3. The Deputy Collector(P&E), Central Excise, Catholic Centre, Broadway, Cochin-682 031. - Common respondents in all the cases

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| Mr MGK Menon | - | Counsel for the applicants in OAK-545/88,&OA-31/89 & OA-347/89 |
| Mr KRB Kaimal | - | Counsel for the applicant in OA-113/89 |
| Mr P Sankarankutty Nair, ACGSC | - | Counsel for the respondents in OAK-545/88 & OA-113/89 |
| Mr V Krishnakumar, ACGSC | - | Counsel for the appl respondents in OA-31/89 |
| Mr K Prabhakaran, ACGSC | - | Counsel for the respondents in OA-347/89 |

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JUDGEMENT

(Shri AV Haridasan, Judicial Member)

Since the factual back ground and the questions of law involved in these four applications are similar, these cases were heard jointly and are being disposed of together. The facts of the cases can be briefly stated thus.

2. Applicants in all these four applications were employed in the Central Excise Divisional Office, Kottayam. Mr Mani Paul, the applicant in OAK-545/88 and Mr PS Philip the applicant in OA-31/89 were Hawildars and Mr KT Paul, the applicant in OA-113/89 and Mr Nair Rajan Narayanan the applicant in OA-347/89 were Inspectors. Alleging that M/s Nair Rajan Narayanan, KT Paul and PS Philip aided and abetted by Mr Mani Paul on 9.2.1984 conducted unauthorised and illegal raids at the business premises of pawnbrokers M/s James Puthooran of M/s Dilkush Trust, Peruvai and extorted money from the former and forcibly took away money under threat from the latter, all the applicants were served with show cause notices and charge sheets and were placed under suspension. On a complaint from M/s Dilkush Trust, the local Police registered and investigated a case against M/s Nair Rajan Narayanan, KT Paul and PS Philip and prosecuted them before the Chief Judicial Magistrate, Kottayam. The applicants submitted explanations denying the charges. In Annexure-III to the

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memorandum of charges issued to each of the applicants list of documents proposed to be relied on, and in Annexure-IV the list of witnesses to be examined were stated. These varied in the case of different individuals. The enquiry ordered against each of the applicants was separate and independent enquiry under Rule 14 of the CCS(CCA) Rules. Shri Gopalakrishnan, Assistant Collector of Central Excise was appointed Inquiry Authority to conduct the enquiries against the four applicants. A Presenting Officer was also appointed. The first two sittings of the inquiries in all the four cases were held separately and independently on 12th and 14th of March 1985. But when on the third sitting all the four applicants were called together by the Inquiry Authority and when the proceedings commenced in a common manner, all the applicants objected to the proceedings, stating that without an order under Rule 18 of the CCS(CCA)Rules, the inquiry authority had no authority to conduct common proceedings. Since the Inquiry Authority proceeded with the inquiry in a common proceedings despite the objection, the applicants did not participate at the time when the evidence on behalf of disciplinary authority was recorded. The witnesses were not cross-examined. The Inquiry Authority submitted his report to the Disciplinary Authority. The Disciplinary Authority remitted the case back to the Inquiry Authority under Rule-15(1) of the CCS(CCA) Rules for further inquiry

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strictly in conformity with Rule 14 of the CCS(CCA) Rules. The Inquiry Authority again proceeded with the inquiry in the same manner as before. But defence witnesses were examined. At the initial stages of the inquiry before the examination of the witnesses on the side of the Disciplinary Authority each of the applicants had made a written request to the Inquiry Authority that he should be supplied with documents 21 in number described in the list. The Inquiry Authority made available only 2 out of the 21 documents. After completion of the inquiry, the Inquiry Authority submitted reports, separately in each case finding the delinquent guilty. The reports were accepted and the Disciplinary Authority found all the applicants guilty of the respective charges concurring with the findings of the Inquiry Authority, but without giving the applicants a copy of the Inquiry Report before deciding about their guilt basing on the reports and issued separate orders dismissing the applicants from service. The applicants filed appeals which were dismissed by the second respondent. Aggrieved by the orders of dismissal and the appellate orders the applicants have filed these four applications challenging the legality, propriety and correctness of the orders of the Disciplinary Authority and the appellate authority. It has been alleged in all the applications that the inquiry has been conducted in an irregular and illegal way against the provisions of Rules 14, 15 and 18 of the CCS(CCA)Rules and violating the

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principles of natural justice by not making available the documents cited and that the findings are also perverse. It has also been contended that the non-supply of the inquiry report of the Inquiry Authority before the Disciplinary Authority found the applicants guilty has vitiated the proceedings.

3. In the reply statement it has been contended that the inquiry has been held validly and properly. The examination of witnesses in common has been justified on the ground that they were common witnesses in all the cases and that by doing so inconvenience to the witnesses could be avoided. The failure to supply the documents called for has been justified on the ground that the documents were found to be not relevent. According to the respondents, the copy of the Inquiry Officer's report need to be supplied only with the punishment order and that has been done in all these cases also. So the respondents have contended that the impugned orders are just and fair and do not call for any interference.

4. We have heard the arguments of the learned counsel for the parties and have also carefully gone through the documents produced in all these cases. The applicants in OA-31/89, OA-113/89 and OA-314/89 have contended that the disciplinary proceedings against them is are bad in law since they have been prosecuted for the same offence before the Chief Judicial Magistrate, Kottayam and that as the general rule is that prosecution should precede departmental proceedings, the respondents could not have validly initiated and carried on disciplinary

proceedings before the termination of the criminal case. But the prosecution was on the basis of a complaint given by a private individual and the charge sheet against the applicants were for misconduct though one of the misconducts related to the subject matter of the criminal case. Even if the criminal prosecutions and the departmental action arose out of common allegations as has been held by the Supreme Court in several cases, there is no hard and fast rule that the disciplinary proceedings should not be initiated or proceeded with until the prosecution ended. Therefore we do not find any merit in this contention. The important common grounds argued by the learned counsel for the applicants in all these cases are: i) the inquiry conducted is irregular since without an order under Rule 18 of the CCS(CCA) Rules, the Inquiry Authority conducting an inquiry under Rule 14 of the CCS(CCA)Rules against each of the applicants could not have conducted a common inquiry against all the four applicants taking evidence in common, (ii) the inquiry is vitiated since principles of natural justice have been violated as the Inquiry Authority has not made available to the applicants the important documents required by them for effectively cross-examining the witnesses examined to prove the charges without valid reason (iii) the inquiryis vitiated since statement of witnesses recorded at the preliminary inquiry have not been made available and since such statements have been relied on to support the

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finding against the applicants; and (iv) since the Inquiry Officer's reports have not been made available to the applicants and since they have not been given opportunity to make representations against the acceptability of the report before the Disciplinary Authority decided that the applicants are guilty basing on the report the disciplinary orders are vitiated.

5. We will consider these points one by one:

(i) It is seen from the records of all these cases and it is also admitted in the reply statements filed by the respondents that the inquiries ordered against each of the applicants was separate and independent inquiry under Rule 14 of the CCS(CCA) Rules. It is also seen from the inquiry reports and the disciplinary orders in these cases that the first two sittings of the inquiries were held independently. But from the third sitting onwards it is seen that a consolidated and common inquiry was held. It is also seen that the applicants objected to this procedure and that the Inquiry Authority has despite this objection proceeded with recording evidence in common. At this stage of the proceedings the applicants justifiably withdrew from the proceedings and the evidence on the side of the Disciplinary Authority was recorded in the absence of the applicants. It is also seen that witnesses not cited in some cases were examined since they were cited in other cases. So it is obvious that the inquiry held

is a common inquiry. It is also seen that in that common inquiry Mr PS Philip, the applicant in OA-31/89 was examined as a witness to prove the charges. Under Rule 18 of the CCS (CCA) Rules, it is permissible for the President or any authority/competent to impose the penalty of dismissal from service on the Government servants to make an order directing that the disciplinary action against two or more Government servants concerned be taken in a common proceedings. in any case/ But in this case it is seen that no such order has been made by the President or the competent authority and that even without such an order the Inquiry Authority has proceeded to hold a common inquiry. It is seen from the order of the Disciplinary Authority in these cases that the Disciplinary Authority has on receipt of the reports submitted by the Inquiry Authority remitted the reports to him for further inquiry strictly in conformity with Rule 14 of the CCS(CCA) Rules. But inspite of that, the ~~Disciplinary~~ Inquiry Authority has proceeded with the common inquiry. This action is seen to have been justified in the orders of the Disciplinary Authority and also in the reply statements filed by the respondents on the ground that evidence of the witnesses was recorded only once for all these four cases because the witnesses were common witnesses and also because the applicants did not participate the inquiry for cross-examining the witnesses. It has been contended that this procedure was adopted only to avoid inconvenience to the witnesses in having to depose four times of the same facts. It has been contended in the reply statement

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that since the evidence rendered by witnesses who are cited in individual cases alone had been taken into account for arriving at the fundings in the individual cases, this procedure has not caused any prejudice to any of the applicants. We are not in a position to agree with this contention of the respondents. Since no order under Rule 18 for conducting a common inquiry has been made either by the President or by the competent authority, the Inquiry Authority should not have recorded evidence in common and this procedure has in our view vitiated the proceedings. Mr PS Philip the applicant in OA-31/89 has been examined as a witness in common proceedings. The argument of the learned counsel for the respondents that the testimonies rendered by witnesses who were not cited in individual cases have not been considered for deciding the respective cases does not appear to be sound because since the evidence was recorded in common, it is possible that the evidence of witness though not cited in individual cases would have influenced the finding in all the cases though not expressly relied on. Therefore we find that the argument of the learned counsel for the applicant that the inquiry has been vitiated by reason of a common inquiry being held without a specific order to that effect has great force.

(ii) In all these four cases the applicants had requested the inquiry officer to cause a production of 21 documents and in their written request the applicants had indicated the purpose for which these documents were needed. It is seen

that only 2 documents were made available while the other documents were not made available to the applicants on the ground that they were not relevant for the purpose of the inquiry and also on the ground that some of the documents were required for filing returns and that some others were in the possession of the police. We have gone through the written requests made by the applicants. We are not convinced that the decision of the Disciplinary Authority that the documents were not relevant for the purpose of the inquiry is correct. Certain documents required by the applicants appear to be absolutely essential for effective cross-examination of the witnesses examined to prove the charges. Further, documents should not be withheld for the reason that they were required for filing returns or that they are in the possession of the police department. The officers of the police department could have been called upon to produce the documents required by the applicants if they were in the possession of the police department especially, when an officer of the police department was examined to prove the charges against the applicants. Therefore we are convinced that the respondents have denied reasonable opportunity to the applicants to properly defend themselves in the inquiry as the documents required by them for the purpose of effectively cross-examining the witnesses were not made available to them.

(iii) The applicants have in the applications averred that the statement recorded during the preliminary inquiry of one witness Mr Sivadasan who was examined as

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defence witness was not made available inspite of requests made by them and that since the Disciplinary Authority has relied upon that statement and had produced the same as Annexure-1 to the disciplinary order, the procedure adopted is highly irregular and illegal. Mr Sivadasan was not examined as a witness to prove the charges. So even if his statement was not made available in the ordinary course, it cannot be said that any substantial prejudice was caused to the applicants by not giving his statement, But in these cases it is seen that the Disciplinary Authority has in his orders relied on the statement of the witness Mr Sivadasan and has appended the same as Annexure-1 to the disciplinary orders. The appending of this statement in the disciplinary order without giving the statement to the applicant during the inquiry did not serve any purpose. If the Disciplinary Authority wanted to rely on the statement of Mr.Sivadasan the same should have been given to the applicants during the course of the inquiry. Therefore this course adopted by the Disciplinary Authority is also highly irregular. Therefore for this reason also it has to be held that the inquiry held is not regular.

(iv) It is not disputed that the copies of the reports of the inquiry were not supplied to the applicants before the Disciplinary Authority entered findings regarding the guilt of the applicants. The case of the respondents is that as per rules the copies of the report need be furnished only

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with the disciplinary orders. In Premnath K Sharma V. Union of India and others (1988(3) SLJ(CAT), 449) a Full Bench of the Tribunal sitting at New Bombay has held that the non-supply of the copy of the inquiry report to the delinquent before the Disciplinary Authority entered a finding regarding the guilt basing on the report vitiates the proceedings as principles of natural justice demand giving a copy of the report to the delinquent and an opportunity to him to make a representation regarding the acceptability of the report. This dictum was followed by the Bombay Bench of the Tribunal in Bhashyam V. Union of India & others (1988(6) ATC, 863). A Division Bench of the Supreme Court in Union of India V. E Bashyam, ATR 1989(1) SC, 50, in an SLP against this order of the Tribunal virtually upheld the dictum but considering the importance of the matter referred it to a Larger Bench. The Division Bench of the Supreme Court distinquished the requirement of making the copy of the Enquiry Report available to the delinquent officer for his defence before the Disciplinary Authority makes up its mind on the guilt from the show cause notice given to him on the quantum of punishment and observed as follows:

> "It appears to us to be a startling proposition to advance that the only authority which really and actually holds him guilty need not afford any opportunity to the person against whom such finding of guilt is recorded and the material on which he acts".

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The Division Bench held that abolition of show cause notice on quantum of punishment by the 42nd amendment of the Constitution did not dispense with the requirement of article 311(2) of the Constitution to give reasonable opportunity to a delinquent compatible with the principles of Natural Justice. It held that non-supply of the Enquiry Report to the delinquent to let him persuade the Disciplinary Authority that the finding of guilt is not warranted from the Enquiry Report, would constitute violation of the principles of Natural Justice. Though the Supreme Court has in another SLP filed by the Union of India against the decision of the Tribunal in Premnath K Sharma's case stayed the operation of the order in that case as the principles enunciated in that case still hold good and have been buttressed by the Division Bench of the Supreme Court in Bashyam's case, this Tribunal has been consistently holding that the non-supply of the copy of the inquiry report before the Disciplinary Authority decides the question of guilt basing on the report vitiates the proceedings from that stage onwards. Following the above dictum, we find that the non-supply of the Inquiry Officer's reports in these cases to the applicants before the Disciplinary Authority decided that the delinquents were guilty without giving them an opportunity to make representations about the nature of evidence and the acceptability of the reports has vitiated the proceedings and the disciplinary orders.

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6. For all the reasons mentioned in the foregoing paragraph, we are of the view that the disciplinary proceedings and orders in all the four cases suffer from serious illegalities and irregularities and that they have to be set aside. The appellate orders also are liable to be set aside since the appellate authority has not properly considered the grounds raised by the applicants on the basis of these irregularities. Since the disciplinary prders are bad in law and have to be set aside normally the applicants have to be ordered to be reinstated in service. But since it has come out from the pleadings that the applicants in OA-31/89, OA-113/89 and OA-347/89 have been convicted by the Criminal Court and since the accusation against all the four applicants are of very serious nature it will not be conducive to the interest of justice if these applicants are allowed to go free if really the accusations against them were true. Therefore we are of the view that in the public interest and in the interest of justice it is necessary to direct the respondents to conduct denovo inquiries against the applicants on the basis of the charges already issued.

7. In the result we allow the applications OAK-545/88, OA-31/89, OA-113/89 and OA-347/89 and set aside the impuged orders in all these cases and direct the respondents to conduct denovo inquiries against these applicants ~~in~~

in accordance with law giving them reasonable opportunity to defend themselves and supplying them the documents necessary for enabling them to cross-examine the witnesses effectively. The applicants will be deemed to be under suspension from the respective dates of their removal from service for the purpose of completing the disciplinary proceedings. The disciplinary proceedings should be completed within a period of three months from the date of communication of this order. There will be no order as to costs.

8. A copy of this order may be placed in each of the cases.

( AV HARIDASAN )
JUDICIAL MEMBER

25.5.90

( SP MUKERJI )
VICE CHAIRMAN

25-5-1990

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