

Central Administrative Tribunal Lucknow Bench
Lucknow

Original Application No. 450/2007

This, the 9th day of December, 2009

Hon'ble Ms. Sadhna Srivastava, Member (J)
Hon'ble Dr. A. K. Mishra, Member (A)

S.N. L. Das, aged about 60 years s/o Late Shri Dhanush Dhari Lal Das, Assistant Commissioner (Retd.) resident at 233-Civil Lines Sitapur (UP).

Applicant

By Advocate Sri Raj Singh.

Versus

1. The Union of India, through the Secretary to the Govt. of India, Ministry of Finance, Department of Revenue, North Block New Delhi.
2. The Commissioner, Central Excise Commissionerate, 7-A, Ashok Marg, Lucknow (UP).
3. Shri C. Mathur, the then Commissioner, Central Excise Commissionerate, 7-A Ashok Marg, Lucknow (UP) presently posted at Goa.
4. Chief Vigilance Officer, Central Board of Excise & Customs, New Delhi.
5. The Under Secretary, Government of India, Ministry of Finance Department of Revenue, Ad-V, Fourth Floor, Jeevan Deep Building, Parliament Street, New Delhi.

Respondents

By Advocate Sri S.P. Singh.

Order

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been made challenging the Memorandum of Charge No. 15/2007 issued by Government of India on 26/29.6.2007 which was served on the applicant on 29.6.2007 (Annexure A-1) and the same charge sheet which was again supplied to him on 21.7.2007 (Annexure A-2) with a prayer to quash it.

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2. The applicant was posted as Assistant Commissioner Central Excise Division, Sitapur under the administrative control of Respondent No. 2/3 and he superannuated from Government service on 31.7.2007. The impugned charge sheet contained 3 articles of charge:

(i) regarding his failure to comply with the procedure of issuance of Central Excise Registration to M/s Prince International, Shahjahanpur, a 100% Export Oriented Unit, by not forwarding the duplicate copy of the application for the Registration containing all the relevant details of the Unit to the Range Officer, which resulted in non-detection of discrepancies in the ground plan and wrong verification of the premises by the Range Officer

(ii) failure to ensure the checks which were to be carried out at the time of granting the warehousing license to the above said 100% EOU; and

(iii) failure to ensure fulfillment of minimum requirements necessary for issuance of CT-3s meant for procurement of duty free raw materials for the above said unit.

3. At the time of hearing, the learned counsel or the applicant advanced the following grounds in challenging the charge sheet:

(i) The Memorandum of charge served on him was issued without the approval of the President of India although by the time of its valid service on him on 21.7.2007 he was already a retired employee

[Signature]

from government service. The proceedings should have been initiated under Rule 9 (2) (b) of the CCS (Pension) rules, 1972 and not under Rule 14 of the CCS (CCA) Rules. Therefore, the charge sheet should be held as void ab initio on the ground of not having the approval of the competent authority.

(ii) The charge sheet was issued after inordinate delay of about 4 years which has not been explained by the respondent authorities. The incidents related to the year 2003 and the charge sheet was issued at the fag end of his career on 29.6.2007 two days before his retirement.

3.1 The learned counsel for the applicant has placed reliance on P.L. Khandelwal vs. Union of India and Others (1989) Administrative Tribunals Cases 509 in support of his contention that in the absence of material to justify the delay, initiation of a disciplinary proceeding after superannuation of a Govt. Servant is unsustainable particularly in the context of the fact that there was no allegation of personal monetary gain or corrupt practice against the applicant. Such a delay, according to him, amounted to denial of reasonable opportunity and constituted violation of principles of natural justice. Besides, the applicant has cited the following decisions in this regard:

(a) Mohanbhi Dungarbai Parmar Vs. Y.B. Zala- reported in 1980 (1) SLR 324 decided by Gujarat High Court on 15.9.1978.



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(b) A.P. Augustine Vs. Supdt. Post Office,
Always reported in 1984 (2) SLR 163-of
Kerala High Court order dated 4.1.1982

(c) S.C. Govil vs. State of U.P. &
others reported in 1923 (11) LCD 831-of
Allahabad High Court, Lucknow Bench-
order dated 23.3.1992.

(d) S Venkatachalam Vs. chief Commissioner of
Income Tax, Tamil Nadu reported in 1988 7
Administrative Tribunal cases 1

(e) K.V. Subramaniam Vs. A.D (Estt.) Post
Master General Office Madras & Others
reported in 1988 (7) Administrative
Tribunal Cases 8.

3.2. The applicant has alleged malafide against Sri Mathur, the then Commissioner of Customs and Excise, Lucknow, under whom he was working. According to the applicant, Sri Mathur has not submitted any affidavit controverting the allegations made against him which should, therefore be deemed to have been established. Any disciplinary proceeding initiated with malafide intentions cannot be sustained by a court of law. Therefore, it was argued that the present disciplinary proceeding should not be allowed to continue.

3.3 The applicant has discussed all the three articles of charges in the application and tried to establish that he had no direct responsibility in the matter and he had acted on the reports of the

Range Officers and the jurisdictional superintendent, who had filed their reports after field verification. In any case, the charge sheet does not reveal any allegation of corrupt practice against him or any specific loss of revenue caused to the Government. Therefore, there was no justification to start the proceedings on the eve of his retirement and to continue it afterwards.

4. The respondents have stated that the applicant granted Central Excise Registration on 28.4.2003 in favour of M/s Prince International as 100% Export Oriented Unit (EOU) which intended to manufacture and export handicrafts made of Brass, Copper, Aluminum etc. Post registration verification was conducted by the Range Officer and his report was submitted on 20.5.2003. Application for grant of license in respect of private bonded warehouse was allowed by the applicant on 20.6.2003. He also issued CT-3 certificates permitting the unit to procure 100MT of Brass ingots and 350Mt of Copper wire rods. The consignments of raw material, were procured as duty free goods and warehousing certificate in the form ARE-3 dated 28.10.2003 was obtained by the unit. Thereafter, the unit applied for removing the goods for job work to be done at New Delhi. After the permission was granted the goods were removed from the factory premises.

5. The officers of the Directorate General of Central Excise Intelligence (DGCEI), received



information that the copper wire rods had been diverted to the local market. They made a search during which , neither any consignment of copper wire rods nor any finished goods were found in the factory premises. Further, there was no electricity connection in the factory and in one of the rooms, a few old grinding and polishing machines were lying on the floor without being attached to the ground. They ascertained that no manufacturing activity was carried out in the premises. On further verification, the job worker, to whom the consignment was supposed to be given was found to be non-existent at the given address of Delhi. Consequently, notice was issued against the unit demanding duty which was deposited by the party with interest.

6. It was also detected that the factory was not set up on the piece of land (Khasra) No. 1799 of village Khandahar purchased by the unit, but in a rented building belonging to some one else. In the application submitted before the applicant, built up premises were shown as those of the factory and the land covered by Khasra No 1799 in village Khandahar purchased for the unit was shown as the land on which the factory stood.

7. Therefore, it was urged that the charge that had the applicant supplied the full details available in the application to the Range Office who conducted post-registration verification the discrepancies could have been detected was justified. Further, allegedly,

necessary checks regarding genuineness of the factory premises and its manufacturing activities were not made before permitting procurement of duty free materials which were utilized by the unit for fraudulent purposes. On the whole, the allegations are that as the Assistant Commissioner under whose direct charge the EOU was registered and who issued licence for import of duty free material, had to share the responsibility for the corrupt practices indulged in by the unit which entailed loss of revenue to the Government but for the detection of the intelligence wing.

8. The respondents have submitted that a disciplinary proceeding is deemed to have commenced from the date of issue of the charge sheet, not from the date of its receipt by the charged official (CO). This subject has been discussed in detail in the order dated 7.10.2009 of this Tribunal in O.A. No. 47 /2008. The judgments of the Supreme Court of India in **(i) Union of India Vs. K.V. Janki Raman-AIR 1991 SCC 2010, (ii) State of M.P. Vs. Onkar Chand Sharma reported at (2001) 9 SCC 171, (iii) State of Madhya Pradesh And another Vs. Syed Naseem Zahir and Othrs reported at 1993 SCC (L&S) 429, (iv) Union jof India Vs. Kewal Kumar reported at 1993 SCC (L&S) 744, (v) Delhi Development Authority Vs. H.C. Khurana reported at (1993) 3 SCC 196 (vi) U.P. State Sugar Corporation Ltd and others versus Kamal Swaroop Tondon, (2008) 2 SCC 41** were relied on to reach the conclusion that a disciplinary proceeding starts from the

date of issue of the charge sheet not from the date of its service. Therefore, we find that this ground taken by the applicant does not have any merit in view of the settled position of law.

9. In this case admittedly there was a delay of 4 years before initiation of the proceedings. Without expressing any opinion on the merits of the case, we find that the facts of the case indicate serious corrupt practice indulged in by the Export Oriented Unit which was allowed to import duty free raw material when there was not even electricity connection in the factory and no machineries worth the name had been installed. Therefore, the contention of the respondents that the allegations are serious in nature and the applicant as the Assistant Commissioner who issued the licence for the purpose could not disown his accountability has to be given due consideration.

10. The subject of validity of disciplinary proceedings initiated after some delay was discussed in our judgment dated 6th October 2009 in O.A. No. 209/2009 in which it was held on the strength of the ratio laid down by the Apex court in U.O.I. v/s Mohd. Ibrahim, 2004(10)SCC 87 and Govt. of A.P. Vs Appala Swamy, 2007 (14) SCC 49 that the question of delay should be examined on the basis of facts of each case and the seriousness of the charges leveled against the delinquent official. In the Appala Swamy case, the Supreme Court held that there could not be any hard and fast rule as regards

delay and each case should be decided on its own facts. We find that the facts of this case do not justify quashing of the charge sheet on the ground that it was initiated after delay of 4 years or immediately before the retirement of the applicant.

11. The applicant has alleged malafide against respondent No. 2/3 which has been denied by the respondents in the counter reply. According to them, the report of the preliminary investigation against the alleged misconduct of the applicant was considered by the statutory authority, i.e. the Central Vigilance Commission (CVC) and on their recommendation, the disciplinary authority namely the Government of India took the final decision to initiate the disciplinary proceedings against the applicant. It is not the case of the applicant that the disciplinary authority or for that matter, the CVC were actuated by any malafide intentions against the applicant. Although he has taken the ground of malice in law against the CVC, there is no materials to come to such a conclusion against the CVC. Under the circumstances, the charges of malafide cannot be held as established against the disciplinary authority who has issued the impugned charge sheet nor the CVC who recommended for such action.

12. For the same reasons, we would not like to get into an examination of the merits of the charges brought against the applicant. The learned counsel



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for the respondents submits that judicial pronouncements of the Apex Court in a catena of cases support the view that the validity of a charge sheet should not be scrutinized in a judicial proceeding. It should be allowed to be properly investigated in the disciplinary proceedings initiated against an employee.

13. In particular, reliance was placed on the decision of the Supreme Court in Union of India and Another Vs. Kunisetty Satyanarayana (2006) 12 SCC 28 in which the following observations were made:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show cause notice vide Executive Engineer, Bihar State Housing Board Vs. Ramesh Kumar Singh- (1996) 1 SCC 327, Special Director Vs. Mohd. Gulam Ghous- (2004) 3 SCC 440, Ulagappa Vs. Divisional Commr., Mysore- (2001) 10 SCC 639, State of U.P. Vs. Brahm Datt Shasrma- (1987) 2 SCC 179, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show -cause notice or after holding an enquiry the authority concerned may drop the proceedings and /or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance."



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14. The applicant himself has made a representation before the disciplinary authority denying the charges and requesting to drop the proceedings. The matter is better left to the disciplinary authority to take appropriate action on his representation.

15. In the result, the application is dismissed.
No costs.

Aljze 09/12/09
(Dr. A. K. Mishra)

Member (A)

Sadhna Srivastava
(Ms. Sadhna Srivastava)
Member (S)

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