

Central Administrative Tribunal Lucknow Bench
Lucknow

Original Application No. 451/2007

This, the 9/12 day of December, 2009

Hon'ble Ms. Sadna 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).

By Advocate Sri Raj Singh. Applicant

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. The 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

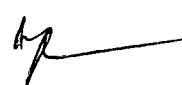
By Advocate Sri Sumit Kumar for Sri Y. Kesarwani

Order

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

This application has been made against the charge sheet issued by the Government of India in its order dated 27/29.06.2007 served on the applicant on 29.6.2007.

2. The applicant was working on the post of Assistant Commissioner of Central Excise and Customs and was posted at Central Excise Division, Sitapur. He was superannuated on 31.6.2007. But the said charge sheet, according to him, was served on him



on 29.6.2007 after office hours. The charge sheet contained three articles of charge:

(i) that although the order of the competent authority dated 29.3.2005 imposing the penalty of compulsory retirement on Sri Ajai Jauhari, an employee who was working under the control of the applicant and was present in the office on 17.8.2005, was received in the office on that date but it was not served on Sri Jauhari on the same day;

(ii) that although the said order imposing the penalty of compulsory retirement was served on Sri Ajai Jauhari on 22.8.2005, the applicant in total disregard of that order made internal postings on 26.8.2005 asking Sri Jauhari to look after the work of adjudication branch;

(iii) that although he sought for instructions from the Joint Commissioner Central Excise, Lucknow in his letter dated 6.9.2005 about the course of action to be taken if Sri Ajai Jauhari turned up for joining his duty, without waiting for instruction from the higher authorities he allowed Sri Jauhari to work in the office and intimated the fact about Sri Jaughari reporting for duty in his letter dated 9.9.2006. The charge was that the applicant did not maintain absolute integrity and devotion to duty and acted in a manner unbecoming of a Government servant by not strictly acting on the orders of the higher authority and allowing the employee Shri Jauhari both to proceed on leave before service of the penalty order and

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then allowing him to report to duty which was beyond his competence.

3. At the time of hearing, the learned counsel for the applicant submitted the following pleas in support of the prayer to quash the impugned Memorandum of Charges No. 12/2007 issued on 27/29 June 2007 and communicated to him once on 29.6.2007 (Annexure A1) and subsequently on 11.6.2007 (Annexure A-2). **(i)** The charge sheet served on the applicant on 29.6.2007 consisted of an unsigned photocopy which was communicated through a fax letter. Since it was not very legible, the applicant demanded a signed copy of the original Memorandum of Charge\$, which was supplied to him on 11.7.2007 after he had superannuated from government service. It was urged that no proceedings could be initiated against a retired government servant except under Rule 9 (2) (b) of CCS (Pension) Rules, 1972, according to which, such an action could be taken only with prior approval of the president of India. Admittedly, the charge sheet did not have the approval of the President of India under Rule 9 (2) (b) of the CCS (Pension) Rules, 1972. As such, it was void ab initio.

(ii) The allegations contained in the charge sheet related to the period August 2005 and September 2005 whereas, the charge sheet was issued in June 2007 after a lapse of more than one and half years. Reliance was placed on a number of judgments to contend that in-ordinate delay on the part of the respondent authorities in initiating departmental



proceedings constituted denial of reasonable opportunities to the charged officer (C.O.) and amounted to violation of principles of natural justice. In support of this contention, the decisions in the following cases were cited:

- (a) Mohanbhi Dungarbai Parmar Vs. Y.B. Zala- reported in 1980 (1) SLR 324 decided by Gujrat High Court on 15.9.1978.
- (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.
- (f) P.L. Khandelwal Vs. Union of India & Others reported in (1989) 9 Administrative Tribunal cases 509.

(iii) The applicant has alleged malafide against Sri C. Mathur, who was acting as the Commissioner of Central Excise Lucknow during the relevant period. According to the applicant, the averments relating to allegations of malafide against Sri Mathur have not been replied by him

by

personally. Therefore, the allegations should be deemed to be proved in the absence of any controversy from the side of Sri Mathur and the issuance of the memorandum of charges at the instance of Sri Mathur should be treated as originating with malafide intention and should be set aside on that ground.

(iv) The applicant has discussed the 3 articles of charge in the application itself and has stated that they were bereft of merit and should be held as unsustainable on that ground.

4. 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

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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.

5. As regard the delay, the respondents have stated that the applicant himself was to blame to some extent as the delay was caused due to his non-cooperation at the stage of preliminary investigation. In the office letter dated 9.2.2007, the applicant was requested to appear before the Additional commissioner (P&V) Central Excise Lucknow on 17.3.2007 giving him almost a month's time, but he did not appear and requested for another date which was granted by the authorities. He was again asked in the letter dated 8.3.2007 to appear on 2.4.2007 but the applicant chose to seek further adjournment instead of participating in the investigation. Therefore, it was contented that the applicant himself contributed to the delay.

5.2. This subject was discussed in great detail in the judgment of this Tribunal dated 6th October 2009 in Original Application No. 209/2009 in which it was held, on the strength of the ratio laid down by the Apex Court in U.O.I. Vs. 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.

6. 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.

7. As regards the merits of the charges, the matter is yet to be concluded in the disciplinary proceedings pending against him. The learned counsel 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.

8. The learned counsel for respondents placed reliance 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 Ghouse*-(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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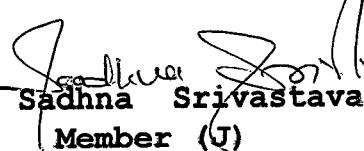
9. The respondents have also taken the plea that the applicant has filed his representations against the charge sheet and these are pending for decision. In other words, he has already entered his defence not only by denying the charges but also by challenging the validity of the charge sheet. The proper course of action would be for the disciplinary authority to consider his representations and decide either to start an inquiry or to close the matter on the basis of the submissions of the applicant in his representation.

10. For the aforesaid reasons, we do not find any justification for quashing of the charge sheet. As observed, the disciplinary authority may take appropriate action on the representations of the applicant.

11. In the result, the application is dismissed.

No costs.


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


(Ms. Sadhna Srivastava)
Member (J)

Vidya