CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:6/96

DATE OF DECISION: 31st March 2000

Shri V.N. Kullarwar — Applicant.

Shri S.S.Karkera — Advocate for Applicant.

Versus

Union of India and others — Respondents.

Shri M.I.Sethna — Advocate for Respondents

CORAM

Hon'ble Shri D.S.Baweja,Member(A)

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? yes

(2) Whether it needs to be circulated to other Benches of the Tribunal? no.

(3) Library. yes

(S.L. Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
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ORIGINAL APPLICATION NO:6/96

the 31st day of MARCH 2000

CORAM: Hon'ble Shri D.S.Baweja, Member(A)

Hon'ble Shri S.L.Jain, Member(J)

V.N. Kullarwar
Jyoti Sadan,
1st floor,
Sitaladevi Temple Road,
Mahim, Bombay. ...Applicant.

By Advocate Shri S.S.Karkera

V/s

1. Union of India through
The Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.

2. The Commissioner of
Central Excise, Bombay -I
Central Excise Building,
Maharshi Karve Road,
Opp. Churchgate Station
Bombay.

3. The Commissioner of
Departmental Enquiries,
Government of India,
Central Vigilance
Commisioner, New Delhi. ...Respondents.

By Advocate Shri M.I.Sethna.

O R D E R

(Per Shri S.L.Jain,Member (J))

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the impugned order dated 28.6.1995 bearing No. 59/95 F.No.C-14011/44/90-Ad.V issued by respondent No.1 imposing penalty of 20% cut in the monthly pension payable to the applicant for a period of 5 years with a declaration that the

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entire enquiry proceedings initiated and conducted by the respondents pursuant to the charge sheet dated 29.12.1985 being illegal and bad in law, therefore deserves to be quashed and set aside the Enquiry Officer's report and the impugned order dated 28.6.1995.

2. The applicant has retired on 31.1.1980 from the post of Assistant Collector, Central Excise,Bombay. The applicant came across an order dated 29.12.1983 which states that the applicant while working as Assistant Collector of Central Excise during the year 1978-79, failed to maintain absolute integrity and devotion to duty and committed grave misconduct in as much as he reclassified the starch products of M/s Gold Seal Industries, A-7,MIDC, Andheri(E), P.O.Chakala, Bombay under Tarrif Item 68 instead of Tarrif Item 15-C which was otherwise being classified correctly and that he sanctioned a refund claim of Rs.1,11,394.72 of M/s. Gold Seal Indrustries for the period 1976-77 and 1977-78 on 31.12.1979, which was barred by limitation under Rule 11 of the Central Excise Rules, 1944 and the firm was not paying duty under protest. Sanction was accorded to the departmental proceedings against the applicant and the proceedings were to be conducted in accordance with the procedurers laid down in Rule 14 and 15 of the CCS (CCA) Rules 1965. Alongwith the said order dated 29.12.1983, a Memorandum of chargesheet was served and one of the Articles of charge in the said chargesheet related to the order dated 20.9.1979 regarding reclassification of the product which was earalier correctly classified, the second charge was in respect of the refund claim of the amount above mentioned which arose due to wrong classification of the products, though the

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claim was barred by limitation under Rule 11 of the Central Excise Rules 1944 and the fact that the firm was not paying duty under protest. The memo also contains the statement of imputations of misconduct and the names of witnesses and the list of documents sought to be relied on by the prosecution to bring home the charge against the applicant.

3. The applicant alleged that the very initiation of the enquiry proceedings was itself an illegality in as much as the chargesheet issued was time barred in view of rule 9(2)(b)(ii) of the CCS (Pension) Rules, 1972 as it was sent by Registered Post from Delhi on 30..12.1983, which was received by the applicant in the 1st week of January 1984, after 1.1.1984, which was a Sunday, as the chargesheet was received after expiry of 4 years from the date of retirement and no enquiry proceedings could have been initiated on the basis of the charge sheet which itself was barred by law of limitation. The Disciplinary Authority with some ulterior motive to harass the applicant by levelling baseless and false charges proceeded with the enquiry. The applicant by his representation, objected to the initiation of the disciplinary proceedings on the ground of limitation. During the enquiry number of witnesses were examined but the material on record did not prove the charges levelled against him.

4. Artice I of the chargesheet related to reclassification of ACS - 55 Powder which had been classified by the predecessor of the applicant, Assistant Collector, Shri S.N.Thapa under Tariff Item No.15 -C of the Central Excise Tariff as 'Starch'. The classification list of the product ACS - 55 powder obtained

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as starch by the officers of the Central Excise Deparatment was against the say and protest of the manufacturers M/s Gold Seal Industries, Bombay. It was protested that the said powder is an 'adhesivse' and not 'starch' which was a written protest vide letter dated 30.4.1976 alongwith the classification list No. 6 of 1976. The protest made was valid. In fact, the classifiction list obtained under duress was admitted by the Assistant Collector, Shri S.N.Thapa. The protest made by M/s Gold Seal Industries remained not disposed of till 20.9.1979 for a period of three years which was to be disposed of by appellate order. The approved classification of 1976 without disposing of the valid protest was against the express provisions of law and therefore it was only with a view to set right the injustice done to the applicant, after having taken over his charge, disposed off the protest when the matter was brought to his notice. After receiving number of representations from M/s. Gold Seal Industries, Bombay, after seeking the opinion of Chief Chemist on the fresh sample drawn from the said products and testifies that the ACS - 55 powder is neither starch nor modified starch but the product is 'glue' which is covered by T.I. No.68 of the Central Excise Tariff and the arbitrary classification done by Shri S.N. Thapa under T.I. No. 15 -C was incorrect and the protest made by M/s Gold Seal Industries remained to be disposed of. Hence the OA for the aforesaid reliefs.

5. The respondents have resisted the claim of the applicant and alleged that the disciplinary proceedings were initiated within the period of four years and the applicant was rightly held guilty of the charges levelled against him and the proceedings are in accordance with law.

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6. There is no dispute about the fact that the charge sheet is dated 29.12.1983 which was served in the first week of January 1984 by registered post. The learned counsel for the applicant relied on Rule 9 (2)(b)(ii)CCS(Pension) Rules 1972 and argued that the departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment shall not be in respect of any event which took place more than four years before such institution. On the basis of said provision, the learned counsel for the applicant argued that as the charge sheet was served in first week of January 1984 the disciplinary proceedings is vitiated.

7. Rule 9(6) of CCS(Pension) Rules 1972 is as under:

> "Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date."

On perusal of the same we are of the considered opinion that it is not the date of service of charge sheet, but it is the date of issue of charge sheet which is relevant for deciding the period of limitation. There is no word like the 'service of the charge sheet on the Government Servant' but the word is 'statement of charges is issued to the Government servant or pensioner'. Therefore, though service effected in first week of January 1984 but the charge sheet was issued on 29.12.1983 which is within the period of limitation.

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8. The applicant was served with the said charge sheet which contains two articles of charges which are as under:

Article:1

That on 20.9.79, Shri Khullarwar passed orders to the effect that the modified starch products of M/s Gold Seal Industries, A-7, MIDG, Andheri(E),P.O. Chakala,Bombay-93 which were chemically analysed under the test memo dated 30.4.79 would be classified under T.I. 68 without referring to the relevant B.T.N. heading for which a reference was made in the Dy. Chief Chemist's report and the Explanatory notes thereunder norhe had referred to the detailed instructions in Annexure IV to the Budget proposals for the year 1976 (relating to starch and scope of Tariff Item 15-C in Central Excise Tariff) before reclassifying the products, which were otherwise being classified correctly and classifiable under T.I.15-C to T.I 68 of Central Excise Tariff.

Article 2:

Shri Khullarwar had sanctioned refund claims of Rs.1,11,394.72 of M/s Gold Seal Industries for the period 1976-77 and 1977-78 on 31.12.1979 which arosedue to his wrong classification of the products manufactured by M/s Gold Seal Industries as stated in article 1 above, though this claim was barred by limitation under Rule 11 of Central Excise Rules 1944 and the fact that the firm was not paying duty under protest.

9. After enquiry, the Enquiry Officer submitted the report to the effect that Article 1 and 2 stands proved. The Disciplinary Authority after having received the representation of the

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applicant and considering the same came to the conclusion that article 1 is not proved while article 2 stands proved, after seeking advise the punishment as indicated above was ordered.

10. The learned counsel for the applicant relied on (1987) 4 ATC 185 V.K.Gupta V/s Union of India and others decided by CAT Principal Bench, New Delhi which lays down the proposition that if the events relating to charges more than four yeaars old at the time of initiation of proceedings, departmental enquiry is not permissible. We agree to the said proposition of law. The said authority does not help the applicant as Article of charge II relates to 31.12.1979.

11. The learned counsel for the applicant relied on (1988) 8 ATC 97 H.V. Bhat V/s Union of India and others decided by CAT Bangalre for the proposition that only when misconduct committed by retired employee during service resulted in pecuniary loss to the Government and there was prima facie evidence for such loss, charges framed against retired employee must disclose such loss, in absence of the same the proceedings deserves to be quashed.

12. On perusal of Article 2, it is true that it is not mentioned that the Act of the applicant resulted in pecuniary loss to the Government. In Amarjit Singh V/s Union of India, Administrative Tribunal Reporter 1988 (2) CAT 637, the Full Bench, after examining the matter at length, have held that institution/continuance of the proceedings is not dependent upon any pecuniary loss being occasioned to the Government. Even in the absence of any pecuniary loss, the pension of a pensioner can be withheld or withdrawn in whole or part, after following the

prescribed procedure for an act of misconduct/negligence committed while in service. In view of Full Bench judgement, the judgement of CAT Bangalore Bench referred to above does not help the applicant.

13. The learned counsel for the applicant relied on JT 1999 (5) SC 366 Zunjarrao Bhikaji Nagarkar V/s Union of India and others decided by the Apex Court of the land and argued that the act of the respondents was Quasi-Judicial act,on the basis of a wrong opinion it is not always necessary to hold that a quasi-judical authority has acted with culpable negligence and forms a basis of departmental enquiry. The learned counsel for the respondents submitted that after having attended the disciplinary proceedings, now the applicant is not at liberty to raise this question. Before we arrive to any conclusion it is necessary to reproduce the question of law mentioned in Nagarkar's case which is as below:

> "Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. <u>If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioniong of quasi judicial officers.</u> _
>
> It is a quasi judicial order. Merely because penalty imposable has not been imposed, which was obligatory for the officer to impose, could it be said that if it is case of misconduct and he is liable to be proceeded against? The officer did impose the excise duty

be imposed has to be in commensurate with the gravity of the offence and the extent of the evasion. In the present case, penalty could have been justified.

It is not that the appellant did not impose penalty because of any negiligence on his part but he said it was not a case of imposition of penalty. In a case like this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. A wrong interpretation of law cannot be a ground for misconduct.

It cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. There is no other instance to show that in similar case the appellant invariably imposed penalty.

Since misconduct is sought to be inferred by the appellant having committted an error of law, the charge-sheet on the face of it proceeds on a wholly illegal premise rendering it liable to be quashed. It was not a case for initiation of any disciplinary proceedings against the appellant. Charge of misconduct against him was not proper. It has to be quashed."

(underlined by us)

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On the above said principle which is laid down by the Apex Court of the land we have to arrive to a conclusion whether the charge sheet could be issued in respect of Article of charge II referred above. There is no charge either of negligence or favour to M/s Gold Seal Industries, Bombay, no evidence in this respect. Mere inference of the disciplinary authority on the basis of the fact that the applicant has committed an error of law, the disciplinary proceedings cannot be proceeded.

14. It appears that on the ground of wrong reclassification and limitation the applicant ought not to have interfered with the matter but in view of the said proposition which is stated above, the disciplinary proceedings cannot be proceeded with. The Applicant might have committed error or law, until and unless there is no evidence that he has favoured M/s. Gold Seal Industries or he acted negligently it is not proper to arrive to a conclusion that the applicant has committed any misconduct.

15. The fact that the applicant did not challenge the initiation of the disciplinary proceedings will not disentitle the applicant to raise the objection at this stage as it goes to the root of the case for the reason that for a fact for which no disciplinary proceedings can be instituted, the applicant cannot be held guilty for the same.

16. The learned counsel for the applicant also pointed out that the impugned order is without application of mind, as the applicant was not posted on 20.9.1979 at Bombay. The narration of the facts in this respect cannot be said to be a finding based on facts, but only a mistake which cannot lead us to conclude that the order passed is without application of mind.

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17. In the result OA deserves to be allowed and is allowed. Order dated 28.6.1995 bearing No. 59/95, F.No.C-14011/44/90-Ad.V issued by the respondents by which imposition of 20% cut monthly pension payable to the applicant for a period of 5 years deserves to be quashed and set aside and is quashed and set aside with no order as to costs.

(S.L.Jain)
Member(J)

(D.S.Baweja)
Member (A)

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