

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH.

Original Application No. 811/2000.

Monday, this the 17th day of September, 2001.

Hon'ble Shri Justice Birendra Dikshit, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

R.N.Narulkar,
Superintendent,
Central Excise,
Mumbai - II Commissionerate,
Piramal Chambers, Lalbag,
Mumbai - 400 012.
(By Advocate Shri Y.R.Singh)

...Applicant.

v.

1. Union of India, through
the Chief Commissioner,
Central Excise, having his
Office at Central Excise Building,
Churchgate,
Mumbai - 400 020.
2. Commissioner, Central
Excise, Mumbai - II,
having his office at Piramal Chambers,
Jijibhoy Lane,
Lalbag,
Mumbai - 400 012.
(By Advocate Shri V.D.Vadhavkar for
Shri M.I.Sethna)

...Respondents.

: O R D E R (ORAL) :

Shri Birendra Dikshit, Vice-Chairman.

Being aggrieved by a notice dt. 21.9.2000, whereby proceedings under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 (in short, CCS Rules) were initiated, the applicant has filed this OA under section 19 of the Administrative Tribunals Act, 1985. The notice which is under challenge reads as follows :

"The undersigned proposes to hold an inquiry against Shri R.H.Narulkar, Superintendent of Central Excise, Mumbai - II, Commissionerate under Rule 14 of the Central Civil Service (Classification, Control and Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed

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statement of articles of charge (Annexure - I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed (Annexure - II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are enclosed (Annexure III & IV).

2. Shri R.H.Narulkar, Superintendent, Central Excise, Mumbai - II, is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri R.H.Narulkar, Superintendent Central Excise, Mumbai - II is further informed that if he does not submit his written statement of defence on or before the date specified in Para - 2 above, or does not appear in person before the inquiring authority or otherwise fails to refuse to comply with the provisions of Rule 14 of the C.C.S. (C.C.A.) Rules, 1965, or the orders / directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte.

5. Attention of Shri R.H.Narulkar, Superintendent is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Government servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interest in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings it will be presumed that Shri R.H.Narulkar, Superintendent Central Excise is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the C.C.S. (Conduct) Rules, 1964.

6. The receipt of the Memorandum may be acknowledged."

The applicant has filed this OA against notice, without submitting any reply. The challenge to the notice is on the ground that criminal proceedings were registered against him together with an assessee as a co-accused wherein he was called

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upon to face an enquiry under Rule 209A of the Central Excise Rules, 1944 beside a criminal case registered and investigated against him by C.B.I. in respect of same matter. The applicant claims that as he was not charge sheeted or prosecuted for alleged offence and a final report was accepted by Court while notice under Rule 209A has been dropped in appeal, therefore, no departmental disciplinary proceedings can be initiated against him in respect of same matter and, therefore, the notice may be quashed and respondents be restrained from proceeding in pursuance of said notice.

2. The Learned Counsel for applicant has argued that whereas the applicant has already faced criminal proceedings which were dropped by C.B.I. after investigation while in notice under section 209A, a penalty of Rs.2,00,000/- was imposed upon applicant by the Commissioner of Central Excise which was also set aside by Appellate Tribunal and the present notice is on similar facts, therefore, the notice and proceedings thereon are unsustainable under law and the notice is liable to be quashed. He further contended that there is delay in initiating disciplinary proceedings which are being initiated after a period of five years since incident giving rise to present proceedings came to light in the year 1993 and 1994, the notice may be quashed even on the ground of initiation of present proceedings belatedly. The notice being for alleged incidents of 1993 and 1994, it may be quashed even for that reason. The argument has been opposed by Shri V.D. Vadhavkar appearing on behalf of the Respondents. He contended that present notice being on different facts and as is neither on identical, nor on

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similar facts, therefore, the applicant has not made out any case for interference by this Tribunal. To support his contention, Shri Vadhavkar pointed out that present notice is for defacement of documents etc. by applicant, which was not a subject matter of earlier proceedings relied by applicant and, therefore, the OA is liable to be dismissed. He justified initiation and maintainability of Disciplinary Authority well within the power of Disciplinary Authority.

3. The first question which we would like to examine is whether the notice in question is on same facts which were gone into in proceedings under Rule 209A of Central Excise Rules, 1944. The notice under Rule 209A was issued by Commissioner, Central Excise, Mumbai. The notice was a joint notice to applicant, Inspector of Central Excise and the assessee by which each one was called upon as to why they be not penalised. The Commissioner considered the defence of all the three persons and by order dt. 9.4.1997 imposed penalty of Rs. 2 lacs on applicant. The Inspector and assessee were also penalised differently with which we are not concerned here. The applicant, the Inspector and assessee preferred separate appeals to Customs Excise and Gold (Control) Appellate Tribunal, New Delhi (in short 'CEGAT'). The CEGAT by order dt. 9.8.2000 allowed applicant's appeal and dropped the penalty imposed while it referred certain other questions to a Full Bench. Thus, so far applicant is concerned his appeal stood finalised before reference in respect of other persons.

4. The thrust of argument of learned counsel for applicant is that as notice under Rule 209A stands struck down, the

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applicant could not be proceeded departmentally under impugned notice. The argument requires consideration in the light of Rule 209A. Rule 209A is as under :

"Any person who acquires possession of, or is in any way concerned in transporting, removing, depositing, keeping, concealing, selling or purchasing, or in any other manner deals with, any excisable goods which he knows or has reason to believe are liable to confiscation under the Act or these rules, shall be liable to a penalty not exceeding (the duty on) such goods or (ten) thousand rupees, whichever is greater".

The notice contemplated under said rule gives rise to penalise a person for transporting, removing, depositing, keeping, concealing, selling or purchasing etc. in respect of goods. No action for defacement of documents etc. is contemplated under said rule. It has nothing to do with regard to drawing of disciplinary proceedings against a delinquent officer for mis-conduct by defacement of documents. The disciplinary proceedings under notice are for his alleged mis-conduct in discharging of his duties as a government servant. Such conduct of government servant can always be gone into by initiating departmental proceedings. We have gone through the order and we do not find proceedings under section 209A to be similar to the one for which notice has been given to applicant.

5 The learned counsel for applicant pointed out from certain paragraphs of Full Bench order that defacement of the document was the subject matter which came up for consideration before CEGAT. It is true that in the order passed by Commissioner there is reference about defacement of certain documents, but that has not been considered in appeal in discharging notice.

The Learned Counsel has neither been able to point out any

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finding in appellate order as to how or who defaced the documents nor there is any finding that applicant was not responsible for defacement of documents in question. We would like to observe here that there is no bar under CCS (CCA) Rules to initiate proceedings against an Officer or an employee where proceedings under section 209A of Central Excise Rules fail as the scope of inquiry in the two matters is different, the difference for the purpose of this case being while under rule 209A transporting etc. of exciseable item was involved whereas here determination involved is about defacement of document by applicant.

6. This takes us to second question, which arise for consideration^{is} about the effect of criminal investigation against applicant on the notice in question. A Special Judge of Greater Mumbai in Special Case No.23/99 in R.C. No.41 (A)/1996 Mumbai dt. 1.8.1996 - The State Vs. Shri R.H.Narulkar & Ors. by order dt. 29.6.1999 dropped the proceedings as per Section 169 read with 173 Cr. P.C. No prosecution of applicant took place and the Special Judge dropped the proceedings by accepting final report of CBI wherein the CBI's conclusion in respect of investigation was that there is no evidence to show that there has been any breach of Excise Rules on the part of the concerned official.

7. The learned counsel for applicant relying upon case of Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd. and Anr. (1999 SCC (L&S) 810) contended that as one proceeding was before Commissioner, Central Excise and another before a Special Judge on same facts which are the basis of present notice and as those

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two proceedings stood dropped against applicant, no departmental proceedings can take place on the facts stated in the notice. The case cited does not help applicant's contention. As observed earlier, we do not find that the mis-conduct about, who defaced documents, was considered and finalised in either of those two proceeding. Not only that much, the scope of inquiry in said proceedings was different. The investigation by CBI was to charge-sheet applicant if case was made out against him for prosecution. The applicant was neither charge-sheeted nor he was made to face trial. There was no adjudication in respect of any offence by that Court. Thus, applicant do not get any benefit on that account.

8. As we are of opinion that scope of the proceedings under Rule 209A as well as Criminal Case did not include for taking any action about defacement of documents by applicants, therefore, applicant does not get ^{benefit} from the said two proceedings on which he relies for quashing of notice.

9. So far as the argument of learned counsel for the delay in initiating proceeding is concerned, it is well known that CBI inquiry do take time. The order was passed by Special Judge on 30.6.1999 whereby he closed the proceedings against applicant by accepting final report of CBI in exercise of power under section 169 read with section 176 of Cr. P.C. The Special Judge after accepting the final report and closing criminal matter against applicant ordered return of seized documents. However, as the Additional Commissioner (Vigilance) at Directorate General of Vigilance, New Delhi did opine in this matter that the Disciplinary Proceedings against the officer be deferred till final decision which was being investigated by C.B.I. and as

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the Special Judge could not dispose of the matter on 30.6.1999 while order was passed by CEGAT on applicant's appeal was passed on 22.7.1999 ~~and~~ ^{while} the Full Bench, though considering assessee's case sent back the file to Division Bench after disposing of the reference on 29.9.2000, these aspects cannot be ignored for considering arguments of learned counsel for applicant in respect of delay. Considering in said light, we find that when matter was investigated by CBI and record was with CEGAT, it cannot be considered that the delay in initiating proceeding is so fatal so that notice be quashed. Thus, we hold that it is a case where no interference is required with the impugned notice.

10. Before parting with the case we would like to observe that as this matter has arisen out of an incident of the year 1993-94, we consider it necessary to direct the respondents to see that Disciplinary Proceedings is disposed of as expeditiously as possible, preferably within six months from the date of receipt of copy of this order. Subject to above observation, the OA is dismissed.

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(B.N. BAHADUR)
MEMBER(A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

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