

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 566/2001

Date of Decision : 25.2.2002

K.P.Desai Applicant

Shri M.S.Ramamurthy Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.D.Vadhavkar for Advocate for the
Shri M.I.Sethna Respondents

CORAM :

The Hon'ble Shri Justice Ashok C.Agarwal, Chairman

The Hon'ble Smt.Shanta Shastri, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other
Benches of the Tribunal ?
- (iii) Library ✓

Shanta
(SMT.SHANTA SHASTRY)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.566/2001

Monday this the 25th day of February, 2002.

CORAM : Hon'ble Shri Justice Ashok C.Agarwal, Chairman

Hon'ble Smt.Shanta Shastry, Member (A)

K.P.Desai,
Dy.Director of Enforcement (Retd.),
R/at. Flat No.10, Plot No.258,
Jawahar Nagar, Goregaon (West),
Mumbai.

...Applicant.

By Advocate Shri M.S.Ramamurthy

vs.

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
Govt.of India, North Block,
New Delhi.
2. Shri P.K.Ajwani,
Commissioner of Central
Excise (Appeals),
Mumbai III Commissionerate,
Bombay Garage, Meher Building,
Mumbai.

...Respondents

By Advocate Shri V.D.Vadhavkar
for Shri M.I.Sethna

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O R D E R (ORAL)

{Per : Smt.Shanta Shastry, Member (A)}

A chargesheet was issued to the applicant under Rule 14 of the CCS (CCA) Rules, 1965 vide O.M. dated 29.6.1995. One Birendra Kumar was appointed as Enquiry officer to conduct the enquiry. However, Shri Birendra Kumar was transferred. According to the applicant, Shri Birendra Kumar had proceeded with the enquiry and had submitted his report to the Government exonerating the applicant. Thereafter, on 11.12.1997 an order was passed by the Government of India remitting the matter for recording further evidence. In place of Shri Birendra Kumar, one Shri P.K.Ajwani, Special Director in the Directorate of Enforcement was appointed as Enquiry Officer. The order stated that :-

"And whereas Shri Birendra Kumar after having heard and recorded part of the evidence has since been transferred and it is necessary to appoint another officer as Inquiring Authority to further inquire into the charges against the applicant."

Shri P.K.Ajwani is appointed as the Enquiry Officer. The applicant thereafter approached this Tribunal in OA.NO.123/98 on the ground that the enquiry had been completed by the Enquiry Officer and the disciplinary authority was not empowered to remit the proceedings for further enquiry. The Tribunal dismissed the application at the admission stage observing as follows :-

"It is not a case where the applicant has been exonerated on merit by the Disciplinary Authority. The report of the Inquiry Authority was not a full fledged enquiry since four witnesses have been dropped due to refusal of adjournment. We, therefore, feel that in the larger interest of justice and in public interest, liberty should be given to the Disciplinary Authority to pass a fresh appropriate order according to law under Rule 15(1) of the C.C.S.(C.C.A.) Rules, if he feels further enquiry is necessary in the circumstances of the case. As far as the continuation of the enquiry even after retirement, there is no legal bar, since Rule 9 of the Pension Rules provides for that."

The order also stated that it was without prejudice to the right of the Disciplinary Authority to pass appropriate order. In pursuance of this judgement of the Tribunal, the disciplinary authority issued a fresh order on 23.9.1998 appointing Shri P.K.Ajwani as Enquiry Officer as already mentioned. The applicant submitted a representation against the aforesaid order on 27.2.1999 and requested to withdraw further enquiry and in case the disciplinary authority differed with the findings of enquiry officer, such difference should be recorded and communicated to him. He also prayed to stay the proceedings. His representation was rejected on 1.4.1999. The applicant thereafter filed another OA.No.340/99 challenging the order dated 23.9.1998 appointing Shri P.K.Ajwani as Enquiry Officer which was dismissed by the Tribunal on 22.10.1999. The applicant followed this up with a Writ Petition No.810/2000 filed in the Bombay High Court. The same was dismissed on 18.4.2000 and the Enquiry Officer was advised to proceed with the enquiry proceedings.

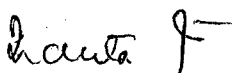
2. In the meantime, Shri Ajwani's deputation as Special Director of Enforcement had expired but he was asked to continue as Enquiry Officer. The disciplinary authority took this decision to continue Shri Ajwani as Enquiry Officer for the sake of expeditious finalisation of the proceedings. Therefore, notices of personal hearing of the four witnesses who were left out were issued by him. The applicant again gave representation on 11.7.2001 opposing the continuation of Shri Ajwani as Enquiry Officer on the ground that he had left the Enforcement Directorate and he could not be continued as Enquiry Officer. His representation was considered. The respondents gave a reply to the applicant on 31.7.2001 stating that it was not necessary to appoint a fresh Enquiry Officer as Shri Ajwani can very well discharge his enquiry as Enquiry Officer as both form part of Department of Revenue, Ministry of Finance. In the meantime, he has approached this Tribunal by the present OA. The Tribunal had directed to give reply to the applicant's representation dated 11.7.2001. That has already been complied with even before the applicant filed the present OA.

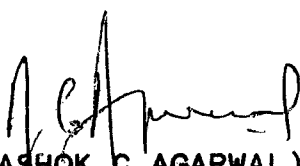
3. Now the applicant is once again challenging the continuation of appointment of Shri Ajwani as the Enquiry Officer inspite of his being repatriated to his parent department. According to the applicant, Shri Ajwani has not been appointed in his capacity as Commissioner of Central Excise but as Special Director in the Directorate of Enforcement. Shri Ajwani has already proceeded with the enquiry ex-parte on 19.7.2001 and 20.7.2001 according to the applicant. The applicant has,

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therefore, prayed that any further steps are being taken by him as Enquiry Officer and proceedings should be held to be in violation of principles of natural justice. The applicant has now pressed that atleast even though Shri Ajwani may continue as Enquiry Officer, the applicant should be given an opportunity to cross-examine the four witnesses who have been examined by the Enquiry Officer and also to examine himself and defence witnesses, if any. The learned counsel for the respondents submits that the present stage of the enquiry is not known. However, the applicant submits that he has not been given any enquiry report nor has he been given copies of the statements of the witnesses and the same should be furnished to him.

4. In our considered view, ends of justice will be duly met if the applicant is given an opportunity to cross-examine the witnesses and to examine himself and also the defence witnesses. Accordingly, we direct the respondents to give an opportunity to the applicant to cross-examine the prosecution witnesses examined on 19 and 20.7.2001 and to participate in the further proceedings before finalising the enquiry report and taking a decision on the same. This can be done within a period of two months from the date of receipt of copy of this order. Pending this, enquiry report shall not be submitted. OA. is allowed partly. No costs.


(SMT. SHANTA SHASTRY)
MEMBER (A)


(ASHOK C. AGARWAL)
CHAIRMAN

mrj.

dt. 25.2.2002.
Order/Judgement despatched
to Applicant/Respondent (s)
on 7.3.2002
