CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 705/91
Transfer Application No.

Date of Decision : 6.4.1995

D.J.Bapardekar. — Petitioner

Shri S.R.Atre. — Advocate for the Petitioners

Versus

Union of India & Anr. — Respondents

Shri S.S.Karkera. — Advocate for the respondents

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri P.P.Srivastava, Member(A).

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

(2) Whether it needs to be circulated to other Benches of the Tribunal?

(M.S.DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,
BOMBAY BENCH, BOMBAY.

Original Application No.705/1991.

D.J.Bapardekar. .... Applicant.

V/s.

Union of India & Anr. .... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri P.P.Srivastava, Member(A).

Appearances:-

Shri S.R.Atre, counsel for
the applicant.
Shri S.S.Karkera, counsel for
the respondents.

Oral Judgment:-

(Per Shri M.S.Deshpande, Vice-Chairman) Dt. 6.4.1995.

By this application, the applicant challenges the finding of guilty recorded against him and the penalty of reduction by one stage from Rs.2,240/- to 2,180/- in the time scale of pay of Rs.1640-2900/- for the period of one year from 1.2.1990 with the rider that he will not gain increment of pay during the period of reduction and that on the expiry of this period, reduction will have effect of postponing of his further increments.

2. The applicant who was working as Inspector of Central Excise at the relevant time, was charged with having received declaration filed by M/s.Navbharat Industries on 31.12.1982 and not caring to enter it in the Inward Register and not informing the Range Superintendent about its receipt and thus causing a loss of Revenue of Rs.77,160.60 to the Government. The Enquiry Officer after holding an inquiry exonerated the applicant of this charge, butthe Disciplinary

...2.

Authority by his order dt. 19.10.1988 took the view that from the reasons given by the Enquiry Officer it appeared that the reasons given were contradictory since the fact that the applicant had received a declaration and had initialled it had not been disputed. He also observed that the Presenting Officer had not taken enough care to bring in evidence against the charged officer. A further inquiry was held by the different Enquiry Officer as the Enquiry Officer who had held earlier inquiry had retired and by the order dt. 6.10.1989 the Enquiry Officer took the view that a benefit of doubt should be given to the applicant and thus exonerated the applicant. The Disciplinary Authority who by that time had been replaced by a different Disciplinary Authority dis-agreed with the findings recorded by the Enquiry Officer and found the applicant guilty and imposed the punishment as stated above.

3. Two points were raised by the learned counsel for the applicant while assailing the ultimate order that came to be passed against the applicant. Firstly, it was urged that the object in remanding the case for a further inquiry to the Enquiry Officer was only to have a desired finding from the Enquiry Officer and since this was the motive behind the remand the remitting of the case to the Enquiry Officer for a fresh decision could not be supported. Reliance was placed on K.R.Deb V/s. Collector, Central Excise where the following observations were made:

> "It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry

> Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

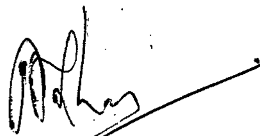
We were taken through the order passed by the Enquiry Officer, as well as, that of the Disciplinary Authority by which the case was remitted for a further inquiry. The Disciplinary Authority's order shows that the further material was sought to be produced only on one aspect of the case and it was not to be a de novo inquiry by another officer. The Disciplinary Authority has given cogent reasons for adopting the course it did and we do not think that there was any violation of Rule 15 of the C.C.S. (C.C.A.) Rules, 1965. Reliance was also placed on S.P.Bansal V/s. UOI & Ors. (A.T.R. 1987(1) C.A.T. 215) where the New Delhi Bench of this Tribunal took the view where the order of the Disciplinary Authority directing de novo inquiry by remanding the case to the Enquiry Officer due to laxity on the part of the department for non-production of the record before the Enquiry Officer and the letter of the Presenting Officer containing list of further documents came to be quashed and the respondents were directed to take further action on the basis of the inquiry report within three months. There the facts were different. It was a case of a de novo inquiry where the object was not only to fill up the gaps, but also to transform the character of inquiry. Such is not the case here and this case would not help the applicant.

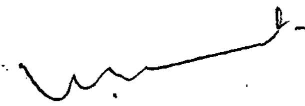
4. In the second report after considering the entire material, the Enquiry Officer instead of recording a clear cut finding as to whether

the preponderance of evidence or probabilities would justify the finding for or against the delinquent officer, chose the easier course of stating that he was giving benefit of doubt to the applicant. The Disciplinary Authority considered the entire material while recording his dis-agreement with the findings recorded by the Enquiry Officer.

5. Shri S.R.Atre, counsel for the applicant contended that the impugned order would be bad also on the ground of delay because in respect of incident of 31.12.1982 the charge sheet came to be served on 20.5.1987 and the ultimate order came to be passed on 30.1.1990. We do not think having regard to the course which the entire proceedings took, the delay was such as to invalidate the entire proceedings or rendering it impossible for the applicant to make his defence because of lapse of time. We are therefore, not impressed by the contention raised by the learned counsel on the ground of delay.

6. In the result, we see no merit in the application, it is dismissed. There will be no order as to costs.





(P.P.SRIVASTAVA)
MEMBER(A)

(M.S.DESHPANDE)
VICE-CHAIRMAN

B.