

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO:1106/94 and 1384/94

THURSDAY the 31st day of AUGUST 2000

CORAM: Hon'ble Shri B.N.Bahadur, Member(A)

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

S.S.Sachdev
Shree Nivalrai Buwas,
1st floor, F.No. 102,
Old Bus Stop.
Ulahasnagar.

...Applicant.

By Advocate Shri K.B. Talreja.

V/s

1. The Union of India through
Principal Collector,
Central Excise, West Zone,
Bombay.
2. The Additional Collector
(P & V) Central Excise
Bombay.
3. The Collector
Central Excise
Bombay.

...Respondents.

By Advocate Shri M.I. Sethna alongwith Shri Vadhavkar.

(O R D E R) (O R A L)

(Per Shri B.N. Bahadur, Member(A))

OAs 1106.94 and 1384.94 have been heard together and are being disposed of through this common order, since the facts in the two cases are closely interlinked, the basic issues are the same and the relief sought are identical. We have heard Shri K.B. Talreja counsel for the Applicant and Shri M.I. Sethna alongwith Shri V.D. Vadhavkar counsel for the Respondents at some length on both these OAs, and have perused the records in the cases, including the original records produced before us by the Respondents.

2. The core facts of the two cases, are that the Applicant Shri S.S. Sachdev, Inspector, Central Excise was served with a Charge Sheet dated 29.11.1990 imputing certain cases of mis-conduct etc and a regular Enquiry was conducted. The Enquiry report is dated 20.1.1994, and the penalty order by the Disciplinary Authority is dated 7.3.1994. The Enquiry Officer has exonerated the applicant of the charges, with the benefit of doubt. The Disciplinary Authority has dis-agreed, within his own powers. A notice for enhancement of punishment was issued to the applicant (dated 7.7.1994) and after considering the reply thereto, the penalty order came to be issued. The penalty imposed was that of reduction by two stages in the relevant scale for a period of two years, without further effect.

3. In the first OA (1106/94) a direction has been sought for promotion from the date that Applicant's junior was promoted, alongwith all arrears, and a direction for opening the sealed cover. In the second OA (1384/94) the applicant seeks a direction to the respondents to open the sealed cover and impliment the result there of, and has also asked for consequential benefits like payment of arrears etc.

4. The learned Counsel for the applicant Shri K.B. Talreja, who argued the case in detail. He contended that this Tribunal had, infact, ordered the opening of the sealed cover vide its Roznama order dated 17.11.1994. He stressed on this point more than once. He made the point that the Disciplinary Authority (DA) had not issued any show cause notice and that he (DA) is entitled to differ from the conclusion in the Enquiry report. He stressed that it was important to note that the Enquiry Officer had found the applicant fit to be exonerated,

and that the Respondents had, with mala fide intention, dis-agreed with the Enquiry Report and proceeded to give higher penalty not once but twice. The details in this regard were brought to our notice by Counsel for the applicant with reference to the papers on record.

5. The learned counsel for the Applicant further stated that the enquiry was delayed, inordinately, and that this has deprived the applicant of promotion right upto 1998, when he was finally promoted. He had filed an M.P. 566/95 for opening the sealed cover. He further argued that 'Censure' is not a punishment that comes in the way of a promotion. He also referred to the instructions cited by the respondents in their reply that it was not necessary to open the sealed cover once a punishment had been inflicted as a result of the departmental enquiry. He argued that these instructions were not applicable at that time, and that these instructions cannot have retrospective effect. The learned counsel for the applicant cited the case of Khurana [1993 (24) ATC 763] in support of his contention.

6. The Respondents in their written reply in both the cases have resisted the claim of the Applicant, and have contended that once the applicant emerges from the departmental enquiry with a penalty (even 'Censure') it was not required to open the sealed cover. It was pointed out that sealed cover was opened in June 1994, when no enquiry was operating in the intervening period and the Applicant was found unfit. The learned counsel for the Respondents who argued the case in detail took us over the relevant rules already produced and stated that the show cause notice dated 27.7.1994 for enhancement of punishment was issued

under the powers under Rule 29 CCS (CCA) and it was not an arbitrary action on the part of the Respondents. He argued that no agitation of delay was made at that time, and thus this remedy is not now available to the applicant. The learned counsel for the Respondents met the argument of the learned counsel for the Applicant regarding the 1992 circular and stated that even before this circular there were instructions that the sealed cover could not be opened in such circumstances. The 1992 instructions are reiterations and it was not something new.

7. With regard to the instructions for consideration of adhoc promotion as contained in the instructions 1992 the learned counsel had pointed that these instructions envisaged such consideration after two years, after the first DPC and it was only on 28.6.1993 that such a case could arise. He further argued that on 17.6.1994 he was not found fit. Even in the 1995 DPC the applicant was not found fit for promotion.

8. The learned counsel for the Respondents argued that Khurana's case was not applicable and that the ratio decided in the case of I.A. Qureshi by the Supreme Court would hold valid in the present case. Thus the Respondents were perfectly right in not opening the sealed cover. The learned counsel for the Respondents also met some of the points raised regarding the Departmental Enquiry but these are not recorded in detail because the penalty order is not been challenged in either of the OAs.

9. We will now discuss the point made by the learned counsel for the applicant that this Tribunal had in-fact ordered for opening of the sealed cover on 17.11.1994. Reproduced below ^{is Para} the order dated 17.11.1994.

" Shri K.B. Talreja counsel for the applicant.

The learned counsel for the applicant states that the

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enquiry was started in the year 1990 and ended in 1994. The order of censure has been imposed on the applicant. He also states that pending enquiry the promotion was kept in the sealed cover. Since the enquiry had already completed the sealed cover may be opened. In the circumstances OA is admitted.

Issue notice to the respondents to file reply within four weeks. List the case on 19.1.1995 before the Registrar for completion of pleadings. "

It is clear that the order relates to the pleadings by the applicant and ^{is} ~~certainly~~ ^{not} an order of the Tribunal for opening the sealed cover. In fact, if it were so, the OA would have really stood disposed of. Further, it is noted that in subsequent pleadings also, the plea for opening the sealed cover was made and not granted. This point was not decided in fact even till today the M.P. referred to above is pending. In the light of the discussions above M.P. has to be rejected, and is rejected.

10. Having settled this point we now recapitulate that as per settled law, the sealed cover cannot be opened if the delinquent emerges out of enquiry with any type of the punishment. I.A. Qureshi's case (1998 SCC (L&S) 1121). Similarly no promotion can be granted during the period that the official is under the cloud of enquiry i.e. after issue of charge sheet. Now in the present case the applicant was under the cloud since 29.11.1993. He continued to be in this situation till 7.3.1994, when an order of 'censure' was made. (Unfortunately the enquiry has been delayed for too long and we shall comment on this later.) Thereafter, from 7.3.1994 he is

entitled to be considered by the DPC, but not entitled for opening of the sealed cover. We see from the facts brought before us that he is indeed considered in DPC some three months later on 17.6.1994 and has found not fit. These records have been seen by us. It is clearly seen that instructions regarding not opening of the sealed cover referred to has existed even prior to 1992, and we see nothing wrong in the respondents action in not opening of sealed cover. As mentioned above, the Supreme Court has settled the matter in the case of State of M.P. V/s I.A. Qureshi (1998 SCC (L&S) 1121).

11. In further development, chronologically, a notice for enhancement of penalty was issued on 27.7.1994, and a final decision emerges on 13.4.1996. We find nothing wrong in procedure or observation of rules in this process. Ofcourse we will not sit on the merits of this action, as if an Appellate Authority or go into the aspect of propriety and adequacy of the penalty order. We may record that even though some arguments were advanced in regard to the defects in procedure in Departmental Enquiry itself it is clear that order of the penalty orders are not challenged. Therefore we are not going to this aspect at all. The learned Counsel for the Applicant has mentioned that the Appeal of the applicant is pending. It is for him to persue this with the Respondents. If such an Appeal is pending, the Respondent has to dispose it as per law and rules.

12. It is therefore seen that the applicant is not able to establish the case for opening of sealed cover since this is not in accordance with the rules or the settled law.

13. Before parting the case, we must observe that there is truth in the contention made by the learned counsel for the Applicant that the enquiry has been dragged far too long.

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The Respondents took a period of 3 1/2 years initially to complete the enquiry and come to a decision for imposition of 'censure'. There after a review has also taken long time. ~~The~~ ^{16/11/5} ~~case is also not considered.~~ Be that as it may, we wish that such a long time should not have been taken as it is contrary to the very instructions of Government, which require disposal of the Enquiries within a time limit. However, we are unable to provide any relief on this delay, except to make our observation as above.

14. In view of the discussion above both these OAs deserve ^{16/11/5} to be dismissed, and are hereby dismissed. There will be no order as to costs.

(S.L.JAIN)
Member (J)

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(B.N. BAHADUR)
Member (A)