

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 250/98

Date of Decision: 12.8.1998

Z.B.Nagarkar .. Applicant

Shri Ramaswamy with Shri V.G.Rage .. Advocate for Applicant

-versus-

Union of India & Ors. .. Respondent(s)

Shri M.I.Sethna with Shri V.D.Vadhav .. Advocate for Respondent(s)

CORAM:

The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

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

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

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

D.S. Baweja
(D.S.BAWEJA)
MEMBER (A)

R.G. Vaidyanatha
(R.G.VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 250/98

Wednesday this the 12th day of August, 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Bawaja, Member (A)

Zunjarrao Bhikaji Nagarkar,
Addl. Director General,
National Academy of Customs
Excise and Narcotics,
Western Region,
Bhandup East, Mumbai-400 042.

By Advocate Shri Ramaswamy with
Shri V.G.Rege

... Applicant

V/S.

1. Union of India through the
Secretary, Ministry of Finance,
Department of Revenue,
Government of India, North Block,
New Delhi-110 001.
2. Central Board of Excise and
Customs, Ministry of Finance,
Government of India,
Department of Revenue,
North Block, New Delhi.
3. Central Vigilance Commission
having its office at Bikaner
House, Shahjehan Road,
New Delhi.


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

... Respondents

O R D E R

(Per: Shri Justice R.G.Vaidyanatha, VC)

This is an application challenging the
issuance of chargesheet by the respondents against
the applicant. Respondents have filed reply. We have
heard the learned counsel on both sides both regarding
admission and grant of interim relief.

 .. 2/-


2. The applicant is now working as Additional Director General, National Academy of Customs Excise and Narcotics, Western Region at Mumbai. Earlier, at the relevant time in 1994-95 the applicant was working as Commissioner of Central Excise at Nagpur. Now a chargesheet is issued against the applicant by the respondents in respect of a transaction in which the applicant had not imposed penalty against the defaulting party inspite of monetary loss. In the imputations in support of the chargesheet, it is alleged that the applicant had shown undue favour to the party by not imposing penalty. On the basis of this material, the chargesheet has been issued.

The applicant has approached this Tribunal challenging the legality of the chargesheet.

Respondents have filed reply justifying the issuance of the chargesheet.

3. The learned counsel for the applicant contended that there is no prima facie case for issuance of chargesheet. He also attacked the issuance of chargesheet on the ground of prejudice, bias and malafide on the part of Mr. A.K. Pandey and G.S. Maingi. On the other hand, the learned counsel for the respondents submitted that the chargesheet has been issued on sufficient material and grounds and he denied the allegation of malafides and bias.

4. We are not impressed by the arguments on malafides and bias on the part of A.K. Pandey and G.S. Maingi. It is against them applicant filed W.P. for prosecution in the Bombay High Court at Nagpur Bench. The learned counsel for the respondents brought to our notice that the W.P.

 .. 3/-

was dismissed by a considered order by the Bombay High Court at Nagpur Bench. Further, A.K. Pandey and G.S. Maingi are not parties in this OA. The allegation made against them is not sufficient and they are not the disciplinary authority. Both Mr. Pandey and Maingi are not disciplinary authority for issuing the chargesheet against the applicant. Hence, we find no merit in the applicant's contention that issuance of chargesheet suffers from malafide or bias or prejudice. The chargesheet has been issued by the highest authority, namely, the President of India.

5. It is true that the applicant's quasi judicial order is being subjected to the disciplinary enquiry. The learned counsel for the applicant fairly did not address any argument that no chargesheet lies in respect of quasi judicial or judicial order. On the other hand, he himself has cited number of authorities of Supreme Court pertaining to issuance of chargesheet in respect of judicial or quasi judicial. The decisions are :- (a) S. Govinda Menon vs. Union of India & Anr., AIR 1967 SC 1274, (b) Union of India & Ors. vs. K.K. Dhawan, 1993 SCC (L&S) 325 and (c) Union of India & Ors. vs. A.N. Saxena, AIR 1992 SC 1233. In all these decisions, the Supreme Court has held that chargesheet is maintainable even in respect of judicial or quasi judicial order. No doubt, in these decisions there is some mention about issuance of chargesheet on prima facie material. In our view, prima facie material mentioned for the disciplinary authority to initiate action if there is prima facie material.

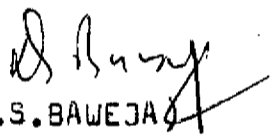
 .. 4/-

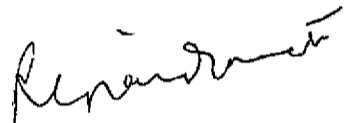
But we are at the stage of judicial review over the order of the disciplinary authority for issuing a chargesheet. It is well settled that the scope of judicial review is very limited. The Supreme Court has observed that the Courts or Tribunal should not interfere at the stage of issuance of chargesheet (Vide The Deputy Inspector General of Police vs. K.S.Swaminathan, 1997 (1) SC SLJ 259). We are only concerned with the legality or ^{want of jurisdiction for} ~~issuing~~ ^{merits} of chargesheet and not ^{on} whether there being sufficient material for issuing a chargesheet. Therefore, the words used in some of the decisions mentioning this are only for the disciplinary authority to initiate disciplinary action.

6. Even otherwise, the learned counsel for the respondents pointed out that in the present case the applicant admittedly had not levied penalty against the erring party ^{inspite} of ^{mandatory} provisions under Rule 173 (q) of Central Excise Rules, 1944. The Rule provides that whenever there is clandestine removal of exciseable goods or when the goods are ^{confiscated} then penalty should be levied 3 times the value of the goods or Rs.5,000/- whichever is high. In the present case, the applicant did not levy penalty. No doubt he has given ^{some} explanation. Whether the explanation is ^{to} ^{be} ^{ad} ^{or} not, it is for the disciplinary authority to decide after enquiry. ^{The} chargesheet is ^{sustainable} on prima facie ground. The allegation ^{against} the applicant is that he has not levied the penalty. Whether ^{the} applicant is guilty or ^{not} will be decided during the ^{enquiry}. This Tribunal cannot at this stage express any opinion on the ^{merits} of this case. The chargesheet was issued in September, 1997. The applicant has appeared on some hearing dates before the enquiry.

officer. After going through the circumstances of the case, prima facie, at this stage, we do not find any illegality or want of jurisdiction and therefore without expressing any opinion on merits of the case, we decline to interfere with the departmental enquiry. It is for the department to adduce whatever evidence and the disciplinary authority to take whatever action it deems fit according to law. All contentions are left open. This is not a fit case for admission at this stage.

7. In the result, the application is rejected at the admission stage. Interim order granted in this case is hereby vacated. In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

mrj.