

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1017/98.

Date of Decision: 8/3/99.

Ashwinikumar Purushottam Bandekar

Applicant.

Shri I.P. Bagaria

Advocate for
Applicant.

Versus

Chief Commissioner of Central Excise
and 30rs.

Respondent(s)

Shri M.I. Sethna

Advocate for
Respondent(s)

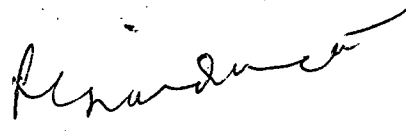
CORAM:

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

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

- (1) To be referred to the Reporter or not? *NO*
- (2) Whether it needs to be circulated to other Benches of the Tribunal? *NO*

abp.


(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, 4TH FLR, PRESCOT RD, FORT,

MUMBAI-400 001.

ORIGINAL APPLICATION NO.1017/98.

DATED THE 8TH DAY OF MARCH, 1999.

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

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

Ashwinikumar Purushottam Bandekar,
Railwaymen's Apna Ghar Co-op. Housing Society Ltd.,
'D' Group, "E" Building, Ground Floor, ...
Jogeshwari (East),
Mumbai - 400 060. ... Applicant.

By Advocate Shri I.P.Bagaria.

v/s.

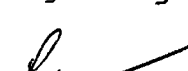
1. Chief Commissioner,
Central Excise, having his
office at Central Excise Building
M.K.Road, Churchgate,
Mumbai - 400 020.
2. Deputy Commissioner (Personal and Vigilance),
Central Excise, Mumbai-V
having his office at 9th Floor, Parel,
Piramal Chambers, Lalbaug,
Parel, Mumbai - 400 012.
3. Shri D.P.Mukhopadhyaya,
earlier Asstt. Commissioner of
Central Excise, Mumbai-II Range,
now transferred to
Calcutta as Assistant Commissioner
to be served through Respondent No.1.
4. Shri S.C.Rohtagi,
Assistant Commissioner,
Central Excise, Vikhroli Division,
having his office at
Polyshore Building,
Vikhroli, Mumbai. ... Respondents.

By Advocate Shri M.I.Sethna

ORDER


{ Per Shri R.G.Vaidyanatha, Vice Chairman }

This is an application challenging the orders dated 17/7/97 and 11/9/98 passed by Disciplinary Authority remanding the matter for further enquiry by the enquiry officer. A short reply has been filed on behalf of Respondents No. 1 and 2. We have heard the learned counsels for applicant and respondent Nos.1 and 2. regarding admission and interim relief.



2. The applicant was charge sheeted by the department in 1994 for alleged misconduct in investigation of the case pertaining to Narcotics. The applicant denied the charges. Then a disciplinary enquiry was held. The Enquiry officer recorded evidence and submitted a report to the Disciplinary Authority. By the Impugned order dated 17/7/97, the Disciplinary Authority did not accept the report and findings of the Enquiry Officer and made some comments and observations on the findings recorded by the Enquiry Officer including non-examination of two material witnesses. Then he remitted the matter to the Enquiry Officer to do further enquiry in the light of the observations made by him and to ^{record} record findings and submit a report. The matter was remitted to the same Enquiry Officer, namely Shri Mukhopadhyaya, who is made respondent No.3 in the present application. It appears Shri Mukhopadhyaya was subsequently transferred and therefore Disciplinary Authority passed a fresh order dated 11/9/98 by giving same reasons and appointing Shri S.C.Rohtagi, respondent No.4 to enquiry into the matter and submit a report. At this stage, the applicant has approached this Tribunal.

3. The applicant's grievance is that Disciplinary Authority cannot give binding directions to the Enquiry Officer and therefore no purpose will be served in holding Enquiry when it is not left to the discretion of the Enquiry Officer to give a report on the basis of evidence placed before him; and for not completing the enquiry expeditiously though the charge sheet was issued in 1994. Another grievance is about the direction for examining two more witnesses.



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In their reply the respondent Nos.1 and 2, some reasons are given for the delay in conducting enquiry and about the change of Enquiry Officers due to transfer, promotion, etc. The Disciplinary Authority has justified the directions given by him in the Impugned order.

4. After hearing the counsels appearing on both sides, we have no hesitation to hold that the Disciplinary Authority was not well advised in making observations on the merits of the case and remanding the matter for further Enquiry to the same Enquiry officer. If the report of the Enquiry Officer was not correct, then report is not binding on Disciplinary Authority and he could have invoked Rule 15(2) of CCS(CCA) Rules and disagreed with the findings of Enquiry Officer and pass whatever order he deemed fit. ^{we} ~~We~~ may also observe ^{that} in view of recent decision of Supreme Court, the Disciplinary Authority has to record ^{tentative} ~~tentative~~ reason for disagreeing with the findings of the Enquiry Officer and send a show cause notice to the applicant as to why he should not differ from the findings of the Enquiry Officer. Then after receiving reply from Delinquent Official, the Disciplinary Authority can pass appropriate orders according to law.
5. But in the present case, the Disciplinary Authority in the remand order went on to make number of observations on the merits of the case which was not strictly necessary. The Enquiry Officer should be free to conduct the enquiry on his own and give a report of whatever he deems fit according to the evidence on record.

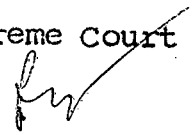
The Disciplinary Authority has also noticed and observed that two important witnesses have not been examined during the enquiry and his direction/ shows that those two witnesses should be enquired by the enquiry officer. These two witnesses are Smt. Hema Jain and Inspector Mahe. Under Rule 15(1) of CCS(CCA) Rules, the Disciplinary Enquiry can submit the matter to Enquiry Officer for further enquiry and report. Therefore, in a given case, if the Disciplinary

[Signature]

Authority is satisfied that there is nothing wrong or illegal if the matter is remitted for examination of additional witnesses, particularly when those witnesses are cited in the charge sheet.

As far as delay is concerned charge sheet was issued in 1994 and then enquiry has been completed and the Enquiry Officer submitted his report in 1997 and within three to four months, the Disciplinary Authority passed an Impugned order dated 17/7/97. Having regard to gravity of the alleged misconduct, we do not think delay should come in the way of holding proper enquiry according to law. Therefore, we are not inclined to quash the charge sheet or Disciplinary Enquiry on the grounds of delay.

6. In our view the observations made by Disciplinary Authority should be ignored by the Enquiry Officer; he should examine two additional witnesses mentioned in the remand order, then the Enquiry Officer should apply his mind to the evidence which is before him and submit his report on his own without being influenced by the Disciplinary Authority's instructions in the two Impugned orders dated 17/7/97, 11/9/98 and 23/11/98. Since the matter is remitted by Disciplinary Authority for examining the two additional witnesses, the Enquiry Officer may permit the applicant to produce additional defense witnesses he would like to examine after the examination of those two witnesses. It is made clear that it is not a case of denovo enquiry but in addition to the two witnesses, on behalf of the prosecution as mentioned in the Impugned order and then after giving opportunity to the applicant to produce any additional defence evidence, he must complete the enquiry and submit his report to Disciplinary Authority. Then it is open to Disciplinary Authority to pass any order he deems fit according to law. In case the Disciplinary Authority wants to disagree with the findings of the Enquiry Officer, as per the observations of Supreme Court




in the case of Punjab National Bank and Ors. v/s. Sri Kunj Bihari Mishra reported in 1998(2)SCSLJ 117, he may do so only after giving a tentative reasons as to why he wants to disagree with the report of Enquiry Officer and serve a show cause notice to the applicant and then after receipt of his representation in reply to show cause notice, he may make up his mind and pass appropriate orders according to law.

All contentions on merits are left open.

7. In the result, the OA is disposed of at the admission stage subject to observations mentioned above, with a direction to the present Enquiry Officer to complete the enquiry and submit the report.

In the circumstances and having regard to the fact that this is an old case of 1994, Enquiry Officer should expedite the enquiry and submit his report to Disciplinary Authority preferably within a period of four months from the date of receipt of this order. Since Shri Raveendran is appointed as new Enquiry Officer, a copy of this order be sent to Shri Raveendran directly, Assistant Commissioner, Mumbai-V., in the light of the observations made in this order.

After receipt of Enquiry Report, the Disciplinary Authority shall apply his mind and pass final orders preferably within a period of four months from the date of receipt of Enquiry Officer's report. Needless to say, the applicant must fully cooperate with the Enquiry Officer and Disciplinary Authority for early disposal of the case. No costs.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

abp.