

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.380/89.

Date of Judgement : 1-9-93

P.Anjaneyulu

.. Applicant

Vs.

1. Union of India,
Rep. by its Under Secretary,
Min. of Finance,
Dept. of Revenue,
North Block,
New Delhi.

2. Collector of Central Excise,
Central Revenue Building,
Fatemaïdan Road,
Hyderabad.

.. Respondents

Counsel for the Applicant :: Shri V.Jogayya Sarma

Counsel for the Respondents:: Shri N.R.Devaraj, Sr. CGSC

CORAM:

Hon'ble Shri A.B.Gorthi : Member(A)

Hon'ble Shri T.Chandrasekhara Reddy : Member(J)

J u d g e m e n t

X As per Hon'ble Shri A.B.Gorthi : Member(A) X

The applicant who had to suffer the penalty of compulsory retirement imposed upon him by the Collector, Central Excise, Hyderabad, vide order dt. 28.12.87 challenges in this application the validity of the penalty and prays that it be set aside and that he be reinstated with all consequential benefits.

2. The applicant was the Supdt. of Central Excise at Koratla Range in Karimnagar District. During the period from 18.9.82 to 28.10.82 he was holding the additional charge of Karimnagar Range as the regular incumbent was on leave. He was served with a charge memo dt. 7.4.87 alleging that he with the connivance of Shri S.Narasinga Rao, Inspector, Central Excise, Sircilla Fixed Sector issued L-4 licences to 1236 weavers covering 2467 power looms without satisfying himself whether the

power looms were installed on or before 31.3.81, whereby the Department sustained loss of revenue to the extent of Rs.14,80,200/- being the compound levy not collected in respect of the 2467 power looms for the period 31.3.81 to 30.9.82. After a departmental disciplinary enquiry, the applicant was found guilty and awarded the penalty of compulsory retirement. His appeal to the President was rejected on 16.12.88.

3. We have heard the learned counsel for both the parties. The main contention of Shri V.Jogayya Sarma is that the very basis of the charge is faulty. The charge does not say that the power looms were those which were not installed prior to 31.3.81 nor does it establish the factum of fiscal loss to the State. There could in fact be no loss to the State, as contended by the applicant's counsel. The enquiry that followed did not establish that the power looms were in fact installed after 31.3.81. The applicant was bound to grant licences on the applications verified by the Inspector, who was the proper authority. In other words, the contention of the learned counsel for the applicant is that the conduct of the applicant cannot be said to be culpable and hence the charge against him is without foundation.

4. Shri N.R.Devaraj, learned counsel for the respondents asserted that as would be evident from the enquiry proceedings, the applicant acted without exercising due care and caution in granting licences to 2467 power looms in a short period. The speed with which the licences were granted would itself be indicative of the rashness on the part of the applicant. Had he physically checked or ensured that such physical check of the power looms was carried out by the Inspector, it would have in all probability, enabled the Government to collect compound levy to the extent of Rs.14,80,200/-. The said loss

admittedly is hypothetical and not actual. Thus, the Respondents' contention is that the charge memo did not suffer from any such defect as would render it invalid in the eye of law. It is further contended on behalf of the Respondents that the enquiry brought out sufficient evidence of the manner in which the Applicant connived with the Inspector and granted licences. Shri N.R.Devaraj brought to our notice that on a single day the Applicant granted as many as 90 licences which he could have done only by appending his signatures but without actually verifying the facts.

5. There is no dispute that the Applicant was the proper authority to grant the licences in accordance with the order of the Central Board of Excise & Customs dt. 11.8.82. The said order was issued in exercise of the powers conferred by the fourth proviso to Rule 174 of the Central Excise Rules, 1944. There can also be no doubt that the Applicant was to be assisted by the Inspector of Central Excise in scrutinising the applications and the supporting documents before granting licences. The essence of the charge against the Applicant is that he in connivance with the Inspector of Central Excise issued licences covering 2467 power looms of 1236 individuals within a short period of 21 days (30.9.82 to 20.10.82) without satisfying himself whether the power looms were acquired and installed on or before 31.3.81 or thereafter and without properly verifying the documents and inspecting the power looms alleged to have been installed. The power looms were installed ⁱⁿ ~~several~~ places covering a reasonably wide area. It is, therefore, the contention of the Respondents that the Applicant obviously rushed through the process of granting licences by merely affixing his signatures on the relevant forms.

P38

On one particular day, i.e., 30.9.82, the Applicant granted as many as 90 licences. On all the forms the Inspector signed on the same date that he had verified the applications for licences. In the instant case, the Inquiry Officer as also the disciplinary authority having come to the conclusion that the charge against the Applicant was proved, we are not inclined to interfere with the same, particularly so because the enquiry brought out several cogent circumstances which would justify his finding of guilty.

6. The learned counsel for the Applicant vehemently contended that the charge itself is without any basis. Firstly, the charge does not aver that any of the power looms were ^{in fact} installed after 31.3.81. Secondly, in the absence of any material to show that any of the power looms did not deserve to be granted licences, the allegation in the charge memo that the Department sustained loss of revenue to the extent of Rs.14,80,200/- is unfounded. There is ^{some} force in the contention raised by the Applicant's counsel, but a careful reading of the entire charge memo would clearly indicate that the gravamen lies in the averment that the Applicant issued licences to 1236 individuals covering 2467 power looms within a short period of 21 days between 30.9.82 and 20.10.82 without satisfying himself whether the power looms were actually acquired and installed on or before 31.3.81. The concessional scheme introduced by the Central Board of Excise & Customs vide order dt. 11.8.82 applied only in respect of power looms installed on or before 31.3.81. Power looms installed thereafter were required to pay certain amount of excise duty every quarter. As the allegation is that the Applicant granted licences without verifying the factual situation, the possibility was there that the power looms were installed after 31.3.81. In such a contingency it is obvious that the State would have

P. J. B.

lost revenue to the extent averred in the charge memo. The said averment by itself would not, in our opinion, render the charge memo as baseless. More so, in the instant case, no recovery has been imposed upon the Applicant. In view of this we are not inclined to accept the plea of the learned counsel for the Applicant that the charge memo deserves to be quashed.

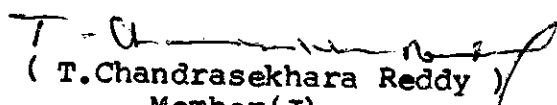
7. The learned counsel for the Applicant strongly urged that the penalty imposed upon the Applicant is very heavy and morally disproportionate to the nature of the charge. As the charge was only for negligent performance of duties, the penalty of compulsory retirement should not have been awarded. Although we are aware that in exceptional cases where the penalty is patently perverse the Tribunal can interfere with the quantum of punishment. In a border line case of this nature it would not be proper for us to do so. In this context, we would like to draw support from the case Union of India Vs. Parma Nanda (AIR 1989 SC 1185) wherein the Hon'ble Supreme Court held that the Tribunal can exercise only such powers which the High Court could have exercised by way of judicial review. It will, therefore, be not proper for the Tribunal to interfere with the penalty merely on the ground that it does appear to be commensurate with the delinquency of the employee. In the instant case, the question whether the Applicant merited the penalty of compulsory retirement was examined in consultation with the U.P.S.C. and was held to be justified. We, therefore, decline to interfere with the quantum of punishment.


8. Lastly, the learned counsel for the Applicant contended that although the appellate authority did give a personal hearing to the Applicant, the points raised by the Applicant

121

in the appeal were not duly considered. Instead, the appellate authority accepted the reasons contained in the Commission's letter dt. 5.10.88 and held that the penalty imposed was not excessive. The contention of the Applicant's counsel is that the appellate authority was duty bound to examine the issues raised by the Applicant and not go by the reasons contained in the Commission's letter. In this context we have carefully perused the order of the appellate authority dt. 16.12.88 which indicates that the Applicant was given a personal hearing on 15.11.88 but his appeal was turned down "after careful consideration of the appeal alongwith the relevant records of the case and in consultation with the U.P.S.C." The advice rendered by the U.P.S.C. is quite exhaustive and if the appellate authority accepted the same in preference to the pleas made by the Applicant we see no irregularity in it.

9. In the result, the application is dismissed without any order as to costs.


(T.Chandrasekhara Reddy)
Member(J).


(A.B.Gorthi)
Member(A).

Dated: 01 August, 1993.

br.


Deputy Registrar(J)

To

1. The Under Secretary, Union of India, Ministry of Finance, Dept.of Revenue, North Block, New Delhi.
2. The Collector of Central Excise, Central Revenue Building, Fatemaidah Road, Hyderabad.
3. One copy to Mr v.Jogayya Sarma, Advocate, 5-1-896/6 Putli Bowli, Hyderabad-195.
4. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT Hyd.
5. One copy to Library, CAT.Hyd.
6. One sparecopy.

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16/8/93
15/5/93