(33)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

O.A.No.344/93 Date of Order: 23.4.93

BETWEEN:

S.Dora Reddy .. Applicant.

A N D

1. The Deputy Collector (P&V),
   Office of the Collector of
   Central Excise, Hyderabad.

2. The Collector, Central Excise,
   Basheerbagh, Hyderabad. .. Respondents.

Counsel for the Applicant .. Mr.M.Narsing Rao

Counsel for the Respondents .. Mr.N.R.Devraj

CORAM:

HON'BLE SHRI T.CHANDRASEKHARA REDDY : MEMBER (JUDL.)

HON'BLE SHRI P.T.THIRUVENGADAM : MEMBER (ADMN.)

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(34)

Order of the Division Bench delivered by Hon'ble Shri T.Chandrasekhara Reddy, Member(Judl.).

This is an application filed under Section 19 of the Administrative Tribunal Act to quash the order of the respondents imposing the punishment on the applicant in the departmental enquiry that had been initiated against him.

2. This matter came up for admission hearing on 16.4.93. On 16.4.1993 Mr.M.Narsing Rao, Advocate for the applicant and Mr.N.R.Devraj, Standing Counsel for the respondents were present and they were heard. After hearing both the sides we ordered this matter to be listed for orders on today (23.4.93).

3. Today we have heard further Mr.M.Narsing Rao, Advocate for the applicant and Mr.N.R.Devraj, Standing Counsel for the respondents and proceed to dispose of this O.A.

4. The facts so far necessary to adjudicate this O.A. in brief are as follows:-

5. The applicant herein is working as Inspector of Central Excise in the Office of the Superintendent of Central Excise and Customs, Hyderabad. Certain disciplinary enquiry had been initiated against him. The enquiry officer exonerated him of all the charges that were framed against him. The enquiry officer submitted his report to the disciplinary authority. The disciplinary authority did not agree with the findings of the enquiry officer and had imposed the penalty of reducing the pay of the applicant by four stages from 2060/- to Rs.1820/- in the time scale of 1640-60-2600-EB-75-2900/- for two years w.e.f. the date of

the order of the disciplinary authority without cumulative effect. So, as against the orders passed by the disciplinary authority, the present O.A. is filed by the applicant for the relief as already indicated above.

6. It is the contention of the learned counsel for the applicant that the principles of natural Justice are violated as the entuiry officer had absolved the applicant of the charges but the disciplinary authority disaggreed with the findi findings of the enquiry officer without affording an opportunity to the applicant. Where the enquiry report absolves a deliquent officer, the disciplinary authority as a matter of fac fact is entitled to differ from the report of the enquiry officer. But before the disciplinary authority does so the disciplinary authority has to afford a responsible opportunity to the deliquent. In this context we may refer to a decision of the Supreme Court reported in 1969 SLR (3) at page 657 Nayaran Misra Vs. State of Orissa wherein it is held if the punishing authority differed from the findings of Enquiry Officer and held the official guilty of charges from which he was exhonerated by the Enquiry Officer if no notice or opportunity was given to deliquent official about the attitude of punishing authority, the punishment was liable to be set aside as being violative of natural justice and fair play.

7. So, in view of the above position we do not have any dount to come to a conclusion that the order of the disciplinary authority is liable to be set aside. Ofcourse the applicant had approached this Tribunal without exhausting the alternative remedy under the service rules that is without approaching the appellate authority. But this is a case where the principles of natural justice are violated. If a

deliquent officer satisfied the Tribunal that the disciplinary proceedings are vitiated by violation of the principles of natural justice it will be open to this Tribunal to interfere and if deemed fit quash the disciplinary proceedings even before it is concluded. The said disciplinary proceedings may also be quashed after its completion also. The fact that the applicant had not appealed according to the rules by itseld bo no bar to approach this Tribunal in case of violation of principles of natural justice. Whether the principles of natural justice are violated or not will ofcourse be a question of fact. But in the instant case we are satisfied that the principles of natural justice have been violated. So, though the applicant has not exhausted the alternative remedy certainly this OA is maintainable.

8. In the result we set aside the order dated 24.2.92 passed by the disciplinary authority punishing the applicant and remit the case to the disciplinary authority for dealing with the same in accordance with law. As a consequence of setting aside the order of punishment, the applicant stands relegated to the same position he occupied as on the date of the impugned order was passed with regard to his pay and allowances. The disciplinary authority shall continue the enquiry from the stage of the submission of the enquiry report to the disciplinary authority and supply a copy of the enquiry report to the applicant if not already supplied and give proper notice to the applicant intimating him that the disciplinary authority had differed from the findings of the enquiry report and that the charges as against the applicant would be considered and afford the applicant an opportunity of explaining them. It is needless to point out that the disciplinary authority should exercise its mind

independently and take a decision in the matter. O.A. is allowed accordingly, leaving the parties to bear their own costs.

(T.CHANDRASEKHARA REDDY)
Member(Judl.),

(P.T.THIRUVENGADAM)
Member(Admn.)

Dated: 23rd April, 1993

(Dictated in Open Court)

Deputy Registrar(Judl.)

Copy to:-

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1. The Deputy Collector(P&V), O/O Collector of Central Excise, Hyderabad.
2. The Collector, Central Excise, Basheerbagh, Hyderabad.
3. One copy to Sri. M.Narsing Rao, advocate, CAT, Hyd.
4. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
5. One spare copy.

Rsm/-

O.A. 344/93

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CHECKED BY APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.V.NEELADRI RAO :V.C.

AND

THE HON'BLE MR.R.BALASUBRAMANIAN:M(A)

AND

THE HON'BLE MR.CHANDRA SEKHAR REDDY
:MEMBER(J)

AND

~~THE~~ HON'BLE MR. P.T.Thiruvengadam M(A)

DATED: 23/4/-1993

~~ORDER~~/JUDGMENT:

~~R.P./C.P/M.A. No.~~

in

O.A.No. 344/93

~~T.A.No.~~ (W.P.No.

Admitted and Interim directions issued.

Allowed

Disposed of with direction

Dismissed as withdrawn

Dismissed

Dismissed for default

Rejected/Ordered

No order as to costs.

pvm

To be signed by HPTT.