

(129)

CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH :  
AT HYDERABAD.

O.A.No.383 of 1995.

Date of Order - 4<sup>th</sup> November, 1997

S. Dora Reddy

... Applicant

(Mr.B. Nalini Kumar, Advocate for the applicant )

Vs.

The Union of India and two others ... respondents

(Mr. V.Rajeswara Rao, CGSC for the respondents)

CORAM :

THE HONOURABLE MR. R. RANGARAJAN, MEMBER (ADMN.)

THE HONOURABLE MR. B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

FOR INSTRUCTIONS

1. Whether Reports of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice-Chairman on columns 1, 2, 4 (to be submitted to the Vice-Chairman where he is not on the Bench.

JUDGMENT/ORDER DELIVERED BY HON.MR. B.S.JAI PARAMESHWAR,  
MEMBER (JUDICIAL).

Jai

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :  
AT HYDERABAD.

O.A.No. 383 of 1995

Date of Order - November, 1997.

Between :

S. Dora Reddy, aged 35 years,  
Son of S. Venkata Reddy,  
O/o Collector of Central Excise,  
Hyderabad.

... Applicant

And

1. The Union of India, rep. by  
Finance Secretary,  
Customs & Central Excise,
2. The Collector,  
Central Excise & Customs Dept.,  
Basheerbagh, Hyderabad.
3. The Deputy Collector (P & V),  
O/o the Collector,  
Customs & Central Excise,  
Basheerbagh, Hyderabad.

... Respondents

Counsel for the applicant - Mr. B. Nalini Kumar  
Counsel for the respondents - Mr. V. Rajeswara Rao, Esq.

-----

Coram :

Honourable Mr. R. Rangarajan, Member(Admn.)

Mr. B. S. Jai Parameshwar, Member(Judl.)

-----

O R D E R .

(Per Hon. Mr. B.S. Jai Parameshwar, Member( Judicial) )

1. None for the applicant. The applicant was also absent when this O.A. was taken up for hearing. Heard Mr. V. Rajeswara Rao, learned counsel for the respondents. We are deciding this O.A. on the basis of the material placed on record in accordance with Rule 15(1) of the C.A.T. (Procedure) Rules, 1987.

B

2. This is an application under Section 19 of the Administrative Tribunals Act, 1985. The application was filed on 16.2.1995.

3. The facts giving raise to this O.A. may be stated in brief as under :-

(a) Between 1.7.1988 and 31.5.1989 the applicant was in charge of Central Excise, Charminar SRP-I Range, Hyderabad. He was in charge of M/s. Vijay Silk Mills and M/s. Dilip Textiles Private Limited, Hyderabad among other factories/ units.

(b) During the said period it is alleged that the applicant had committed certain acts amounting to dereliction of duty thereby causing a huge loss of revenue to the Government. On 5.9.1990 the disciplinary authority passed a major penalty charge memo C.No.II/10-A/11/90- CIU. The copy of the memorandum of charges is at Annexure-2. In that the applicant was charged as follows :

" Sri S. Dora Reddy while functioning in the said capacity during the said period failed to draw adequate number of samples in respect of the fabrics processed by the said factories as Chapter-V of Basic Excise Manual, 1914-II(d) - average count of Cotton fabrics, Polyester content of the blended fabrics, and variety of yarn used like Nylon Polyester etc in the fabrics, as the case may be, to determine correct Classification of goods and correct rate of duty to safeguard revenue. Sri S. Dora Reddy, has drawn a single sample of blended fabrics from M/s Vijay Silk Mills on 22.12.1988, which is too inadequate, compared to the consignments cleared by the said factories during the said period. His failure led to said assessments. - textile fabrics by the

Sri S. Dora Reddy, by his above acts, exhibited lack of devotion to duty and thereby contravened Rule 3(1) (ii) of C.C.S. (Conduct) Rules, 1964."

(c) The applicant offered his explanation denying the charges. The disciplinary authority was not satisfied with the explanation offered by the applicant. Hence the Assistant Collector (Establishment & Administration ),

Hyderabad was appointed as Inquiry Officer to inquire into the charges. After conducting the inquiry, the Inquiry Officer submitted his report dated 8.1.1992. The Inquiry Officer in his report absolved the applicant of the charges.

(d) The disciplinary authority was not satisfied with the findings recorded by the Inquiry Officer. He disagreed with the findings recorded by the Inquiry Officer and formed an opinion that the charges levelled against the accused were amply proved by the records and circular instructions and therefore, by his order dated 24.2.1992 imposed the punishment of reduction of pay on the applicant.

(e) Against the said order of punishment, the applicant preferred an appeal to the appellate authority. ~~the appellate authority confirmed the punishment~~ but reduced the punishment, in that, the reduction was to be operative for a period of one year.

(f) The applicant challenged the said punishment in O.A.No.344 of 1993 before this Tribunal. On 23.4.1993 ~~the Tribunal allowed the appeal and set aside the punishment~~ and directed the respondents to continue the inquiry from the stage of submission of the inquiry report to the disciplinary authority and to supply a copy of the report of the Inquiry Officer to the applicant, if not already supplied and to give proper notice to the applicant intimating him that the disciplinary authority had differed from the findings recorded by the Inquiry Officer in his report and that the charges against the applicant would be considered.

In accordance with the directions of this Tribunal, the disciplinary authority furnished him a copy of the views and disagreement with the findings recorded

*Pr*

by the Inquiry Officer through his letter dated 12.7.1994. The applicant submitted his explanation on 25.7.1994. The copy of the explanation submitted by the applicant is at pages 39-45 of the O.A.

(g) On 2.9.1994 the disciplinary authority considered the explanation submitted by him guilty and imposed the penalty of reduction of pay by four stages from Rs.2180/- to Rs.1940/- in the time scale of pay of Rs.1640-2900/- for a period of one year with effect from the said date. It was further directed that the applicant would <sup>not</sup> earn increments of pay during the period of reduction and thus the effect of postponing his future increments of pay.

(h) Against the said punishment, the applicant preferred an appeal dated 13.10.1994. A copy of the Memorandum of Appeal is at pages 70-84 of the O.A. The appellate authority by his order C.No.II/26/4/94-CIU dated 20.12.1994 agreed with the reasonings adopted by the disciplinary authority. However, the appellate authority modified the punishment of reduction of pay from four stages to three stages. In other respects, the punishment was confirmed.

4. The applicant has filed this O.A. challenging the above said orders and has prayed as follows :-

- (i) To call for records relating to the orders of the 1st respondent as well as second respondent and every other document relating to the subject matter in dispute to decide the same.
- (ii) To quash the orders of the 1st respondent Collector, Central Excise, Hyderabad passed in his file dated 20.12.94 in C.No.II/26/4/1994-CIU and to declare the same as arbitrary, illegal and without jurisdiction.

R

5. The applicant has challenged the impugned orders on the following grounds :-

(a) The charges were vague and indefinite. He was prejudiced by the charges because two acts of misconduct were clubbed into one charge.

(b) That the Inspectors are <sup>not</sup> independent officers and they are subordinates to the Superintendents of the Ranges. The Inspectors are expected to obey the instructions given by the Superintendents; that the Superintendents are responsible for the discharge of the duties and general supervision of the officers placed under them including the Inspectors; that the Inspectors are expected to maintain X.T- 1 Diary under Rule 55-C of the Tobacco Excise Manual and para 234(c) (i) & (ii) of the basic manual of the departmental instructions on excisable manufactured

(c) products; that the department had no developed standard measures that should be followed in conducting the Production Based Control (PBC) checks; that the alleged non-conducting of PBC checks of the two factories/units as alleged in the charge sheet are not on account of his negligence; that the said two units were registered under the Small Scale Industries; that the frequency of PBC checks was not prescribed; that the department had no definite policy for conducting the PBC checks by the Inspectors.

(d) That as per X-T. 1 diary, the Inspectors conduct PBC checks once in a week; that during the period from 1.7.1988 and 31.5.1989 he discharged his duties with utmost devotion giving no room for any comments from the superior officials.

(e) That the other different wings were in operation to avoid the evasion of excise duty. They were -

- (a) Internal Audit
- (b) Divisional Preventive Wing
- (c) Hd.Qrs. Anti-Evasion

The aforesaid wings were primary responsible to check evasion of any excise duty by the factories or units.

(f) That they were required to perform other different kinds of duties as prescribed in para-34 of the Basic Manual on Excise products;

(g) That the punishment imposed on him is on the basis of no evidence or material to support the charge and that he has been made to suffer with the serious punishment of reduction of pay ;

(h) That the departmental instructions dated 28.12.1978 are not exclusively to the Sector Officers but for the entire department. The department admitted that those instructions were not followed all over India due to lack of work force and hence, the whole burden could not be placed on him; and that the impugned orders are not sustainable in law.

6. The respondents have filed their counter stating that the Directorate of Anti-Evasion, <sup>the</sup> of/ Collectorate of Central Excise detected the evasion of central excise duty to the tune of Rs.14,07,600.64 p. between February, 1989 and May, 1989 in respect of M/s. Dilip Textiles Private Limited and to the tune of Rs.8,95,890.80 for the period between July, 1988 and May, 1989 in respect of M/s. Vijay Silk Mills; that these two factories/units come under the jurisdiction of Charminar SRP-I Range; that on going through the records, they noticed that the applicant was working as Inspector of Central Excise during the said period that a memo. was issued to the applicant by the Commissioner on 27.2.1990; that the allegation to the effect that the department had not issued any instructions to the Inspector with respect to Textile factories, and that he was in charge of the Textile factories and he was aware of the Board's instructions; that a copy of the Board's instructions has been enclosed as Annexure-R-1; that the Inspector of

Central Excise is a Field Officer in charge of sensitive commodity such as textiles should have been more conscious and careful and adhered to the instructions; that the Chapter V of the Basic<sup>Excise</sup> Manual indicated that frequent drawal of samples was essential; that the Board's communication dated 27.11.1978 (Annexure-R-I) clearly indicated that the officers working in the field formations, incharge of factories were expected to carry out certain periodical checks; that the frequency of checks was also indicated in the said communications separately for the Superintendents as well as the Inspectors; that the said checks were required to be performed by the Superintendent, and Inspectors independent of each other; that the contention of the applicant that it was the duty of the Superintendent to see that all the Sector Officers carried <sup>out</sup> the prescribed checks lacks merit; that the factories/ units were allocated to each Inspector depending on the workload; that the letter dated 28.1.1993 issued by the Commissioner of Central Excise to the Inquiry Officer had nothing to do with the disciplinary proceedings in the case; that the contention of the applicant that there was no material for the disciplinary and appellate authorities to disagree with the findings recorded by the Inquiry Officer; that the Board's instructions and the Commissioner's instructions given from time to time clearly prescribed certain legitimate duties to be performed by the Inspectors who were in charge of the Textile factories; that they were the basic Inspectors who were expected to conduct the PBC checks which could have avoided the factories/ units to evade the excise duty; that there was no obligation on the part of the disciplinary authority to furnish the disagreement notes to the applicant; that as per the directions of this Tribunal in OA No.344/93 the disciplinary authority furnished his disagreement views on the findings recorded by



the Inquiry Officer; that the applicant submitted his explanation to the disagreement views of the disciplinary authority; that the disciplinary authority while passing records, Board's instructions and the explanation offered by the applicant, to his disagreement views; that the various grounds of attack raised by the applicant in his explanation and in his written brief have been clearly answered by the disciplinary authority as well as the thinking of filing a S.L.P. against the order of this Tribunal in O.A.No.344/93; that on account of it, there was some delay on their part to furnish the disagreement views of the disciplinary authority to the applicant; that the applicant failed to perform his legitimate duties; that had the applicant been diligent and had the applicant conducted the periodical checks, the evasion of excise duty by the said two factories could have been avoided or minimised to the least possible extent; that the Inspector is a Range Officer; that the various contentions raised by the applicant in the O.A. are not tenable and that the O.A. be dismissed.

7. Since the disciplinary authority has furnished the disagreement views against the findings recorded by the Inquiry Officer and since the applicant has submitted his explanation on 25.7.1994, now there is nothing to contend that the principles of natural justice were violated in the case of the applicant.

8. The dereliction of duty on the part of the applicant came to notice only when the Directorate of Anti-Evasion detected the evasion of excise duty by the said two factories between July 1978 and May, 1989. The applicant submits that he has maintained X.T-I diary. If really the applicant had performed his legitimate duties in conducting the PBC checks of these two factories during the tenure of his service, the

*R*

details of the PBC checks should have been invariably mentioned in the said diary. Had the applicant performed his duties in accordance with the provisions of the ----- the Commissioner's instructions with regard to conduct of PBC checks of these two factories, he could have mentioned the same in the X.T-I diary which could have established whether the applicant had performed his duties promptly. He cannot shift the blame on the Superintendent of Central Excise. No doubt, as Inspector of Central Excise he is expected to obey the instructions of the Superintendent of Central Excise. His duties as basic officer in the Range ----- must be guided by the Superintendent. What he is expected to do must be done by himself. The Superintendent can only supervise and bring to his notice any mistake or any omission or commission made by him in the performance of his duties. The Superintendent is not expected to give each and every time instructions to the Inspectors to perform their duties as per the Basic Excise Manual, Commissioner's instructions and the Board's instructions. As an Inspector of Central Excise he has got basic responsibilities to protect, safeguard and promote the revenue of the Government. The Directorate of Anti-Evasion noticed the evasion of tax duties by these two factories to the extent of nearly 23 lacs and odd of rupees. This clearly goes to show that the possibility is there that the applicant had not at all conducted the PBC checks. We do not think that had the applicant performed his legitimate duties, the evasion of excise duty to that large extent could not have been occurred. The very fact that huge sum ----- excise duty was evaded by the said two factories clearly reflects on the performance of the duties by the applicant. The quantum of excise duty evaded by these two factories also clearly reflects on the performance of work by the

B

applicant. Now it does not lie in his mouth to point out he was expected to obey his instructions and that there were other wings in the Collectorate who could have taken timely action to prevent evasion of excise duty. Besides all these, he should have done his duty as per the instructions of the Commissioner.

9. The applicant entered into service in the Collectorate of Central Excise, Hyderabad in the year 1985 and by the period he worked in Charminar SRP-I Range, he had to follow the instructions of the Superintendents and also adhere to the Central Excise Manual. When that is so, we cannot accept the contention of the applicant that evasion of excise duty by the two factories was not on account of his negligence or dereliction of duty and that his higher ups were also equally responsible for the same. It is for the department to consider whether any immediate official superior of the applicant was also responsible for the said evasion. He cannot take the shelter under the Superintendent of Central Excise and say that he performed his duties as per the instructions of the Superintendent.

10. It appears that Sri Somasekhar was the Inquiry Officer against the Inspectors of Central Excise whose negligence had resulted in evasion of excise duty. The said officer had given a finding in a way favourable to the Inspectors. The Commissioner of Central Excise brought to his notice that the way in which he conducted the inquiries; analysed the material placed on record by the disciplinary authority and submitted the reports and instructed him to be more careful in future regarding disciplinary matters.

11. The burden of proving innocence of the charges lies on the applicant. No doubt, strict rules of evidence

are not applicable to the disciplinary proceedings.

Preponderance of probabilities is the guiding factor to decide the disciplinary proceedings. The disciplinary proceedings are only about the conduct of the delinquent employee. It is not like a criminal trial or a civil trial. The applicant had the fullest opportunity to prove his innocence. As already submitted, mentioned something in the X.T-1 diary maintained by him about the conducting of PBC checks of the aforesaid two factories which could have thrown light on the performance of his duties during the relevant period.

12. The next contention raised by the applicant is that the punishment imposed on him is too harsh. We are not prepared to agree with this contention. Having regard to the fact that the dereliction of duty on the part of the applicant resulted in evasion of excise duty to the extent of Rs.23 lacs and odd, we feel that both the disciplinary and appellate authorities have taken a lenient view as to the misconduct of the applicant.

13. The powers of the Tribunal in respect of the disciplinary proceedings are very much limited. We cannot reappreciate the evidence and come to a different conclusion. Likewise, we also cannot interfere with the punishment imposed by the disciplinary authority. It is for the authorities to consider the gravity of the charge and impose a condign punishment.

14. For the reasons stated above, we find no merits in the O.A. and the O.A. is liable to be dismissed. It is accordingly dismissed. No order as to costs.

  
(B.S. JAI PARAMESHWAR)  
MEMBER (JUDICIAL)

  
( R. RANGARAJAN )  
MEMBER (ADMINISTRATIVE)

DJ/

Dated the

4<sup>th</sup>

November, 1997.

  
D.R.

197  
TYPED BY  
COMPARED BY

CHECKED BY  
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :  
M (J)

Dated: 4-11-97

ORDER/JUDGMENT

M.A./R.A./C.A. NO.

in

O.A. NO.

883/95

Admitted and Interim Directions  
Issued.

Allowed

Disposed of with Directions

Dismissed

Dismissed as withdrawn

Dismissed for Default

Ordered/Rejected

No order as to costs.

YLKR

II Court

