

102

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH :
AT HYDERABAD.

O.A.No.137 of 1996.

Date of Order :- 27th AUGUST, 1998.

M.A.No.91 of 1998

Between :

Y. Nagi Reddy, son of
Office Superintendent,
O/o. The Commissioner, Central
Excise & Customs, Guntur.

... Applicant

And

1. The Union of India, rep.
by its Secretary,
Ministry of Finance
(Department of Revenue)
North Block, New Delhi.

2. The Commissioner,
Central Excise & Customs,
Guntur.

3. The Additional Commissioner,
Central Excise and Customs,
O/o. The Commissioner of Central Excise,
Guntur.

4. Commissioner of Customs &
Central Excise, Hyderabad. ... Respondents

Counsel for Applicant : Mr. C.Suryanarayana Murthy

Counsel for Respondents : Mr. V.Rajeshwara Rao, CGSC

C O R A M :

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

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

O R D E R .

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

1. Heard Mr. C. Suryanarayana Murthy, learned counsel
for the applicant and Mr. V.Rajeswara Rao, learned Standing
Counsel for the respondents.

2. This is an application under Section 19 of the
Administrative Tribunals Act. The application was filed on
29.1.1996.

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3. While the applicant was working as the Office Superintendent, he was served with a letter bearing No.VIII/13/14/92 CUS Tech. dated December, 1992, seeking his explanation on the alleged entry made by him in the file relating to Renewal of Licence of M/s. International Clearing and Shipping Agency, Kakinada. Later the Deputy Collector (Personnel & Vigilance) issued a Charge Memo in proceedings No.C.No.III/10/A/2/93 CTU dated 11.5.1993 (Annexure-III at pages 14 to 20 of the O.A.). The misconduct alleged against the applicant reads as follows :-

" 1. That the said Sri Y.Nagi Reddy, Office Superintendent, (Cus.Tech), Headquarters Office, Guntur, has unauthorisedly inserted a sentence "U.Ranga Rao's name may be included in the licence as requested" in the note file Page II of file C.No.VIII/13/14/92-Cus.Tech(6), after the original note proposals for renewal of CHAL No.2/89 was approved by the Collector and that too at the stage of despatch. This act of Sri Nagi Reddy led to the inclusion of the name of Sri U.Ranga Rao in the licence who is not qualified under Regulation 9 of Customs House Agents (Licensing) Regulations, 1984. The inclusion of the name of Sri U.Ranga Rao was not requested by the Assistant Collector, Kakinada in his letter dated 27.9.92.

Hence the Office Superintendent by inserting the above words, in the note sheets which was not requested for by the Assistant Collector, Kakinada acted beyond his jurisdiction of powers after Collector approved and signed the licence.

The aforesaid act of Sri Y.Nagi Reddy shows lack of integrity and devotion to duty on his part which is highly unbecoming of a Government servant, and thereby violated the provisions of Rule 3 of Central Civil Services (Conduct) Rules, 1964 inviting disciplinary action under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965."

4. A detailed inquiry was conducted into the charge and the Inquiry Officer submitted his report dated 8.6.1994. He recorded a finding that the charges levelled against the accused were not proved. The copy of the report of the Inquiry Officer is at pages 21 to 39 of the O.A. The finding recorded by the Inquiry Officer is reproduced herein below :-

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" In the absence of any tangible evidence with regard to the "time factor of committing the irregularity of including the name of Shri U. Ranga Rao in the Licence by the dealing Asst., the actual date of insertion of the sentence by the Office Supdt.(Charged Officer) could not be fixed. Hence, the Charge framed against the Office Supdt.(Charged Officer) that he has inserted the sentence "U.Ranga Rao's name may be included in the licence as requested" was made subsequent to the approval of the note by the Collector, is not proved.

The Article of Charge is, therefore, not proved.

In the ultimate analysis, I find no recorded evidence to the effect that Shri Y.Nagi Reddy, Office Supdt.(Charged Officer) has unauthorisedly inserted a sentence " U.Ranga Rao's name may be included in the licence as requested" in the note file at page II of file C.No.VIII/13/14/92 Cus.Tech.(6), after the original proposal for renewal of CMA Licence No.2/89 was approved by the Collector on 26.10.92; that a request from the Asst.Collector,Kakinada is a "must" or mandatory for inclusion of the name of a person in the licence; and that the insertion of the sentence by the Office Supdt.(Charged Officer) has lead to the inclusion of the name in the licence by the dealing Asst.

I do not find him guilty, as the charges framed against him have not been proved."

5. The disciplinary authority after going through the findings of the Inquiry Officer felt not inclined to agree with the same. Hence an opportunity was given to the applicant to show cause as to why the findings recorded by the Inquiry Officer be not acted upon. The applicant submitted his explanation. After considering the explanation of the applicant and for the reasons recorded in the detailed order, the disciplinary authority imposed a penalty of reduction in rank of the applicant from the post of Office Superintendent to the post of Deputy Office Superintendent (L-I) for a period of 18 months and directed the applicant to draw a sum of Rs.2000/- per month in the scale of pay of Rs.1600-2600/-. He further observed that the applicant would not earn any increment during the period of reduction and on completion

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of period of punishment, he would be restored to the rank of Office Superintendent by giving him his original seniority. The order of the disciplinary authority is dated 31.3.1995.

The copy of the order of the disciplinary authority is at pages 40 to 49 of the O.A. But this order was passed by the Additional Collector, Kannavarithota, Guntur.

6. Against the said order of punishment, the applicant preferred an appeal to the Collector of Central Excise, Kannavarithota, Guntur. The appeal is dated 16.5.1995. The copy of the Memorandum of Appeal is at pages 50 to 65 of the O.A.

7. There was some delay on the part of the appellate authority to decide the appeal. Then the applicant approached this Tribunal in O.A.No.850/95. On 27.7.1995 this Tribunal directed the appellate authority to decide the appeal as expeditiously as possible and not later than 29.9.1995.

The copy of the order of this Tribunal is at pages 66 & 67 of the O.A. On 24.1.1995 the appellate authority considered the appeal filed by the applicant and ordered as follows :-

"3. I have examined the case records as well as the appeal petition filed by the Charged Officer carefully. I find that the deposition/explanation of Dealing Assistant in whose note the Charged Officer is alleged to have made an insertion at despatch stage should have been cited as a witness and his explanation should have also been relied upon in the charge memo. Since this material evidence was not disclosed to the Charged Officer, the order inflicting the punishment of reduction basing simply on Prosecution Witness-1, suffers from violation of principles of natural justice. Accordingly, order dated 31.3.1995 passed by the (Disciplinary Authority) Additional Commissioner of Central Excise, Guntur is set aside, and the case is remanded to the Disciplinary Authority to conduct the proceedings afresh after modifying the charge sheet suitably so that the crucial evidence of the Dealing Assistant is also included and relied upon."

Accordingly the disciplinary authority issued a fresh charge sheet dated 20.12.1995, by his proceedings No.C.II/10A/2/93-CIU-1.

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8. The applicant being aggrieved by the order of the appellate authority dated 21.9.1995 and by the issue of a fresh Charge Memo dated 20.12.1995 has filed this O.A. praying for the following reliefs :

- (a) To call for the records on the file of the Second Respondent in his proceedings No.C.No.11/26/06/95 CIU-I dated 21.9.1995 and the consequential proceedings issued in C.No.11/10-A/2/93 CTU-1 dated 20.12.1995;
- (b) To quash the aforesaid proceedings dated 21.9.1995 and 20.12.1995; and
- (c) To direct the respondent No.2 to release his promotion order with effect from the date on which his junior Sri Babu Rao was promoted.

9. The main grounds on which the applicant has challenged the order of the appellate authority and the issue of the Charge Memo are that the appellate authority on a misconception of the grounds considered the deposition explanation of the Dealing Assistant Sri K.Kiran Kumar and felt that he should have been cited as a witness; that a de novo inquiry and/or successive inquiry cannot be ordered to fill up the gap or frame a case against a person to make him the scapegoat, the appellate authority by ordering a de novo inquiry attempted to fill the gaps, if any, noticed that there was no evidence against the applicant wherein imposing of a major punishment or any other punishment and that inspite of long delay being illegal, the order directing a de novo inquiry is liable to be set aside.

10. On 9.2.1996 an interim order was passed restraining the respondent No.3 from proceeding further by way of a de novo inquiry as directed by the order dated 21.9.1995 of the appellate authority.

11. The respondents have filed their counter explaining the circumstances under which the appellate authority formed an opinion to order the de novo inquiry against the applicant;

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that the applicant is expected to face the inquiry and should prove his innocence; that the applicant has rushed to the Tribunal in haste; that the competent authority is empowered either to accept or differ from the findings of the inquiry conducted by the department; that the impugned charge memo. dated 20.12.1995 was issued to the applicant and it was for the applicant to substantiate his innocence; that the Assistant Collector, Central Excise, Kakinada noticed certain abuse of power or position by the applicant in the file relating to M/s. International Clearing and Shipping Agency and noticed the applicant inserting a sentence including one U.Ranga Rao's name to grant the licence and that the said sentence was surreptitiously inserted by the applicant before the same could be despatched to the concerned firm.

11.A. They further submit that the appellate authority took into consideration the various grounds raised in the appeal and appropriately directed the disciplinary authority to conduct a fresh inquiry. In that view of the matter, they feel that the order dated 21.9.1995 is proper, legal and the impugned Charge Memo dated 20.12.1995 is valid. Thus they submit that the O.A. is liable to be dismissed.

12. The main contention/^{of the applicant} is that the appellate authority fell in error in ordering de novo inquiry. It is his case that the appellate authority ordered de novo inquiry to fill up the gap or lacuna in the evidence.

13. As against this, the respondents contend that the appellate authority took a decision to order de novo inquiry only on the grounds raised by the applicant in the Memorandum of Appeal. The Memorandum of Appeal submitted by the applicant runs to 15 pages.

14. No doubt, de novo inquiry should not be ordered to harass the Government servant. But the appellate authority



in exercise of his power under Rule 27(2) of the CCS(CCA) Rules has got power of remitting the case to the authority which imposed or enhanced the penalty or any other authority with such power as it may deem fit in the circumstances of the case. Therefore, it cannot be said that the appellate authority has no power at all to order the de novo inquiry.

15. We have perused the Memorandum of Appeal dated 16.5.1995 which is at pages 50 to 65 of the O.A. In page 56 authority he has raised a contention that the disciplinary/ when the vital information is missing, should have reopened the file, cited the Dealing Assistant as a witness and elicited the above information.

16. The Office Superintendent in his reply to Question No. I admitted that he had included the the alleged sentence in the suggestive note in his own hand on 15.10.1992 in good faith. In page 58 he has raised the ground that " the Disciplinary Authority, if he had any doubt, should have cited the Vigilance Superintendent as a State witness and got the required clarification on what basis he wrote his opinion etc."

In page 59 he has raised the ground that " in spite of the clear instructions from Collector as stated above, inquiry has been initiated against Office Superintendent only, side tracking the Dealing Assistant."

In page 60, he has raised the ground that " by this the delinquent Officer has lost the valuable opportunity of suggesting the involvement of the investigating officer." He further raised the ground that " As per Rule 18 of C.C.S. (CCA) Rules, where two or more Govt. Servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Govt. servants may make an order directing that disciplinary action against all of them may be taken in a common proceedings." In page 61 he has raised the ground that " the evidence is suppressed at all stages. The Dealing Assistant whose explanation plays a

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key role in the matter is not cited as a witness." In page 65 he has raised the ground that " As such, the orders passed by the Disciplinary Authority are not only against the principles of natural justice and fair play, but also arbitrary and biased."

17. The grounds raised by the applicant in the Memorandum of Appeal as extracted above, are no doubt indicate that the applicant himself wanted a fresh inquiry. Any prudent man sitting in appeal over the report of the Inquiry Officer and order of the disciplinary authority, can have no other option but to order a de novo inquiry. As already observed above, the appellate authority is quite competent and within his jurisdiction to order a de novo inquiry. When the applicant himself raised certain doubts and attempted to put the blame on the disciplinary authority, then we feel that the appellate authority has not done any irregularity or illegality in ordering a de novo inquiry.

18. Learned counsel for the applicant relied upon a decision of the Hon'ble Supreme Court of India in the case of K.R.Deb v. Collector, Central Excise, Shillong, reported in AIR 1971 SC 1447. The Hon'ble Supreme Court in this case had analysed the scope and ambit of Rule 15 of the CCS(CCA)Rules and formed an opinion that if there is some defect in the inquiry conducted by the Inquiry Officer, the disciplinary authority can direct the Inquiry Officer to conduct further inquiries in respect of that matter, but it cannot direct a fresh inquiry to be conducted by some other officer. This is ^{the} as regards/ power of the disciplinary authority. The appellate authority has every power to order a de novo inquiry.

(a) In the case of J.K.Varshneya v. Union of India, reported in ATR 1989(1) CAT 215, the Principal Bench of this Tribunal considered the prolonged suspension for an indefinite period without serving any charge sheet to be sufficient to quash the suspension order. This decision does not speak of ordering a de novo enquiry by the appellate authority. We feel that this

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decision does not come to the aid of the applicant in any manner.

(b) In the case of R.L.Kapil v. Union of India and others, reported in A.T.R.1988(1) CAT 318, the Principal Bench of this Tribunal considered the power of the appellate authority to order a de novo inquiry. In that case, the Hon'ble Tribunal considered the various dates on which, the charge memo was served and because of considerable delay in ordering de novo inquiry, it formed an opinion that ordering de novo inquiry by the appellate authority was not proper. Here in the instant case, the facts and circumstances are different. The applicant was served with the Charge Memo in December, 1992. The appellate authority ordered de novo inquiry on 21.1.1995. There is no inordinate delay in conducting the inquiry. Therefore, the case cited by the learned counsel can be easily distinguished from the facts and circumstances available in this case.

(c) In the case of S.P.Bansal v. Union of India & ors, reported in ATR 1987(1) CAT 215, the Principal Bench of this Tribunal considered the order directing de novo inquiry by the disciplinary authority when the Inquiry Officer exonerated the delinquent of the charges. In this case though the Inquiry Officer exonerated the applicant as per his report, the disciplinary authority disagreed with the same, gave him an opportunity and passed the impugned punishment order dated 31.3.1995. The appellate authority considering the various grounds raised by the applicant in the Memorandum of Appeal and also considering that the Inquiry Officer violated the principles of natural justice in conducting the inquiry, thought it proper to order a de novo inquiry. Accordingly he passed the order dated 21.9.1995. We do not find any illegality or irregularity committed by the appellate authority. The appellate authority was within his competence to order a de novo inquiry taking into consideration the various grounds raised by the applicant himself in his Memorandum of Appeal. When that is the case, the applicant cannot have any grouse. His Memorandum of Appeal runs to 15 pages. On going through the same, a prudent man can only come to the

conclusion that a fresh inquiry was the proper solution.

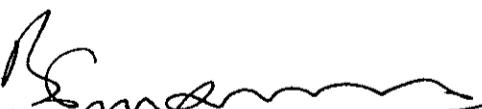
19. Thus we do not find any irregularity or illegality committed by the appellate authority in ordering a de novo inquiry. In fact, the same was ordered by the appellate authority after taking into consideration the grounds taken by the applicant in the Memorandum of Appeal.

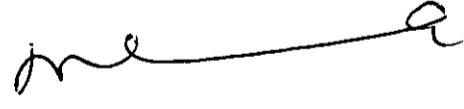
20. For the reasons stated above, we do not find any justification to interfere with the order dated 21.9.1995 passed by the appellate authority directing a de novo inquiry and issuing a fresh Charge Memo dated 20.12.1995.

21. However, we feel it proper to direct the Inquiry Officer to conclude the inquiry as expeditiously as possible. We hope and trust that the applicant shall co-operate with Inquiry Officer in his own interest. The O.A. is disposed of accordingly.

22. During the pendency of this O.A., the applicant had filed M.A.No.91/98 praying for a direction to the respondents to consider his case for promotion as Administrative Officer. Since the O.A. is disposed of today, no further direction is necessary in this M.A. Hence the same is disposed without giving any direction as prayed for.

23. Parties to bear their own costs.


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


(R. RANGARAJAN)
MEMBER (ADMN.)

DATED THE 27th AUGUST, 1998.

DJ/


D.R.

OA.137/96

Copy to:-

1. The Secretary, Ministry of Finance, (Department of Revenue), North Block, New Delhi
2. The Commissioner, Central Excise & Customs, Guntur.
3. The Additional Commissioner, Central Excise and Customs, O/o The Commissioner of Central Excise, Guntur.
4. The Commissioner of Customs & Central Excise, Hyderabad.
5. One copy to Mr. C.Suryanaryana Murthy, Advocate, CAT., Hyd.
6. One copy to Mr. V.Rajeshwara Rao, Addl.CGSC., CAT., Hyd.
7. One copy to BSOPM(J), CAT., Hyd.
8. One copy to D.R.(A), CAT., Hyd.
9. One duplicate copy.

SRR

16/10/98
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II COURT

TYED BY :
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

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

AND

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

DATED: 27/8/98

ORDER/JUDGMENT

M.R.R./C.P.N.C.

in

C.A.NO.

137/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

-7 SEP 1998

हैदराबाद न्यायालय
HYDERABAD BENCH