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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:

AT HYDERABAD

O.A.No.1636 OF 1997.

DATE OF ORDER: 14-12-98

Between:

Mubashir Hussain.

.. Applicant

a n d

1. The Commissioner-III,
Commissioner of Central Excise,
Hyderabad.

2. The Commissioner-I,
Central Excise, Basheerbagh,
Hyderabad.

.. Respondents

COUNSEL FOR THE APPLICANT :: Mr.P.Naveen Rao

COUNSEL FOR THE RESPONDENTS:: Mr.N.R.Devaraj

CORAM:

THE HON'BLE SRI H.RAJENDRA PRASAD, MEMBER (ADMN)

A N D

THE HON'BLE SRI B.S.JAI PARAMESHWAR, MEMBER (JUDL)

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O.A.1636/97

O R D E R

(PER : HON'BLE MR. B.S. JAI PARAMESHWAR, MEMBER(J)

1. Heard Mr. P. Naveen Rao, Learned Counsel for the applicant and Mr. N.R. Devaraj, Learned Standing Counsel for the respondents.
2. While the applicant was working as Inspector of Central Excise at Hyderabad, the then Additional Collector (P&V) Customs and Central Excise, Hyderabad by his Proceedings No.II/10-A/12/90(CIU) dt. 6.9.90 issued a memorandum of charges for certain dereliction of duty which resulted in pecuniary loss to the Collectorate. A detailed inquiry was conducted into the charge. The Inquiry Officer gave a finding favouring the applicant. However, the disciplinary authority disagreed with the findings recorded by the Inquiry Officer and for the reasons recorded by him, imposed penalty of reduction of pay of the applicant by 2 stages for a period of one year.
3. The applicant challenged the said penalty order dt. 24.2.93 before this Tribunal in OA 343 of 1993. On 23.4.93, this Tribunal set aside the order of punishment with a direction to the disciplinary authority to continue the inquiry from the stage of submission of the enquiry report 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 of the enquiry report and that the charges as against the applicant would be considered and^{afford} the applicant an opportunity of explaining them.
4. The Collectorate unsuccessfully challenged the direction in the O.A.344/93 before the Hon'ble Apex Court.
5. In compliance with the directions of this Tribunal, a letter No.C II/10/4/94 CIU.1 dt. 6.10.94 (Annexure-AII) (Page 16) to the O.A. was issued to the applicant. A copy of the enquiry report was furnished to him.

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6. The applicant submitted his representation dt. 18.11.94 against the findings of the enquiry officer. A copy of his representation is at Annexure-AIV (Pages 20 to 23 of the O.A).
7. After considering his representation the disciplinary authority informed the applicant by his letter dt. 8.3.95 of his reasons for his disagreement with the findings recorded by the enquiry officer and gave an opportunity to the applicant to submit his explanation. A copy of the letter dt. 8.3.95 is at Annexure-AV (pages 24 to 25) to the O.A.
8. The applicant submitted his explanation to the letter dt. 8.3.95. His explanation is dated 11.6.95.
9. Since the disciplinary proceedings were pending, the case of the applicant for promotion to the post of Superintendent of Central Excise was not taken up for consideration. Then the applicant relying upon the OM No.22011/4/91-Estt(A) dt.14.9.92 submitted a representation dt. 11.2.94 to consider his case at least for promotion on ad hoc basis.
10. The respondents considered the representation of the applicant and promoted the applicant as Superintendent purely on ad hoc basis by office establishment order No.36 of 94 dated 25.2.94.
11. The disciplinary proceedings pending against the applicant ended by imposing penalty of withholding of one increment of pay for a period of one year from the date of the order dt. 4.11.97. A copy of the penalty order is at Annexure-IX (page 30 to the O.A).
12. In view of the imposition of penalty of the applicant vide order dt. 4.11.97, the respondent authorities by its office order No.31/97 dt. 19.11.97 ordered to revert the applicant to the cadre of Inspector of Central Excise in the pre-revised scale of pay of Rs.1640-2900/- with immediate effect.
13. The applicant has filed this O.A. praying to call for the records relating to and connected with the proceedings dated

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4.11.97 and the proceedings relating to the Establishment Order No.31 of 97 dt. 19.11.97 and to quash or set aside the same with all consequential benefits.

14. The applicant has challenged the impugned orders dt. 4.11.97 and 19.11.97 on the grounds that they are passed without jurisdiction, that they are illegal; that the orders amount to inflicting 2 punishments for a single mistake or misconduct; that he has been subjected to humiliation; that he has been unjustifiably asked to work in a lower grade while his juniors are working as Superintendents; that the Disciplinary Authority has contravened Rule 15(2) of the CCS CCA Rules; that punishment imposed is too harsh and excessive; ^{and} that the impugned orders are void ab initio. He further submitted that since there was delay after the decision in O.A.344/93 he was under the impression that the respondents had waived the proceedings against him.

14. The respondents have filed their reply explaining that the applicant was considered for promotion to the post of Superintendent of Central Excise purely on ad hoc basis in view of pendency of disciplinary proceedings in accordance with the OM dt. 14.9.92 (Annexure-R1) and accordingly by Office Establishment Order dt. 25.2.94, he was promoted as Superintendent of Central Excise purely on ad hoc basis that in the meanwhile the disciplinary proceedings against him ended in imposing ^{the} penalty of withholding an increment of pay by the order dt. 4.11.97; that in accordance with the guidelines issued vide OM dt. 14.11.92 ~~that~~ they have passed the impugned order dt. 19.11.97 reverting the applicant to the post of Inspector of Central Excise.

15. They further submitted that during the pendency of the disciplinary proceedings his case for promotion was considered and recommendations of the DPC were kept in the sealed cover; that their action in reverting the applicant to the post of Inspector of Central Excise by the impugned order dt. 19.11.97 is in accordance with the guidelines contained in OM dt. 14.9.92.

16. The applicant has filed a rejoinder contending that

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since there was delay in concluding the disciplinary proceedings after the decision in O.A. 343 of 1993 he felt that the disciplinary proceedings were waived; that as per para 234(e) (i)&(iii) of the Basic Excise Manual, he was required to attend to the duties entrusted to him by the Superintendent; that the duties assigned to him by his Superintendent had been mentioned in the General Diary; that the impugned action of the respondents amounts to imposing punishment twice for the ^{same} misconduct; that earlier the disciplinary authority had taken a decision to drop the disciplinary proceedings; that OM dt. 15.10.87 are not applicable to the facts and circumstances of the present case; that the PBC Checks could not be undertaken by all the Officers without exception owing to heavy workload; that the respondent authorities consulted the C.V.C. and the C.V.C. insisted upon taking consequential action to revert him to the post of Inspector; that this fact is clear from the impugned order dt. 19.11.97; and that for the reasons stated in the O.A. the impugned orders are liable to be set aside.

17. First we will consider the order dt. 4.11.97 by which the Disciplinary Authority has imposed the penalty of withholding an increment for a period of 1 year. This is on the basis of his reasonings on the charge memo dt. 6.3.1990.

18. The applicant submits that he was under the impression that the respondent authorities had waived the disciplinary action against him after the decision in O.A.344/93. We cannot subscribe to his impression. A disciplinary proceedings initiated must conclude either in exoneration or in imposing ^{-tion} of penalty unless otherwise the Disciplinary Authority cancels the charge memo recording reasons.

19. As per the provisions of the CCS (CCA) Rules, the applicant has statutory remedy to prefer an appeal to the proper appellate authority against the imposition of punishment vide proceedings dt. 4.11.97. The applicant must exhaust that

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remedy before approaching this forum. He cannot approach this forum without exhausting all the statutory remedies available to him. The applicant, if so advised, may submit a detailed appeal to the appropriate appellate authority against the order of punishment dt. 4.11.97 within 15 days from the date of receipt of a copy of this order.

20. His submission that the imposition of penalty of withholding an increment and reversion amounts to double punishment for a single mistake, cannot be accepted. The penalty order dt. 4.11.97 is on the basis of the charge memo dt. 6.3.90. His reversion to the rank of Inspector is on account of his punishment as per the instructions contained in the OM dt. 14.9.92.

21. The learned counsel for the applicant during the course of his arguments relied upon the decision of the Hon'ble Supreme Court in the case of State Bank of India Vs. D.C. Aggarwal and Anr. reported in AIR 1993 SC 1197 to contend that the disciplinary authority while imposing the penalty vide its proceedings dt. 4.11.97 relied upon the material, that is, the opinion/report of the Chief Vigilance Commission, New Delhi without giving him an opportunity. As already observed the applicant has an alternative remedy to challenge the punishment imposed on him on 4.11.97. He has approached this Tribunal challenging the punishment dt. 4.11.97 without availing the said alternative remedy. Hence, we do not wish to express any opinion on this contention. It is for the appellate authority to take into consideration whether the disciplinary authority was justified in considering the opinion/report of the CVC without giving an opportunity to the applicant while imposing the penalty by its

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proceedings dated 4th November, 1997.

22. The applicant was promoted as per order dt. 25.2.94. purely on ad hoc basis. The respondent authorities can terminate such an ad hoc promotion by disclosing the reasons. They have disclosed the reasons in the reversion order dt. 19.11.97.

23. As regards the order of reversion dt. 19.11.97, the respondents justified their action in accordance with the OM dt. 14.9.92. In para 5(4) of the OM dt. 14.9.92, reads as follows :

"5.4 If the Government servant is not acquitted on the merits in the criminal prosecution but purely on technical grounds and Government either proposes to take up the matter to a higher court or to proceed against him departmentally or if the Government servant is not exonerated in the departmental proceedings, the ad hoc promotion given to him should be brought to an end."

The OM dt. 14.9.92 is at pages 15 to 20 to the reply.

24. Eventually, the respondent authorities considered the case of promotion of the applicant to the post of Excise Superintendent because the disciplinary proceedings initiated against the applicant could not be concluded within a certain time limit. As already observed, the charge sheet issued was in the year 1990 and it was pending for more than 4 years. Therefore, considering the representation of the applicant dt. 11.02.94 the respondents promoted the applicant to the post of Superintendent Central Excise, which was on ad hoc basis by their office order dated 25.2.94.

25. The reversion has been made in view of the OM dt. 14.9.92. We cannot find any illegality or irregularity in the order of reversion of the applicant to the post of Inspector of Central Excise. The same is in accordance with the OM dt. 14.9.92. Since the reversion has been occasioned in view of the penalty order dt. 4.11.97 and in accordance with the ^{O.M.} order dt. 14.9.92, the question of his juniors continuing in the higher grade either on regular basis or on ad hoc basis has no relevance.

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26. Hence, we issue the following direction :


(a) The applicant may, if so advised, submit an appeal to the appropriate appellate authority against the penalty order dt. 4.11.97 within 15 days from the date of receipt of a copy of this order.

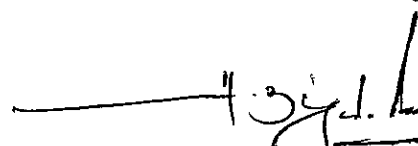
(b) His consequential reversion order dt. 19.11.97, is in accordance with the OM dt. 14.9.92.

(c) If such an appeal is received, the appropriate appellate authority shall consider the same as per rules and on merits expeditiously.

(d) The appellate authority shall provide an opportunity of personal hearing to the applicant, if he so desires.

(e) The period of the applicant's absence from duty from 12.12.1997 to 31.1.98 (or till a suitable date) needs to be regularised by the grant of such leave as may be entitled to. This should be done within 15 days from the date of receipt of a copy of this order.


(B.S. JAI PARAMESHWAR)
MEMBER (J)
14.12.98


(H. RAJENDRA PRASAD)
MEMBER (A)

Dated, the 14th December, 1998.

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copy to: -

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23/12/98

II COURT

TYPED BY
COMPARED BY

CHECKED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

H. Lyndra Prasad
THE HON'BLE SHRI ~~R. RANGARAJAN~~ : M(A)

AND

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

DATED: 12/12/98

ORDER/JUDGMENT

MA/R.A./C.P.No.

in

DA. NO.

1636/97+

ADMITTED AND INTERIM DIRECTIONS ISSUED
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

Disputed

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