

3. The Deputy Collector (P&V), Central Excise & Customs, Office of the Collector, Central Excise & Customs, N.C.R.B, Jaipur.

... Respondents.

Mr. Mahendra Shah, Counsel for the applicant.

Mr. Vijay Singh, Adv., Brief holder for Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM:

Hon'ble Mr. Justice B.S. Raikote, Vice Chairman

Hon'ble Mr. Gopal Singh, Administrative Member

: O R D E R :

(Per Hon'ble Mr. Justice B.S. Raikote)

Applicant, Shri M.K. Gautam, has filed application No. 24/93 under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the impugned order at Annexure A/1 dated 09.12.92 with all consequential benefits. He has also filed another O.A. No. 450/93, challenging the suspension order (Annexures A/1 & 2) and also the order (Annexure A/3) by which the amounts payable under Rule 54 of F.Rs. are determined, and contended that thesee orders are contrary to the F.R. Rules 51, 53 and 54.

2. Taking up the O.A. No. 24/93, we find that by the impugned order vide Annexure A/1 dated 09.12.92, the applicant has been reduced from the post of Inspector to the post of Tax Assistant until he is found fit by the competent authority to be restored to the grade of Inspector, with a further rider that in the event of his re-promotion as Inspector, the applicant would not regain his original seniority in the grade of Inspector.



3. The learned counsel for the applicant contended that though the appeal lies against the impugned order vide Annexure A/1, but he has not preferred such appeal only because the authority which initiated the disciplinary proceedings and which passed the impugned order vide Annexure A/1 is an authority, lacking jurisdiction. He further contended that the Collector was competent to initiate the proceedings, but not the Deputy Collector or Additional Collector. Therefoe, the impugned order is without jurisdiction and is liable to be set aside. He also stated that the Collector was prejudiced against the applicant inasmuch as he exercised undue pressure to complete the enquiry quickly, and as such, the enquiry was not conducted fairly by giving reasonable opportunity to the applicant. The learned counsel for the applicant further submitted that by overlooking the remedy of appeal available to the applicant, this application could be entertained and an appropriate order could be passed. In order to show that the Collector was the competent authority to initiate the disciplinary proceedings and pass an appropriate order against the applicant as Inspector, the applicant relied upon his promotion order from the post of Upper Division Clerk to the post of Inspector, on adhoc basis, vide Annexure A/24 dated 15.10.93. He elaborated his contention saying that the applicant thus being promoted by the Collector, the disciplinary proceedings should have been initiated only by the Collector but not by any authority lower than the Collector. Therefore, the impugned order is liable to be set aside. As against this contention, the respondents contended by filing the reply, that the Additional Collector or the Deputy Collector are the competent authority to initiate the disciplinary proceedings and to impose punishment with regard to the post of Inspector, which the applicant had occupied. The learned counsel for the respondents elaborated his contention stating that the post of Deputy Collector of the Central Excise & Customs is redesignated as the Additional Collector vide Annexure R/2 dated 7.3.91, and thus, he contended that the post of Deputy

Collector and the Additional Collector are equivalent. The learned counsel for the respondents also relied upon the order of the Deputy Collector (Per. & Estt.) dated 12.10.84, contending that vide this order, the applicant was promoted from the post of Upper Division Clerk to the post of Inspector on regular basis. Thus, the Dy. Collector, being the promoting / appointing authority of the applicant, he was the competent disciplinary authority to initiate proceedings and impose appropriate punishments. The order of the Collector vide Annexure A/24 dated 15.10.83 relied upon by the applicant, was only an adhoc promotion in order to meet exigencies of the circumstances, and it was not a regular promotion. But the regular promotion of the applicant was made only vide subsequent order dated 12.10.84. It is the regular promotion that determines the disciplinary authority of the applicant as Additional Collector, but not the adhoc promotion order given by the Collector. Therefore, the Deputy Collector/ Additional Collector was competent to pass the impugned order. The respondents' counsel also submitted that as per the Government notification dated 17.06.72, the appointing authority and the disciplinary authority for all posts equal to or below the rank of the Inspector, Assistant Collector (Headquarters) has been prescribed as competent authority and the Collector is the appellate authority. He also submitted that vide subsequent notification dated 07.05.83, for all the posts of Gr. 'C' and 'D' officers in Central Excise & Customs Department, the Deputy Collector is made as appointing authority and disciplinary authority, and the Collector is made as appellate authority. On the basis of the said notifications, he contended that the Deputy Collector / Additional Collector was the competent authority for initiating disciplinary proceedings as well as passing the impugned order of punishment. In these circumstances, the applicant should have preferred an appeal before the Collector, and this application is liable to be dismissed on the ground of alternative remedy only. Having gone through the records produced before us, we find substance in the

contentions of the respondents.

4. The fact that the applicant was promoted as Inspector on regular basis vide order dated 12.10.84 is not disputed. This order dated 12.10.84, the applicant has specifically suppressed. It is only the respondents have produced the same before us and we have taken the same on record. From the reading of this order vide No. 233/84 dated 12.10.84 issued by the Central Excise Collectorate, it is clear that the applicant has been promoted from the post of Upper Division Clerk to the post of Inspector in the pay scale of Rs. 425-800. It is also noted in the order that applicant's promotion as Inspector vide orders dated 15.10.83 and dated 16.03.84 was on purely adhoc and provisional basis, and by the said order dated 12.10.84, his promotion was made on regular basis with immediate effect. This order also contains the names of some persons, who were not given any adhoc promotion, but who were also promoted by this order. It also determines the seniority amongst the officers, who were promoted on adhoc basis, and those who were promoted by the first time. The point to be noted in this case is that the applicant though promoted earlier on adhoc basis, has been given lower ranking to the person, by name Shri V.K. Soni, who was for the first time promoted by this order dated 12.10.84. Thus, it becomes clear that the applicant was promoted as Inspector on regular basis only by the order of the Dy. Collector dated 12.10.84. If that is so, the Dy. Collector being as promoting/appointing authority, was competent to initiate disciplinary proceedings against the applicant. His adhoc promotion earlier was out of turn, overlooking his senior, by name Shri V.K. Soni, and hence absolutely has no consequence. Therefore, the contention of the applicant that the impugned order passed by the Dy. Collector is without jurisdiction, cannot be accepted. Moreover, vide order dated 07.03.91 (Annexure R/2), all the Deputy Collectors of Customs & Central Excise are re-designated as Additional Collectors. If that is so, the post of Dy.

Collector and Additional Collector are one and the same. But the applicant in his application at ground no. (e) had tried to confuse this Tribunal, by stating that the Deputy Collector and the Additional Collector are two different authorities. Moreover, in earlier occasion, against the order of the Dy. Collector the applicant had preferred an appeal before the Collector, and the Collector had remanded the appeal to the Deputy Collector only because there was change in the designation vide Government of India Notification dated 7.3.91 (Annexure A/2). Therefore, the Dy. Collector and the Additional Collector are one and the same authority, and they were the competent authorities. Apart from that we also notice from the CCS (CCA) Rules, 1965, that the appointing authority and the disciplinary authority was the Deputy Collector / Additional Collector and the appellate authority was Collector. Vide notification dated 17.06.72, the Schedule in Part II, appended to the Rules, provided that for Class III Non-Ministerial staff, all the posts equal to or below the rank of Inspector, the Assistant Collector (Headquarters)² was prescribed as appointing authority and disciplinary authority under column No. 2 and 3 for imposing all the penalties and under column No. 5, the Collector of the Central Excise is prescribed as appellate authority. Meanwhile, there was a change in the designations, and therefore, a subsequent notification was issued on 07.05.83 by modifying Part-II of the Schedule. By this notification, for all the posts of Gr. 'C' and 'D', the Dy. Collector of Central Excise was made both as appointing authority and the disciplinary authority for all the penalties contemplated under the Rules. It is also made clear that the Collector of Central Excise is the appellate authority. Thus, it is clear that even on the basis of these statutory rules, the Dy. Collector / Additional Collector was the competent authority to initiate the disciplinary proceedings and pass the impugned order of punishment and the Collector was the appellate authority. Therefore, the contention of the applicant that the impugned order being passed by an incompetent

officer, he can directly approach this Tribunal, cannot be accepted. For the same reasons, it cannot be accepted that the Collector is not the appellate authority. In these circumstances, the applicant should have preferred an appeal before the Collector, Central Excise. In fact, earlier when the Dy. Collector passed an order of punishment, he had preferred an appeal before the Collector of Central Excise & Custom, and also had preferred an OA No. 187/91. But the said appellate authority had remanded the matter to the disciplinary authority on the ground of non-furnishing of the enquiry report to the applicant. As a consequence, O.A. No. 187/91 was dismissed as withdrawn by the applicant. In other words, the applicant himself had availed of the alternate remedy by filing an appeal earlier without taking any such contention that the Collector was not the appellate authority. It was only after passing of the impugned order, after remand, the applicant is contending that the Collector was not the competent authority to entertain the appeal. As we have stated above, the Additional Collector was competent authority to issue the impugned order, and the applicant should have preferred an appeal before the Collector. The other ground urged by the applicant's counsel that the Collector was prejudiced because he had earlier directed to complete the enquiry within one month, cannot be accepted. Having regard to the fact that the charges relate to the year 1990, if the Collector directs to complete the enquiry expeditiously, it cannot be said that there is any prejudice against the applicant. Therefore, the applicant should have availed of alternate remedy, instead of filing this OA before this Tribunal on untenable grounds.

5. Under Section 20 of the Administrative Tribunals Act, 1985, this Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of his grievances. In the instant case, the applicant has an alternate remedy of appeal before

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cannot be accepted. For the Collector. In these circumstances, it is difficult for this Tribunal to entertain this application directly and dispose of the same when the applicant has an efficacious remedy of appeal before the Collector. In fact, the jurisdiction of the appellate authority is wider than the jurisdiction of this Tribunal in the sense that the appellate authority can reassess the evidence and reappreciate the entire case, and the jurisdiction of the Tribunal is only supervisory wherever there is an error apparent on the face of the record. In this view of the matter, we do not propose to consider the application on merits. Moreover, the Full Bench of the Central Administrative Tribunal, Hyderabad Bench, by its judgement and order dated 12.04.90 in OA No. 27/1990 (B. Parameshwara Rao vs. The Divisional Engineer, Telecommunications, Eluru and Another) reported in Full Bench Judgement of Central Administrative Tribunal (1989-91) Vol. II at page 250, by following the judgement of Hon'ble the Supreme Court in S.S. Rathore vs. State of M.P. (AIR 1990 SC 10), has held that an application under Section 19 of the Administrative Tribunals Act, 1985, cannot be entertained without exhausting the remedy of appeal. The said judgement also has noted its dissent against the judgement of C.A.T, Chandigarh Bench in Sital Singh vs. Union of India & Ors 1989 (1) SLJ 414 (CAT). In view of this judgement, we cannot entertain this application by-passing the remedy provided under Section 20 of the Administrative Tribunals Act, 1985. The Full Bench has held that the word "ordinarily" found in Section 20 of the Act cannot be understood "usually". It observed that :

"17. In view of the above, the power to entertain an application under Section 19 of the Act even before exhaustion of the statutory remedy of appeal etc., in service matters is not the usual feature but an extraordinary, unusual or uncommon feature. As indicated above, this power to entertain an application under Section 19 of the Act even before availing of the remedy provided by statute or statutory rules cannot be exercised generally or always. The statutory right of appeal has to be exhausted before the Application under Section 19 of the Act is admitted by the Tribunal in exercise of its power under Section 20 of the Act."

"18. This leads to the conclusion that no Application under Section 19 of the Act should ordinarily be admitted by the Tribunal unless

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the applicant has exhausted the remedy as indicated above. In other words, normally, and usually, such Application will be rejected or declined as pre-mature. However, where the Tribunal exercises its discretion treating it to be exceptional or extraordinary case as contrasted to the word "ordinarily", it may be entertained and admitted against subject to other provisions of the Act."

The Full Bench for its above conclusion sought support from the judgement of Hon'ble the Supreme Court in S.S. Rathore vs. State of Madhya Pradesh (supra), in which by interpreting Section 20 of the Administrative Tribunals Act, 1985, the Apex Court held as under:-

"The rules relating to disciplinary proceedings do provide for an appeal against the orders of punishment imposed on public servants. Some Rules provide even a second appeal or a revision. The purport of Section 20 of the Administrative Tribunals Act is to give effect to the Disciplinary Rules and the exhaustion of the remedies available thereunder is a condition precedent to maintaining of claims under the Administrative Tribunals Act. (Emphasis supplied)

In view of the above judgements, the application No. 24/93 is liable to be disposed of by directing the applicant to prefer an appeal before the Collector of Central Excise/Customs.

6. Coming to his other application in OA No. 450/93, we find that the applicant again has a remedy of appeal under Order 23 Rule (e) and (f) of CCS (CCA) Rules, 1965. For the reasons recorded in O.A. No. 24/93, we cannot entertain this application also, and accordingly, there should be a direction to the applicant in this application also to prefer an appeal before the appropriate authority. We make it clear at this stage itself that we have not expressed any opinion on the merits of the case except that the disciplinary authority (Dy. Collector / Additional Collector) is competent to pass the impugned order and appeal lies to the Collector as an appellate authority. The other contentions of both the parties are kept open.

7. For the above reasons, we pass the order as under:-

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"Both the OA No. 24/93 and O.A. No. 450/93 are hereby disposed of with a direction to the applicant that he shall prefer an appeal in both the cases to the appropriate authority within a period of two months from today. If the applicant prefers these appeals within that period, the concerned appellate authority shall dispose of the same by passing a speaking order within a period of three months from the date of presentation of such appeals. There shall be no order as to costs."

Gopal Singh

(GOPAL SINGH)
Adm. Member

B.S. Rai

(JUSTICE B.S. RAI) (REDACTED)
Vice Chairman

cvr.