

CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 291/00520/2014
WITH
MISC. APPLICATION NO. 291/00003/2015

DATE OF ORDER: 07.01.2015

CORAM

HON'BLE MR. B.V. RAO, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Mahipal Yadav S/o late Banwari Lal, aged about 57 years, by caste Ahir, R/o 13, Yadav Nagar, Nine Shop Panipech, Jaipur-16, presently working as Superintendent (Appeal-II), O/o the Commissioner, Central Excise (Appeal-II, NCRB, Jaipur.

...Applicant

Applicant present in person.

VERSUS

The Commissioner, Central Excise Jaipur-I, NCRB, Statue Circle, Jaipur.

...Respondent

Mr. V.K. Pareek, counsel for respondent.

ORDER
(Per Mr. B.V. Rao, Judicial Member)

The applicant has filed the present Original Application under Section 19 of the Administrative Tribunals Act, 1985 praying for quashing and setting aside the impugned charge-sheet / memorandum dated 08.08.20014 (Annexure A/1).

2. Brief facts of the case as stated by the applicant in person are that he is working as Superintendent under the Commissioner, Central Excise (Appeal-II).



3. The Disciplinary Authority for issuing charge-sheet and imposing penalty for the post of Superintendent is the Commissioner of Central Excise and Customs as per CCS (CCA) Rules, 1965. On August, 08, 2014 (Annexure A/1), Dr. Sandeep Srivastava, Commissioner, Central Excise, Jaipur-I issued a charge-sheet proposing to hold an inquiry against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dr. Sandeep Srivastava was promoted as Commissioner, Customs and Central Excise on 28.01.2011 (Annexure A/2) purely on ad hoc basis for a period of one year. The said period was extended upto 31.03.2014 vide order dated July, 08, 2013 (Annexure A/3). After 31.01.2014 onwards, there is no order for his continuing as Commissioner.

4. The applicant stated that Dr. Sandeep Srivastava has no authority to perform statutory duties of a Commissioner and is not a Disciplinary Authority to issue charge-sheet in view of MHA OM dated 24th January, 1963. The applicant further stated that according to OM dated 24th January, 1963, an officer appointed to perform the current duties of a post can exercise administrative or financial power vested in the full-fledged incumbent of the post but he cannot exercise statutory powers whether those powers are derived direct from an Act of Parliament or Rules,



Regulations and Bye-Laws made under various Articles of the Constitution (e.g. Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.).

5. The applicant also stated that the impugned charge-sheet has been issued without material against him. He has replied the charge-sheet / Memorandum dated 08.08.2014 vide reply dated 21.08.2014 (Annexure A/6).

In his reply, he has stated that Dr. Srivastava highlighting his incompetency and incapacity qua Commissioner to issue the charge-sheet as well as absence of material to proceed against the applicant and requested to drop the proceedings initiated against him, however, Dr. Sandeep Srivastava proceeded and appointed Inquiry Officer to conduct open inquiry vide order dated 03.09.2014 (Annexure A/7).

6. The applicant also stated that the impugned charge-sheet has been issued by Dr. Sandeep Srivastava to mar the applicant's promotional aspect.

7. The applicant has challenged the impugned charge-sheet on the ground that any disciplinary action initiated under CCS (CCA) Rules, 1965 can only be taken by an officer holding a substantive post in term of MHA OM



dated 24.01.1963. Dr. Sandeep Srivastava is not holding substantive post of Commissioner in Central Excise and Customs department. The charge-sheet has been issued by Dr. Sandeep Srivastava, who was not Commissioner on the date of issue of charge-sheet, hence, he is not the appointing as well as the Disciplinary Authority of the applicant. The charge-sheet has been issued without application of mind and has proved the applicant guilty before reply or conducting inquiry into the matter. Hence, the applicant prayed for quashing and setting aside the impugned charge-sheet / memorandum dated 08.08.20014 (Annexure A/1).

8. On the contrary, the respondents have filed their written reply. In their written reply, they have taken preliminary objections submitting that no order as mentioned in clause (a) of sub-section (2) of Section 20 of the Administrative Tribunals Act, 1985 has yet been passed in the matter and since the applicant has only been issued the Memorandum of Charge-sheet dated 08.08.2014 (Annex. A/1) and only an inquiry officer has been appointed to enquiry into the matter and appropriate order would be passed by the competent authority, hence, this O.A. is premature and is liable to be dismissed as such. Further, the applicant has not challenged the order dated



03.09.2014 appointing the inquiry officer, hence, this O.A. challenging the impugned charge-sheet is not sustainable and is liable to be dismissed as such. The Hon'ble Apex Court has held in catena of judgments that the Court/Tribunal may not interfere in disciplinary proceedings matters while charge-sheet has been issued.

9. The respondents have further submitted that the impugned memorandum of charge-sheet dated 08.08.2014 (Annex. A/1) has been issued by the competent authority. The transfers and postings in AGT-2013 in the grade of Commissioner of Customs and Central Excise were ordered with the approval of the competent authority vide order dated 18.06.2013 until further orders. Dr. Sandeep Srivastava, Commissioner was transferred from NOIDA CX to Jaipur CX-I under the said order dated 18.06.2013 and has been functioning as such since then. Both the orders i.e. the order dated 18.06.2013 and 08.07.2013 were issued with the approval of the competent authority. Vide order dated 08.07.2013, the ad hoc promotions in the grade of Assistant/Deputy Commissioners during the period 1997 to 2013 were extended till 31.03.2013. Similarly, the ad hoc promotions in the grade of Joint Commissioner / Commissioners during the period 1999 to 2013 were extended till 31.03.2014.



10. The respondents have further submitted that the provisions of MHA OM dated 24.01.1963 are not applicable in the instant case inasmuch as the Disciplinary Authority i.e. Dr. Sandeep Srivastava already promoted to the grade of Commissioner in 2011 was transferred to CX-I vide order dated 18.06.2013 with the approval of the competent authority and until further orders. Therefore, he is competent to exercise all the statutory powers vested in him including those of a Disciplinary Authority.

11. The respondents have also stated that the impugned charge-sheet was issued on the basis of the investigation made by the Directorate General of Vigilance (NZU), New Delhi. Considering the facts and circumstances of the case, it was decided to conduct the inquiry by appointing an Inquiry Officer.

12. The respondents submitted that the contention of the applicant that Dr. Sandeep Srivastava is not holding a substantive post is not justified because the officer was transferred with the approval of the competent authority even before the issuance of the order dated 08.07.2013.

13. The respondents have also stated that the charge-sheet was issued on the basis of the material available



on record. The allegation that the charge-sheet has been issued without application of mind and has proved the applicant guilty before reply or conducting inquiry into the matter is not sustainable inasmuch as merely framing a charge against a Govt. servant does not make him/her guilty of any offence as the charge(s) are to be inquired into by the independent Inquiry Officer. At this stage, the charges are neither proved nor dis-proved. Thus, the applicant has not exhausted all the channels and, therefore, the charge-sheet dated 08.08.2014 is not liable to be quashed by the Hon'ble Tribunal. Therefore, the present Original Application is liable to be rejected.

14. The applicant has also filed a rejoinder. In the rejoinder, the applicant has stated that under sub-section 1 of Section 20 of the Administrative Tribunals Act, 1985, Hon'ble Tribunal has unqualified and unrestrained powers to restore justice to aggrieved person where an incompetent authority has initiated any action on non-existing materials in malicious exercise of powers which intends to cause gross miscarriage of justice to the aggrieved person. Dr. Sandeep Srivastava has no order from the competent authority or Hon'ble President of India to exercise statutory power of the higher rank / post of the Commissioner from 01.04.2014 till date. In absence of promotion order, Dr.



Sandeep Srivastava is meant to officiate at higher post of Commissioner purely to look-after the day to day routine work of non-statutory nature. Thus, Dr. Sandeep Srivastava is not the Disciplinary Authority for Group 'B' Officers (Gazetted) in terms of CCS (CCA) Rules. Dr. Sandeep Srivastava is / was not competent to issue the impugned charge-sheet, therefore, he has exceeded his jurisdiction.

15. We have heard the applicant in person as well as the learned counsel for the respondents and perused the documents available on record.

16. The only issue to be decided in this OA is whether the impugned charge sheet dated 08.08.2014 at Annexure A/1 is sustainable under the law ?

17. While answering the above issue we have gone into the factual position which reveals and also not denied by the respondents that Dr. Sandeep Srivastava, Commissioner, Central Excise Jaipur-I issued the charge sheet which is under challenge (A/1) proposing to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965 on 8.8.2014. Admittedly, Dr. Sandeep Srivastava was promoted as Commissioner, Customs and Central Excise on 28.01.2011 (Annexure A/2) purely on ad-hoc basis for a period of one year.

The same was extended upto 31-03-2014 vide order dated 07.08.2013 (A/3). Admittedly, there is no order for continuing Dr. Sandeep Srivastava as Commissioner after 31.01.2014. The applicant in para 4.4 of the OA had taken a strong ground and relied upon MHA OM dated 24th January, 1963 and he mainly contends that as per the OM Dr. Sandeep Srivastava, Commissioner was not a competent authority to issue the charge memorandum. The applicant reproduced the relevant portion of the OM dated 24.1.1963 at para 4.4 in the OA which is as under :

“Officers performing current duties of a post cannot exercise Statutory powers under the Rules :-

An officer appointed to perform the current duties of an appointment can exercise administrative or financial power vested in the full-fledged incumbent of the post but he cannot exercise statutory powers, whether those powers are derived direct from an Act of Parliament (e.g. Income Tax Act) or Rules, Regulations and Bye-Laws made under various Articles of the Constitution (e.g. Fundamental Rules, Classification, Control and Appeal Rules, Civil Service Regulations, Delegation of Financial Powers Rules etc.)”

18. We have also carefully gone through the reply statement wherein the respondents simply denied the contention of the applicant and they contents that the contents of OM dated



24.01.1963 are not applicable in the instant case as the disciplinary authority Dr. Sandeep Srivastava was already promoted to the grade of Commissioner in the year 2011 and was transferred to Jaipur CX-I vide order dated 18.06.2013 with the approval of the competent authority until further orders. A plain reading of the reply statement shows that the respondents mainly relied upon the transfer order No. 138/2013 dated 18.06.2013 of Dr. Sandeep Srivastava by which he was transferred with the approval of the competent authority until further orders. Relying on this transfer order the respondents argued that Dr. Sandeep Srivastava is competent to exercise all the statutory powers vested in him including those of disciplinary authority but the respondents did not file any material or documents to prove that Dr. Sandeep Srivastava's tenure or period as Commissioner of Customs and Central Excise was extended after 31.1.2014. The competent authority had given their approval to the order dated 18.06.2013 by which Dr. Sandeep Srivastava was transferred. The respondents cannot treat the approval for transfer for the purpose of exercising the statutory powers which is against the MHA OM dated 24.01.1963. In the absence of any document or material in respect of extension or continuation of Dr. Sandeep Srivastava as Commissioner of Customs and Central Excise after 31.01.2014 we cannot agree with the stand taken by the respondents and we hold that Dr. Sandeep Srivastava,



Commissioner Customs and Central Excise is not at all competent to issue charge memo dated 08.08.2014 in the absence of order for his continuation as Commissioner after 31.1.2014. Hence, in view of the above position we hold that the impugned charge memo dated 08.08.2014 at Annexure A/1 is not legally sustainable.

19. In view of the above position and after considering the pleadings and material on record the impugned charge memo dated 08.08.2014 (Annexure A/1) is liable to be quashed and set aside and accordingly the same is quashed and set aside.

20. In result the OA is allowed with no order as to costs.

21. MA No. 291/00003/2015 is ordered accordingly.

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

B.V.Rao
(B.V.RAO)
JUDICIAL MEMBER

Kumawat/MD