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29.11.2006

OA No. 151/2002

None present for applicant.

Mr. Balveer Singh, Proxy counsel for
Mr. Gaurav Jain, counsel for respondents.

There is bereavement in the family of the original counsel.
Let the matter be listed for hearing on 15.01.2007.


J.P. SHUKLA
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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15.1.07

Mr. C.B. Sharma, Counsel for applicant
Mr. Gaurav Jain, Counsel for respondents.

Heard the learned counsel for
the parties.

order reserved


(J.P. Shukla)
M(A)


(M.L. Chauhan)
M(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JAIPUR BENCH, JAIPUR

Jaipur, the January 17th, 2007

ORIGINAL APPLICATION NO. 151/2002

CORAM:

HON'BLE MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

HON'BLE MR. J.P. SHUKLA, MEMBER(ADMINISTRATIVE)

S.S. Jhajharia son of Shri Bhana Ram, aged about 38 years, resident of Quarter No. 5, Customs Colony, Ratanada, Jodhpur, at present employed on the post of Inspector Central Excise in the Office of Assistant Commissioner, Central Excise, Division Jodhpur.

By Advocate: Mr. C.B. Sharma

....Applicant

Versus

- 1 Union of India through Secretary to the Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
- 2 Chairman, Central Board of Excise and Customs, North Block, New Delhi.
- 3 The Commissioner, Central Excise, Jaipur, Statue Circle, Jaipur.
- 4 Additional Commissioner (Personnel & Vigilance), Cadre Control Unit, Central Excise Commissionerate, Jaipur, Statue Circle, C-Scheme, Jaipur.
- 5 The Joint Commissioner (P&V), Office of the Commissioner, Central Excise, Statue Circle, Jaipur.

By Advocate: Mr. Gaurav Jain.

....Respondents.

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:

"(i) That the impugned order dated 17.06.99 Annexure A 5, being Charge Sheet under Rule 14 of CCS(CCA) Rules, 1965 and all other subsequent proceedings including the Inquiry Report, the order passed by the Disciplinary Authority and dated 27-12-2000 and the order dated 21-01-2002 passed in appeal may be quashed and the Applicant be ordered to be put in the same position no such impugned order had ever been passed against him besides awarding all consequential benefits.

(ii) That any other direction or orders may be passed in his favour which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the cost of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant while working as Inspector, Central Board of Excise and Customs, Jaipur, was served a charge sheet under Rule 14 of the CCS(CCA) Rules, 1965 vide Memorandum dated 17.06.1999 (Annexure A/5). The charge against the applicant was that he on 24.05.1999, he alongwith his colleagues made a joint representation to the Chairman, Central Board of Excise & Customs, New Delhi wherein they have leveled serious allegation against their seniors and have baselessly criticized the decision taken by them. It was further stated that the applicant has violated the instructions of Government of India vide Circular No. 305 dated 21.02.1967 barring thereby an employee of making a joint representation. Thus the applicant has violated the provisions of Rule 3(1)(iii) of the CCS (Conduct) Rules, 1964. Alongwith the charge sheet, the respondents have also annexed the relevant statement of imputation of misconduct or misbehaviour in support of the articles of charges against the applicant whereby the relevant extract of the paras of representation whereby the applicant has criticized the decisions of Seniors with regard to transfers and postings of Group 'C' Officers was also reproduced. The applicant submitted the reply to the charge sheet. Subsequently, the respondents proceeded with the Inquiry by appointing an

Inquiry/Presenting Officer. Feeling aggrieved by the action of the respondents, some of the applicants have filed six OAs (judgement at Page Nos. 69 to 73 of Paper Book) before the Jodhpur Bench of this Tribunal thereby praying that the impugned order dated 17.06.1999 (Annexure A/1), charge sheet under Rule 14 of CCS(CCA) Rules, 1964 and all consequent proceedings including the orders Annexure A/2 and A/3 dated 23.08.1999, appointment of Inquiry/Presenting Officer, may be declared illegal and be quashed. In the alternative, the applicants have prayed that the competent authority may be directed to take up the matter with the Government for nomination of ad hoc disciplinary authority by Presidential order and to complete the proceedings in accordance with the rules with all consequential benefits. However, at initial stage, while issuing notices, Inquiry proceedings were not stayed. The only interim relief which was granted to the applicants was that till the next date, the respondents authority may not pass any final order in the inquiry, which has been challenged before the Tribunal. The Tribunal ultimately dismissed the OA and had categorically held that it cannot be said that the charge sheet served upon the individual applicant is absolutely baseless and is mala fide one. The Tribunal declined the request of the applicant for the appointment of ad hoc disciplinary authority and the OA was dismissed as premature and the interim order was also vacated. Thereafter the Inquiry Officer submitted his report holding the applicant guilty of the charges, copy of the Inquiry report was given to the applicant and the Disciplinary Authority vide order dated 27.12.2000 (Annexure A/11) passed a reasoned and speaking order holding the applicant guilty in violation of provisions 3(1)(iii) of the CCS (Conduct) Rules, 1964 and instead of awarding major penalty, the Disciplinary Authority imposed the minor penalty of withholding of one increment of applicant's pay without cumulative effect under Rule 11(iv) of the CCS (CCA) Rules, 1965 with effect from the next date of increment. The applicant filed a departmental appeal, which was rejected vide order dated 21.01.2002 (Annexure A/13). It is these orders which have been challenged by the applicant in this OA.

3. Notice of this Original Application was given to the respondents. The respondents have filed their reply. In the reply, they have categorically stated that full opportunity was extended to the applicant during the inquiry proceedings. It is further

stated that copy of the instructions dated 21.2.1967 was also supplied to the applicant. Not only this, the applicant thereafter submitted his defence to the Disciplinary Authority/ Inquiry Officer thereby relying upon the Circular dated 21.2.1967. It is further stated that even in the reply dated 7.6.1999, the applicant did not contain any denial of making a joint representation and he sought extra time of 14 days to reply to the Memorandum. It is further stated that the extension was denied to the applicant vide letter dated 08.06.1999. He again wrote a letter dated 09.06.1999 for extension of time and also raised certain queries but again there was no denial of making a representation by the applicant. According to the respondents, in case the applicant has not made any representation, there was no need for him to seek extra time for submitting the reply to the Memorandum. Not only this, the applicant has also filed a OA before the Hon'ble CAT, Jodhpur Bench assailing the charge sheet and subsequent proceedings taken up by the Disciplinary authority. In that OA, the applicant has submitted in unequivocal terms that he alongwith his twelve colleagues had submitted a detailed and self explanatory representation to the Chairman, Central Board of Excise & Customs vide letter dated 24.05.1999. The respondents have further stated that the applicant was also confronted with the fact that in the OA before the Jodhpur Bench, he has admitted the fact of having making a representation to the Chairman vide letter dated 24.05.1999 whereas thereafter he has submitted that no such representation was made by him. The explanation given by the applicant was that the OA filed before the Hon'ble Tribunal was drafted by the counsel who had ignorantly made a mistake by not adding the word "alleged" before the word representation. Thus according to the respondents, such representation of the applicant cannot be taken into consideration. It is further stated if such a plea of the applicant is accepted, the same amount to committing a criminal offence as nobody can place wrong facts before the Court of law, particularly when the facts are sworn by an Affidavit. Thus according to the respondents, charges against the applicant have been fully proved.

4. The applicant has filed rejoinder, reiterating the facts as stated in the OA.

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5. We have heard the learned counsel for the parties and have gone through the material placed on record.

6. The main thrust of the learned counsel for the applicant in this case is that making joint representation to the Chairman do not constitute a mis-conduct and for that purpose, reliance has been made to the decision of CAT, Ahmedabad Bench in the case of I.I. Ajab vs. Union of India & Others, 2003(2) ATJ 385. We have given thoughtful consideration to the submission made by the learned counsel for the applicant. The case relied upon by the learned counsel for the applicant is not applicable to the facts & circumstances of this case. That was a case where individual employee had written a letter to the higher authorities informing him about the certain allegations made by the Additional Superintendent during his meeting with him in his presence about demanding bribe by GM for securing a posting at Ahmedabad and also for getting extension for himself at Rajkot. It was under these context that this Tribunal held that writing letter to the higher authorities cannot be treated as mis-conduct particularly when there is no evidence on record to show that the same was intentional or the allegation made on such a charge would be unlawful and illegal. It was further observed that there was no evidence to prove that the allegations were false & baseless and they were made knowingly by the applicant. It was under these circumstances, the Bench held that writing a letter about the alleged allegation of crime cannot be construed to be a misconduct. In the case before the Ahmedabad Bench, violation of Circular No. 305 dated 21.2.1967 was regarding a joint representation from Govt. servant which was construed to be subversive of discipline was not a issue. As such, the aforesaid judgement is of no assistance to the applicant. The circular dated 21.2.1967 prohibits of making a joint representation and not an individual representation which every Government servant can make to the higher authorities and in his own name. Thus the ratio as laid down by the Ahmedabad Bench in the case of I.I. Ajab (supra) is not applicable in the instant case. In this case, the charge leveled against the applicant was that he has leveled serious allegation on his superior officers in violation of Circular No. 305 dated 21.02.1967. At this stage, it will be useful to quote Circular No. 305 dated 21.02.1967 issued by the government of India, which reads as under:-

"Joint representation from Government servants to be viewed as subversive of discipline – A question was raised whether Government servants could submit joint representation in matters of common interest and if so whether these representations should be entertained by Government. The matter was examined in consultation with the Ministry of Home Affairs and it has been held that making of joint representation by Government servants should be viewed as subversive of discipline and such representation should not, therefore, be entertained. Every Government servant making a representation should do so separately and in his own name."

6. At this stage it will also be useful to quote the offending part of paras in the joint representation as find mention in the statement of imputation of misconduct or misbehaviour (Annexure II) wherein the applicant and other persons leveled serious allegations against the officers of the Department , which thus reads as under:-

"Shri O.P. Soni, Inspector, Central Excise, Jodhpur from whom an option form was filled and faxed to the powers that be, who incidentally also made three telephone calls in this regard, and the reason for this is not difficult to find. During the powers that be 's tour/vacation alongwith his family in Jodhpur he was looked after by this said Inspector.

But we see that those in the good books of the senior officers get plum and lucrative field postings whereas those who have no godfathers or those who do't cozy up to the officers invariably end up at table postings and remain there till kingdom come. Why is this so? Is this not anything but a brazen display of corruption. If this isn't then we don't know what is."

7. Thus from the reading of the instructions as well as the portion of allegation reproduced hereinabove, the question which requires our consideration is whether the act of the applicant amounts to mis-conduct. From the perusal of the circular as well as from the allegation as leveled above, we are of the view that the action of the applicant amounts to mis-conduct within the provisions of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964 and the applicant has acted in a manner which is unbecoming of a Government servant. Making a joint representation to the higher authorities is in violation of Circular dated 21.02.1967 whereby, inter-alia, it has been stated that making a joint representation

by a Government servant should be viewed subversive of discipline. That apart, the applicant and other persons have also filed an OA before the Jodhpur Bench wherein they have prayed for quashing of the charge sheet and also the order whereby the Department has appointed Inquiry officer and Presenting Officer. Not only this, the applicant has also made alternatively prayed for appointing another Disciplinary Authority. The contention of the applicant was rejected by the Tribunal. At this stage, it will be useful to quote Para 8 of the judgement, which reads as under :-

“8. From the above Circular, it appears that joint representation in matter of common interest is treated as subversive of discipline and consequently the applicants have been charge sheeted. It cannot be said that the charge sheet served on individual applicant is absolutely baseless and is mala fide one. At this stage, it cannot be said as to what view would be taken by the disciplinary authority ultimately, therefore, the apprehension of the applicants that they would not get a fair deal, has no foundation in our opinion. It was argued by the learned counsel for the applicants that the respondents be directed to take action for appointment of ad hoc disciplinary authority as the present disciplinary authority may not be able to deal with the matter fairly as the presentation is relating to the departmental policy of transfer and absence of specific policy may be taken to be an allegation against the seniors. We have considered this aspect also. We do not think that respondents are required to be directed at this stage for taking steps relating to appointment of ad hoc disciplinary authority. If during the course of inquiry or disciplinary action, the applicants fell aggrieved in this regard they are free to agitate the matter at the appropriate level for appropriate orders. Any order by us in this regard would be only conjectural or based on surmises, therefore, alternative prayer of the applicants has no substance.” (Emphasis ours)

8 Thus from the finding, as given above, which has attained finality and finding record by us in Para 7 above, it is not open for the applicant to contend that the action of the applicant does not constitute misconduct. Thus we are of the firm view that applicant has not made out any case for our interference. The factum that the applicant and other persons have made a joint representation to the higher authorities is not seriously disputed by the applicant and indeed cannot be disputed inasmuch as the applicant has himself placed the joint complaint as Annexure in the earlier OA before the Jodhpur Bench where the factum of having made a joint representation to the Chairman, Central Board of Excise & Customs, New Delhi has not been disputed. Rather in the OA the

applicant has pleaded the factum of making representation to the Chairman and also relying upon the said representation while annexing the copy of same as part of the OA for the purpose of quashing of the charge sheet. Now the ipse-dixit of the applicant that the said OA was not properly drafted by the Advocate cannot be accepted. Thus in view of the fact that the applicant has failed to show that he has not made a joint representation to the higher authorities and also that charges against the applicant stood fully proved in departmental inquiry, it cannot be said to be a case of 'no evidence.' The scope of our interference in such matters is very limited. The Apex Court in the case of High Court of judicature at Bombay through its Registrar v. Uday Singh, AIR 1997 SC 2286 and number of decisions has held that :-

" In judicial review, it is settled law that the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the view of the Court or Tribunal. When the conclusion reached by the authority is based on evidence, Tribunal is devoid of power to re-appreciate the evidence, and would come to its own conclusion on the proof of the charge. The only conclusion the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on no evidence."

9. Thus in view of what has been stated above, we are of the view that the applicant has not made out any case for our interference. The penalty imposed upon the applicant cannot be said to be excessive. Though the applicant was proceeded for major penalty, however, he has been imposed a minor penalty of with-holding of one increment without cumulative effect.

10. Thus in view of what has been stated above, the OA is dismissed with no order as to costs.


(J.P. SHUKLA)
MEMBER (A)
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(M.L. CHAUHAN)
MEMBER (J)