

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

DATE OF ORDER: 4-11-04

ORIGINAL APPLICATION NO.471/2003

K.C. Gupta son Shri R.L. Gupta age about 49 years, Resident of B-92, Nehru Nagar, Jhotwara Road, Jaipur. Presently employed as Inspector Central Excise Division II, Vidhyadhar Nagar, Sector 10, Jaipur. Office of the Commissioner, Central Excise and Customs, NCRB, Statue Circle, Jaipur.

....Applicant.

VERSUS

1. The Union of India through the Chief Commissioner (JZ), Central Excise & Customs, NCRB, Statue Circle, Jaipur.
2. The Commissioner, Central Excise, Jaipur I, NCRB, Statue Circle, C-Scheme, Jaipur.
3. The Additional Commissioner (P&V), Office of the Commissioner I, Central Excise, NCRB, Statue Circle, Jaipur.

....Respondents.

Mr. Rajendra Arora, Counsel for the applicant.
Mr. H.C. Bairwa, Proxy counsel for
Mr. Bhanwar Bagri, Counsel for the respondents.

CORAM:

Hon'Ble Mr. A.K. Bhandari, Member (Administrative)

ORDER

PER HON'BLE MR. A.K. BHANDARI

This OA was filed u/s 19 of the Administrative Tribunal's Act to seek the following reliefs:-

- (i) To set aside the order dated 7th November 2002 passed by the Disciplinary Authority, order dated 19th February 2003 of the Appellate Authority and order dated 11th August 2003 interalia disposing revision petition resulting in imposing penalty of withholding two increments in the pay of applicant without cumulative effect.

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(ii) Any other order or relief as may be deemed fit, just and proper under the facts and circumstances of the case, in favour of the applicant may also be passed.

(iii) That the cost of this application may be awarded in favour of the applicant.

2. The brief facts as mentioned in the application are that an Inquiry Report dated 15.7.2002 (Annexure A/2) was given to the applicant alongwith Disagreement Note of the Disciplinary Authority dated 29.7.2002 (Annexure A/3) asking him to submit written representation on the finding of the Disciplinary Authority. This was replied vide letter dated 29.7.2002 (Annexure A/4) in which point by point reply was submitted by the applicant, requesting exoneration in view of the findings of the Inquiry Officer. However, Disciplinary Authority vide his order dated 7.11.2002 imposed penalty of with-holding of two increments without cumulative effect. The applicant then submitted an appeal dated 9.12.2002 (Annexure A/6) to the Appellate Authority therein also requesting for giving opportunity of personal hearing but the Appellate Authority rejected the Appeal of the applicant vide his order dated 19.2.2003 (Annexure A/7). The applicant then filed Revision Petition dated 3.4.2003 but this was also rejected by the Revising Authority vide his order dated 11.8.2003 (Annexure A/9). Aggrieved by all this, this OA has been filed with the above prayer.

3. In the grounds, it is stated that punishment order is unlawful and arbitrary inasmuch as the Departmental inquiry was conducted as per the rules and the charges levelled against the applicant were found 'not proved' but the Disciplinary Authority had not relied upon it but relied upon extraneous facts which are not based on evidence and has imposed punishment on him. That the reasons stated by the Disciplinary Authority are neither convincing nor can be justified on an count. They are based on hearsay, imaginary and perception/presumption based conclusions. That the Disciplinary Authority had not taken into account the facts innumrated in the reply to show cause notice dated 29.7.2004 (Annexure

A/4). It is further stated that the Inquiry Officer has discharged his duties as a Judge without any fear or pressure or influence but his report has not been considered credible by the Disciplinary Authority. The Inquiry Officer has gone to the extent of saying that applicant's controlling officer on the basis of whose report, charge sheet was framed had dealt with the applicant in an inappropriate manner. The Disciplinary Authority, however, under the applicant's controlling officer's influence has unjustifiably imposed the punishment. That the whole matter is, smeared with personal bias, prejudice and wrong information supplied by the Controlling Officer and his intention to tarnish the image of the applicant. It is also stated that there is no documentary evidence or oral evidence to substantiate the charges, rather it is an example of how the respondents shifted the burden to prove his innocence on the applicant.

5. Coming to the facts, it is stated that respondents have not been able to bring on record any material to substantiate their arguments. That the applicant was advised on 24.4.2000 to take charge from Shri Bhawani Singh. It is a matter of record that this information was never given to Shri Bhawani Singh. Therefore, action of the Controlling Authority was contrary to the established practice and rules for handing over and taking over of charge at the time to transfer. Regarding Charge No. 2, it is stated that PW-2, Shri R.L. Meena, during his cross examination categorically stated that he had seen the applicant taking the file out of the Section and had not seen the applicant taking the file out of the Office or to his residence. This vital point has been ignored by the Disciplinary, Appellate and Revision Authorities. That the Inquiry report should have been made available to the applicant for his comments before taking view by the Disciplinary Authority about the punishment but the Inquiry report has been given to him alongwith the disagreement note and in it, the proposed punishment has also been spelt out which proves that Disciplinary Authority had made his mind to impose the punishment before seeing the applicant's defence. That there was no

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written communication dated 24.4.2000, directing the applicant to taking over the charge. Even the communication dated 28.4.2000 was brought to the notice of the applicant on 01.05.2000 at 12.00 Noon as can be observed from despatch numbers of letter dated 28.04.2000 and 01.05.2000. The letter dated 28.4.2000 bears despatch number subsequent to the despatch number of letter dated 01.5.2000. It is also noteworthy that before this letter dated 1.5.2000 was received by the applicant, Shri Bhawani Singh had been relieved by Shri Umanand Vijay as per the written orders of the controlling Authority. If the applicant had failed to obey the instructions about taking over the charge, the Controlling Authority while amending his earlier order should have mentioned it in the subsequent order dated 1.5.2000, in which directions were given to Shri Umanand Vijay to relieve Shri Bhawani Singh. Therefore, it is clear that the Controlling Authority had given the instructions about relieving Shri Bhawani Singh only on 1.5.2000 and no such instructions were given to the applicant on 24.4.2000. Moreover, the prosecution witness, Shri Bhawani Singh, during his deposition had also stated that he had no knowledge of the communication dated 24.4.2000 about handing over the charge to the applicant. The Appellate Authority and Revision Authority's orders also suffer from non-application of mind as both are non speaking orders. Lastly, both the applicant and Shri Bhawani Singh were transferred to different sections in the same order dated 18.4.2000. In these circumstances, it was neither practicable nor believable that Controlling Authority should have asked the applicant to relieve Shri Bhawani Singh. More practicably, from what has been stated above, it is clear that there is no evidence on record to prove existence of any order dated 24.4.2000 to the applicant to relieve Shri Bhawani Singh. The only available record is letter dated 1.5.2000 by which Shri Umanand Vijay was asked to relieve Shri Bhawani Singh.

6. The respondents have submitted a detailed reply. In the reply, it is stated that the applicant was not present in the office in the first half of 24.4.2000 and when he attended the office in the second half, he was

asked to submit half days Casual Leave by Assistant Commissioner, the controlling Authority. At the same time, a file bearing No. VIII(25)1/Disp/96 was delivered to him containing direction of Assistant Commissioner to take over the charge from Bhawani Singh, who was under orders of transfer. After receiving this file, applicant appeared before the Controlling Officer to inform that there was no Casual Leave in his account and that he will avail Earned Leave for that day. Therefore, he submitted Earned Leave Application. He was also directed to relieve Shri Bhawani Singh on 25.4.2000 but on 25.4.2000, the applicant did not attend the office. Therefore, Shri R.L. Meena was asked about the said file by the Assistant Commissioner. Shri Meena informed him that the said file was taken by the applicant. In the meantime, search of the file was made by Shri R.L. Meena and Shri Bhawani Singh in the Office but in vein. On 26.4.2000 also, the applicant also not attended the office, therefore, two inspectors were sent to the residence of the applicant with letter of Assistant Commissioner dated 26.4.2000 containing the direction of to the applicant to return the said file. However, the applicant informed that the file was not with him. On 27.4.2000, the applicant attended the office and submitted his joining report. After accepting the same, controlling Officer directed the applicant to put up the said file but neither the file was put up nor the charge of Shri Bhawani Singh was taken over by him. Later on, the controlling Officer asked the applicant in the presence of Shri M.L. Vijay Superintendent, Bhawani Singh Inspector and Shri R.L. Meena, Inspector to produce the said file. Initially, the applicant replied that he had placed the file before the Assistant Commissioner on 24.4.2000 but later on, he changed his version that he had placed the file in the Disposal Section but the file could not be traced out even during search of the disposal section. In order to ascertain the factual position, a preliminary inquiry was conducted by the Joint Commissioner and it was found that applicant was directed on 24.4.2000 in the concerned file to take over the charge from Shri Bhanwani Singh and that the applicant had taken the said file out of the office. Therefore, charge sheet was

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issued to him on 19.10.2001, which the applicant denied. An Inquiry Officer was, therefore, appointed. The Inquiry officer found that all the charges levelled against the applicant did not stand proved. But this finding was not accepted by the Disciplinary Authority. Therefore, show cause notice dated 29.7.2002 communicating thereunder the reasons for disagreement with the Inquiry officer's report was issued. After going through the facts of the case and the applicant's reply to the Show cause notice, the penalty of withholding of two increments without cumulative effect was imposed on the applicant. Aggrieved by this, applicant preferred an appeal but the Appellate Authority after considering all points raised in the appeal and in the personal hearing, rejected the appeal vide order dated 19.2.2003. The applicant thereafter preferred a Revision Petition. The Revision Authority also after going through all the records and considering all points raised in the petition rejected the Revision Petition of the applicant vide order dated 11.8.2003.

7. In reply to the grounds, plea of applicant that ~~the lack of evidence of the Disciplinary Authority's disagreement is not based on evidence~~ is denied. ^{Also v/d} That ~~Disciplinary Authority~~ issued the show cause notice in terms of Rule 15(2) of Rule 65 of CCS(CCA) Rules in which reasons for disagreement are clearly stated. In his final order, also the Disciplinary Authority ~~has~~ carefully considered all points raised by the applicant in his reply to show cause notice and then only passed the penalty order as per rules. That each and every reason of disagreement was considered vice reply given by the applicant and then only punishment order was issued. It is stated that there is no rule which lays down that Disciplinary Authority must agree with the Inquiry Officer's report. Although the applicant has raised allegation of undue influence of controlling officer on the Disciplinary Authority yet no evidence in support of this allegation has been put forth by him nor has he given any reasons for the Controlling Officer's alleged intention to damage the applicant's image. Similarly the allegation of bias has also not been substantiated and, therefore, all these allegations

have to be ignored.

8. Applicant has filed a detailed rejoinder in which he has once again reiterated his pleadings of innocence and raised allegations against Disciplinary, Appellate and Revisional Authority of non application of mind and mechanical approval of punishment order by the last two authorities.

9. During arguments, learned counsel for the applicant emphasised two points namely; the applicant was also under order of transfer by the same order by which Shri Bhawani Singh was transferred and that it was unreasonable on the part of the Controlling Officer to ask him to relieve Shri Bhawani Singh. Secondly, the Disciplinary Authority had made up his mind to punish the applicant even before considering ~~the~~ his defence subsequently put forth by him in reply to show cause notice issued with Disciplinary Authority's disagreement note.

10. Per contra, the learned counsel for the respondents stated that Administrative practice nowhere bar that officer under order of transfer cannot be given order to relieve another officer under order of transfer before he himself is relieved. As a matter of fact, Controlling Officer issues further instructions directing a chain of the ^{sequence} manner in which officers under orders of transfer are to be relieved. Therefore, if Controlling Officer asked the applicant to relieve Shri Bhawani Singh before he himself was relieved of his own desk, there was no illegality in it. In fact the entire case of the respondents is that the file on which such orders were issued has been lost/misplaced by the applicant. However, during inquiry, it was proved that the applicant had read the contents of the file containing such orders before it was misplaced/lost. He had also approached the Controlling Officer after reading these instructions during which meeting, the applicant was asked verbally to relieve Shri Bhawani Singh. He was also asked during this meeting that he may apply for Earned Leave in absence of Casual Leave

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Title for his absence during the first half of 24.4.2000. Therefore, it is amply clear that there is nothing wrong in Controlling Officer's action. Regarding second plea that the Disciplinary Authority had made up his mind to punish the applicant, it was stated that in the order of the Disciplinary Authority dated 29.7.2002 nowhere proposed punishment has been spelt out. Therefore, there has been no violation of Rule 15(2) of CCS(CCA) Rules, 1965. In this order, the Disciplinary Authority has in fact after ~~considering~~ ^{listening} all points of disagreement directed the applicant to show cause within fifteen days why the findings of the Inquiry officers dated 15.7.2002 should not be rejected and articles of charges framed against him should not be considered proved against him and why appropriate action should not be taken against him under Rule 11 of CCS(CCA) Rules. In this, ^{the} specific punishment has not been disclosed and it cannot be said that Disciplinary Authority had make up his mind to punish the applicant.

11. Both the parties submitted copies of written arguments, which were taken on record. After careful consideration of all the facts and the pleadings, it is noticed that there has been perfect compliance of rules, governing disciplinary inquiry for imposing punishment. There has also not been denial of natural justice of opportunity to cross examine the witnesses, opportunity of personal hearing (although ^{the lack of} alleged by the applicant in relation to Appellate Authority) and each argument of the applicant contained in reply to show cause notice, reply to the show cause notice issued alongwith Disciplinary Authority's disagreement note and the Memos of appeal and Revision have been carefully considered by the relevant authorities before passing respective orders. It is a legal position that Courts and Tribunals while exercising the powers of judicial review do not substitute their own conclusions and they do not sit as Appellate Authority over the orders passed by the Disciplinary Authority or Appellate Authority but only observe whether the principles of natural justice have not been violated, reasonable opportunity of hearing is not denied or punishment imposed is appropriate and not disproportionate to the alleged misconduct. Looking from

this angle, I find that the respondents have not failed in these matters. I also find that the impugned order of punishment is very detailed on every point given by the applicant. The Appellate Authority has also considered not only points raised by the applicant in his reply to the show cause notice but also raised by him in his Memo of Appeal. He has also carefully analysed all the evidence and then only arrived at the conclusion of agreement with the Disciplinary Authority. Therefore, I find no fault with his order also. The same can be said about the Revisional Authority's order. On facts also, the respondents have proved that there has been disobedience of Superior's order and the relevant file concerning Transfer/relieving was unauthorisedly removed by the applicant which caused lot of avoidable confusion and controversy and this mishap had to be taken seriously by the respondents. The learned counsel for the applicant has also referred to this Bench's decision in OA o. 287/2003, R.P. Meena vs. Union of India & Others decided on 15.7.2004. In this regard, I find that the facts of the above case are very different and are in no manner relevant to this case and due to this reason the plea is being ignored.

12. In the light of the foregoing, I find no ground for interference and the OA is dismissed with no order as to costs.


(A.K. BHANDARI)
MEMBER (A)

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