

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

23

ORDER SHEET

ORDERS OF THE TRIBUNAL


19.9.2007


OA 543/2003

Applicant present in person.
None present for respondents.

The applicant submits that he wants to engage some other counsel.

It is 2003 matter. Let the matter be listed on 4.10.2007, on which date the matter will be heard finally.


(J.P. SHUKLA)
MEMBER (A)

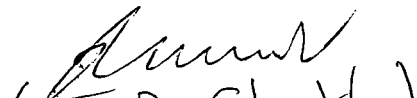

(M.L. CHAUGHAN)
MEMBER (J)

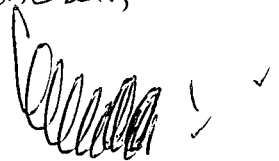
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4-10-2007

Mr Harpreet Singh, Counsel for applicant
Mrs. Parinitoo Jain, Counsel for respondents

Heard the learned Counsel for the parties. The OA is disposed of by a separate order for the reasons recorded therein


(J.P. Shukla)
M (A)


(M.L. Chauhan)
M (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the 04th day of October, 2007

ORIGINAL APPLICATION NO. 543/2003

CORAM:

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

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

P.K. Gupta son of Shri Ghanshyam Dass Gupta, aged about 51 years, resident of Plot No. A-91, Model Town, Malviya Nagar, Jagatpura Road, Jaipur. O/o New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.

By Advocate: Mr. Harpreet Singh

.....Applicant

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Commissioner, Central Excise, Jaipur-I, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.
3. Union Public Service Commission through its Under Secretary, UPSC Sangh Lok Seva Ayog, Dholpur House, Shahjahan Road, New Delhi.

By Advocate: Mrs. Parinitoo Jain

.....Respondents

ORDER (ORAL)

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

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- (i) By appropriate order or direction, the entire record relating to the present case, may kindly be summoned from the respondents.
- (ii) By appropriate order or direction, the impugned order dated 17.1.2003 (Annexure A/1) passed by the disciplinary authority, order dated 22.7.20093 (Annexure A/2) passed by the UPSC as also the order dated 22.8.2003 (Annexure A/3) passed by the Government of India, may kindly be quashed and set aside. The respondents may kindly be directed to give all consequential benefits to the applicant as a result of the quashing of the impugned orders.
- (iii) By an appropriate order or direction, the respondents may kindly further be directed to treat the applicant as Superintendent for all the periods, as if the impugned orders dated 17.1.2003, 22.7.2003 and 22.8.2003 have not been passed by the respondents with all consequential benefits to him.

Any other appropriate order or relief which this Hon'ble Tribunal deems fit and proper may kindly be granted in favour of the humble applicant.

Cost of the OA may be awarded in favour of the humble applicant."

2. Heard the learned counsel for the parties at length. The main grievance of the applicant in this case is that the very initiation of the charge sheet is bad in law inasmuch as the charge sheet has been issued by the person who was not competent to issue the same, as such the entire proceedings is void abinitio and no action could have been taken on the basis of such charge sheet. The learned counsel for the applicant has also drawn out attention to the Appellate Authority's order and pointed out certain infirmity and argued that such an order is not sustainable in the eye of law being

not passed in conformity with the mandate of Rule 27 of the CCS (CCA) Rules, 1965. Learned counsel for the applicant has also drawn our attention to judgment rendered by Jodhpur Bench of this Tribunal in support of his contention that where the charge sheet has not been issued by the competent authority, the entire proceeding stands vitiated and also the judgment of the apex Court in order to show that there should be application of mind by the competent authority to pass the impugned order and the same could not have been passed on the dictate of the outside agency.

3. We have given due consideration to the submission of the learned counsel for the applicant. We are of the view that the matter can be disposed of on short ground of non application of mind on behalf of Appellate Authority while passing the impugned order, without going into the merit of the case, by setting aside the order passed by the Appellate Authority and remitting the case back to the Appellate Authority to pass fresh order in conformity with the mandate of Rule 27 ibidi.

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4. At this stage, it may be relevant to mention here that initially the applicant has filed OA against the impugned order dated 17.1.2003 passed by the respondent No. 2 whereby the applicant was awarded multiple punishments. The said OA was registered as OA No. 77/2003, which was disposed of vide order dated 09.04.2003. At this stage, it will be useful to quote Para nos. 2 & 3 of the said judgment, which reads as under:-

"2. Heard the learned counsel for the applicant. He submits that *although number of grounds are taken in the OA but he will stress on the main ground i.e. the penalty order has been issued by the incompetent authority and, therefore, cannot be sustained in the eyes of law. He further submits that the applicant has filed a statutory appeal dated 19.1.2003 within the statutory period of 45 days. The appeal has not been decided although more than two and a half months have elapsed.*

3. Since the appeal is still pending, without going into the merits of the case, this OA is disposed of at the admission stage with the direction to the Appellate Authority to pass appropriate order on the appeal filed by the applicant in accordance with rules within one month from the date of service of this order to the Appellate Authority by the applicant."

5. Pursuant to the order passed by this Bench, the respondents have passed the order dated 22.08.2003 (Annexure A/3) whereby the appeal of the applicant was rejected and the order passed by the Disciplinary Authority was confirmed by the Appellate Authority. At this stage, it

will be useful to quote Para No. 5 of the said order whereby the finding has been recorded by the Appellate Authority, which reads as under:-

"5. While deciding the instant appeal, the advice of UPSC been considered carefully. The UPSC has found not merit in the appeal filed by Shri P.K. Gupta and has advised that the appeal of Shri P.K. Gupta should be rejected. The advice of the Commission being just fair and reasonable has been accepted. A copy of the said advice of UPSC is enclosed."

6. We have perused the finding given by the Appellate Authority while confirming the order passed by the Disciplinary Authority. We are of the view that this is no order in the eye of law. At this stage, it will be useful to quote relevant provisions of Rule 27 of CCS (CCA) Rules, 1965, which reads as under:-

- (1)
- (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said rules, the appellate authority shall consider-
 - (a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice.
 - (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record.
 - (c) Whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

and pass orders-

- (i) confirming, enhancing, reducing or setting aside the penalty; or
- (ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority which such direction as it may deem fit in the circumstances of the case."

7. Thus from the perusal of the various provisions, as quoted above, it is clear that Appellate Authority is required to apply his mind with regards to the factors enumerated in sub-rule 2 of Rule 27 of CCS(CCA) Rules while disposing of the appeal and then record reasons as to whether the findings of the Disciplinary Authority was required to be confirmed or to set aside or the case is required to be remitted back to the Disciplinary Authority. In the instant case, the Appellate Authority has not examined the matter in the light of Rule 27(2) of CCS (CCA) Rules. In fact the perusal of Para no. 5 of order dated 22.08.2003 (Annexure A/3), which has been reproduced above, makes it clear that the Appellate Authority has maintained the order of the Disciplinary Authority only on the ground that the Commission advice being just and fair and which has been accepted by the Appellate Authority. According to us, this order is not sustainable and show complete non-application of mind on

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the part of the Appellate Authority. The learned counsel for the applicant has drawn our attention to the decision of the apex Court in the case of **Nagaraj Shivarao Karjagi vs. Syndicate Bank, Head Office, Manipal and Another** reported in 1991(3) SCC 219 whereby the apex Court has held that the punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the mis-conduct proved. The authorities have to exercise their judicial discretion having regard to the facts & circumstances of each case. They cannot act under the dictation of Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government can dictate the disciplinary authority or the Appellate Authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. The ratio laid down by the apex Court is squarely applicable in the facts & circumstances of this case. As already stated above, this Tribunal in earlier OA has specifically directed the Appellate Authority to pass appropriate order on the appeal filed by the applicant and from the perusal of the order passed by this Bench in the earlier OA, it is clear that the applicant has also

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raised contention that penalty order has been issued by the incompetent authority and thus cannot be sustained in the eyes of law. Neither the Public Service Commission nor the Appellate Authority has given any finding on this issue. It was incumbent upon the Appellate Authority to take note of this plea, as raised by the applicant in his appeal, and give finding on this aspect and other points raised by the applicant in his appeal. Having not done so, we are of the firm view that the appeal of the applicant is not decided as contemplated in law. The only reason given by the Appellate Authority to dismiss the appeal of the applicant was that the advice of the Commission was fair and reasonable. The learned counsel for the applicant has also drawn our attention to a decision of the Jodhpur Bench in OA No. 269/2004 in the case of **Anil Kumar Jain vs. Union of India & Others** decided on 31.08.2005 whereby the Jodhpur Bench after going through the various provisions of the CCS (CCA) Rules including **Office order No. C.No.11-3(21 CCU(JZ) ET/98** dated 23.12.98 has categorically held that application of the order for initiation of disciplinary proceedings by then Chief Commissioner of Custom and Excise is no application in the

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eye of law and very initiation of disciplinary case as well as of proceedings thereof vitiated.

8. Matter on this point is also no longer resintegra and stand covered by the decision of apex court. The apex court in the case of R.P. Bhatt vs. Union of India reported in 1986(2) SCC 651 in Para nos. 4 & 5 has opined as under:-

"4. The word 'consider' in Rule 27(2) implies 'due application of mind'. It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules have been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

5. There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the recruitment of clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

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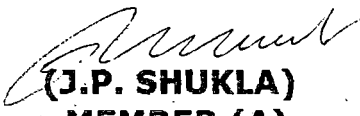
The said decision of the apex court has been further affirmed and relied by the apex court in the case of **Narinder Mohan Arya vs. United India Insurance Co. Ltd. & Others**, reported in 2006 SCC (L&S) 840

9. The ratio as laid down by the apex court in the case of R.K. Bhatt and Narinder Mohan Arya is squarely applicable to the facts of instant case.

10. Thus for the foregoing reasons and without entering into the merit of the case, we are of the view that the ends of justice will be met if the case is remitted back to the Appellate Authority to consider the appeal of the applicant afresh and pass a reasoned and speaking order thereby dealing with all the contentions raised by the applicant in his appeal including the ground of competency of the concerned authority who has issued the charge sheet or imposed penalty and also regarding imposition of multiple penalties to the applicant and to specify clause/rules under which such penalty is sustainable in view of the provisions contained in Rule 11 of the CCS(CCA) Rules. Accordingly, the impugned order dated 22.08.2003 (Annexure A/3) is quashed and set

aside. The Appellate Authority is directed to pass fresh reasonable order in terms of observations made hereinabove within a period of two months from the date of receipt of a copy of this order. Needless to add that if the applicant is still aggrieved, it will be open for him to take further course in accordance with law.

11. With these observations, the OA is disposed of with no order as to costs.


(J.P. SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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