

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

OA No.118/03

Jabalpur, this the 18th day of March, 2005.

CORAM

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.Madan Mohan, Judicial Member

R.P. Yadav
S/o Shri Laxmi Prasad Yadav
R/o Surya Vihar Colony
Pinto Park P.O.
Jaderua Kalan
Gwalior.

Applicant

(By advocate Shri S.C.Sharma)

Versus

1. Union of India through
Its Secretary
Customs and Central Excise
Ministry of Finance
New Delhi.
2. The Commissioner
Customs and Central Excise
(Appellate Authority)
O/o Commissioner
Customs and Central Excise
Manikbagh Palace
Indore.
3. The Joint Commissioner
Customs and Central Excise
(Disciplinary Authority)
O/o Commissioner
Manikbagh Palace
Indore.

Respondents

21
(By advocate None)

ORDER

By Madan Mohan, Judicial Member

By filing this OA, the applicant seeks to quash the disciplinary proceedings, punishment order dated 19th August, 2002 (Annexure A1), Appellate order dated 28th November, 2002 (Annexure A2) and to direct the respondents to provide all consequential benefits.

2. The brief facts of the case are that the applicant who is working as Inspector of Central Excise was served with a charge sheet dated 7.4.2000 (Annexure A3) under Rule 14 of CCS (CCA) Rules. He denied the charges and an enquiry officer was appointed. It is alleged in the application that the enquiry was full of irregularities and was done in an undue haste. The applicant was not given reasonable and adequate opportunity of defence in the departmental enquiry. It was conducted in a pre-determined manner with a view to hold the applicant guilty. The enquiry officer acted as a servant of the prosecution rather than a judge. The alleged misconduct pertained to the year 1997 and the charge sheet was issued on 7.4.2000. There was no explanation for the delay in issuing the charge sheet. The applicant preferred a representation that Shri R.S.Dahiya, Superintendent, Central Excise and Shri Prakash, Joint Manager of M/s Surya Roshni Limited, Malanpur should be produced in the enquiry so that they can be effectively cross examined by the applicant (Annexure A4). However, these persons were not called by the enquiry officer. The applicant also made a request to supply 9 documents vide his letter dated

31.1.2001 but these documents were not supplied. The applicant in his representation dated 28.5.02 (Annexure A5) took a categorical stand that his statement recorded during preliminary enquiry could not be relied upon in the regular enquiry as he had not confirmed the contents of the same before the inquiry officer nor the inquiry officer had put any question in this regard. The compliance report was for the first time put up to Shri Dahiya, Superintendent, on 22.9.97 for his approval and signature but he had no time to go through the contents of the compliance report. Shri Dahiya did not give any instruction to the applicant to put up the report with supporting documents, as alleged in the charge sheet. The applicant requested for cross examination of Shri Dahiya. The enquiry officer did not make efforts to produce Shri Dahiya for cross examination. The letters of Shri Dahiya should not have been taken as evidence as erroneously done by the inquiry officer and upheld by the disciplinary authority. On transfer of Shri Dahiya on 22.9.1997, Shri Surendra took charge of the range officer. Accordingly, the applicant put the compliance report before Shri Surendra, Superintendent, for his approval and signature. Shri Surendra duly applied his mind to the contents of the compliance report and he signed the said report. The deposition of Shri Surendra proved the finding of the inquiry officer is incorrect and based on extraneous considerations. The appeal of the applicant was rejected by the appellate authority vide order dated 28th November, 2002 (Annexure A2). Hence this OA is filed.

3. Heard the learned counsel for the applicant. None appears for respondents. Hence, the provision of Rule 16 of the CAT (Procedure) Rules, 1987 is invoked.

4. It is argued on behalf of the applicant that though the applicant had made a request to supply 9 documents vide his letter dated 31.1.2001, yet these documents were not supplied. He had also made a representation that Shri R.S.Dahiya, Superintendent, Central Excise and Shri Prakash, Joint Manager of M/s Surya Roshni Limited, Malanpur should be produced in the enquiry so that they can be effectively cross examined by the applicant, because these two persons were material witnesses but in spite of the order passed by the enquiry officer to summon them, these persons were not produced for cross examination. Hence the applicant could not cross examine them. The learned counsel further argued that the applicant was not examined during the final enquiry which was mandatory. Our attention is drawn towards (1992) 19 ATC 659 CAT, PB, New Delhi – Hari Giri Vs. UOI & Ors., decided on 26th July, 1991 in which it is held that “ Department Enquiry – Witness -omission to examine material witness- enquiry held, vitiated. The learned counsel further argued that in the departmental enquiry, full, reasonable, sufficient and effective opportunity of defence was not provided to the applicant. The principles of natural justice and the mandate of CCS (CCA) Rules were not followed. The enquiry officer's report was not in consonance with rule 14 (23)of CCS (CCA) Rules. The report is based on extraneous considerations. The respondents have passed the impugned order mechanically, imposing a major punishment on the applicant. Our attention is also drawn towards (1999) 8 SCC 582 – Hardwari Lal Vs. State of U.P. and Ors., decided on 27th October, 1999 about examination of material witnesses.

4. According to the version contained in the reply filed on behalf of the respondents, the applicant was given proper and adequate opportunity of hearing. Copies of all relevant and concerned documents were furnished to him within time and the applicant was duly instructed by the then Superintendent Shri Dahiya to take precautions while putting up the said compliance report but he was negligent in performing the duties, which is evident from the letter dated 3rd August 1998. The genuineness of the letters dated 3.8.98 and 19.8.98 of Shri Dahiya and the statements dated 15.4.98, 16.4.98 and 17.4.98 of Shri Prakash Kumar, Joint Manager of M/s Surya Roshni Ltd, were never challenged by the applicant while these documents and statements formed circumstantial evidence. The applicant cannot take the plea that principles of natural justice were not followed. The applicant cannot escape from his legal duties when he was specifically instructed to put up the reply of the Audit Note with supporting documents. The said objection had substantial revenue implications. But the applicant had submitted the compliance report without examining the issue or verifying the facts. The charge against the applicant was proved. Therefore, the disciplinary authority, after considering the facts and circumstances of the case, evidences on record, the advice of the CVC and the representation of the applicant, passed the impugned order. The respondents have not committed any irregularity or illegality in conducting the departmental proceedings and also in passing the impugned order. The OA is liable to be dismissed.

5 After hearing the learned counsel for the applicant and carefully perusing the records, we find that though the applicant had demanded production of 9 documents mentioned in the charge

sheet, but these have not been furnished to him. He had also prayed that that Shri R.S.Dahiya, Superintendent, Central Excise and Shri Prakash, Joint Manager of M/s Surya Roshni Limited, Malanpur should be produced in the enquiry so that they could have been effectively cross examined by the applicant. But despite the order of the enquiry officer dated 29th May, 2001, these persons were not produced during the enquiry proceedings while by the aforesaid order, the presenting officer was directed to issue summons to cross examine the witnesses. We have perused the letter dated 22nd September 1997. There is no instruction by Shri R.S.Dahiya (Superintendent) to the applicant in this document. As argued on behalf of the respondents, the applicant failed to comply with the verbal instructions of R.S.Dahiya to put up the compliance report of the Audit Note with supporting documents for verification. As is mentioned in para 5 of the impugned order dated 19th August 2002 (Annexure A1), the contention the respondents seems to be self contradictory. The applicant has specifically mentioned in the OA that on transfer of Shri Dahiya on 22.9.1997, Shri Surendra took charge of the range officer. Accordingly, the applicant put the compliance report before Shri Surendra, Superintendent, on 29th September, 1997, 14th October, 1997 and finally on 22nd October, 1997 for his approval and signature. This is evident from the applicant's ~~EXT~~ diary and has further mentioned that Shri Surendra duly applied his mind to the contents of the compliance report and only thereafter he signed the said compliance report after about 3 weeks. Hence he was duly satisfied. No proper explanation to the above contention of the applicant is given on behalf of the respondents. If the applicant was negligent in discharging his duties despite the alleged instructions, even then it was the legal duty of

I was shown how also applies

his immediate superior officer Shri Surendra ~~also to apply~~ his mind and to scrutinize the whole compliance report submitted by the applicant and he should have pointed out any error, mistake or defect committed by the applicant and should have returned the compliance report to the applicant for checking and re-verification. But Shri Surendra did not do so while he was also legally bound to peruse the compliance report submitted by his subordinate i.e. the applicant thoroughly. He should have forwarded this compliance report to the Division Office. Shri Surendra was not simply a forwarding officer of the compliance report submitted by his subordinate i.e. the applicant. As is mentioned earlier, it was his legal duty to go through the compliance report thoroughly and should have satisfied himself that it is perfectly legal and correct and there is no error, mistake or omission in this compliance report. Only in that condition, Shri Surendra should have forwarded this compliance report to the Division Office but he failed to do so.

6. Though 10 days' time was granted to the respondents to submit written argument, the same has not been filed.

7. We have perused the departmental enquiry proceedings produced by the respondents.

8. In the facts and circumstances of the case, we are of the considered opinion that the impugned orders passed by the disciplinary authority dated 19th August 2002 (Annexure A1) and by the Appellate Authority dated 28th November 2002 (Annexure A2) are not sustainable. Hence these orders are quashed and set aside. The matter is remitted back to the enquiry officer to conduct

enquiry from the stage of recording evidence in view of the observations made above in this order. No costs.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"/aa.

पृष्ठांकन द्वारा/न्या.....जालनुद, दि.....

प्रदित्तिनाम अन्वेषिता.....

(1) रामेश, उमा नामका, जालनुद, जलपुर

(2) आवेषक श्री/महिला/दूसरे के नामस्वरूप

(3) प्रद्युम्नी श्री/महिला/दूसरे के नामस्वरूप

(4) वायपाल, देवेश, जालनुद जालनुद
सूचना एवं आवश्यक कार्यवाही हेतु

S.C. Sharma *SC.Sharma* 24-3-45

K.N. Pathia *K.N.Pathia* 24-3-45

Pathia 24-3-45

fr उप रजिस्ट्रार

Issued
On 24.3.45
By