

**CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR,
JABALPUR**

Original Application No. 882 of 2003

 Indore, this the 12th day of January, 2005

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

Ajit B. Awasthi, Indian, age 53 years,
Son of Dr. Bhawani Prasad Awasthi,
Assistant Commissioner of Central
Excise and Customs, Indore, Office of
Commissioner of C. Excise and Customs,
Manek Bag Palace, Indore (MP),
Pin – 452 001, Residential address Type V
Flat 5, Central Excise Officers Colony,
Residency Area, Indore (MP),
Pin – 42 001.

.... Applicant

(By Advocate – Shri A.M. Mathur alongwith Shri Paresh Saraf)

V e r s u s

1. Union of India, through Secretary,
Ministry of Finance, North Block,
New Delhi, Pin – 110 001.
2. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi, Pin – 110 011. Respondents

(By Advocate – Shri S.A. Dharmadhikari)

O R D E R (Oral)

By Madan Mohan, Judicial Member –

By filing this Original Application the applicant has claimed the following main relief :

“8. the respondents be directed to produce the records pertaining to the examination of representation of the applicant dated 12.5.2001 against Inquiry Report and Hon'ble CAT may kindly quash the impugned order of penalty Order No. 23/2003 dated



4.9.2003 against the applicant along with consequential benefits along with costs."

2. The brief facts of the case are the applicant was appointed as Customs Appraiser on 31.8.1974. He was promoted as Assistant Commissioner of Customs Grade-VI of Indian Customs and Central Excise Service Group-A on 18.9.1986. He was further promoted to Senior Time Scale Grade-V on 17.9.1986 and was designated as Deputy Commissioner on 12.5.2001. He was transferred to Bhopal in June, 1995. During February, 1996 and March, 1996 he had granted permissions to avail Modvat credit under Rule 57-H in exercise of quasi judicial powers under Central Excise Rules. He was issued charge sheet on 14.8.1998. He submitted a detailed reply against it on 18.9.1998 (Annexure A-2) denying all of the charges leveled against him. Mr. Bhikhoo Ram, Joint Commissioner, Central Excise, Bhopal was appointed as the enquiry officer on 16.3.1999 and Shri D.V. Sharma as presenting officer. The applicant was supplied the copies of the documents. On 20.4.2001, the respondent No. 1 supplied a copy of the enquiry report. On 12.5.2001 the applicant sent a representation to the respondent No. 1 and also to CVC. The enquiry report is written by the enquiry officer without reading and discussing the merit of documentary evidence and oral evidence on record. The enquiry officer also traveled beyond the charge sheet. As regards the charge No. IV the enquiry officer has held it as partly proved and partly not proved. If the charges are not fully proved the finding should be that it is not proved. The applicant has enclosed the copy of the defence brief and had requested disciplinary authority to itself read it and consider exoneration. The applicant has also prayed for hearing before the final decision. On 8.4.2002 he had sent a representation to UPSC praying for justice and granting of hearing. On 12.6.2002 the applicant had learnt that CVC had recommended imposition of major penalty on 3.4.2001 when copy of enquiry report was not supplied to him. Therefore, the applicant sent a representation to CVC to give hearing and justice but no response was received. On 4.9.2003 the applicant was served with

impugned order dated 4.9.2003 along with UPSC's advice and thereby reducing his rank to Assistant Commissioner in the lower pay scale. The applicant is challenging this impugned order by way of filing the present Original Application.

3. Heard the learned counsel for the parties and carefully perused the records and pleadings.

4. It is argued on behalf of the applicant that the enquiry officer has submitted his report on 29.12.1999 and in his finding he has mentioned that the charge in Article-IV is partially proved and partially not proved against the charged officer. But the disciplinary authority while passing the impugned order of punishment dated 4th September, 2003 has mentioned that the charge No. IV is also proved. The learned counsel for the applicant further argued that if the disciplinary authority was dissenting the enquiry report of the enquiry officer about the charge No. IV then he should have prepared a dissenting note himself after recording his own reasonings and grounds and also the applicant should have been given an opportunity of hearing according to the rules. But the disciplinary authority arbitrarily suo-motto held the charge No. IV to be fully proved and passed the impugned order. The learned counsel for the applicant also argued that the questioned orders passed by the applicant were subjected to appeal to the appellate authority of the Department and the appellate authority rejected the appeal and the impugned order was upheld. The applicant was discharging quasi-judicial powers while passing the questioned orders. Hence, this Original Application deserves to be allowed.

5. Against the argument advanced on behalf of the applicant regarding not presenting of the dissenting note by the disciplinary authority, the learned counsel for the respondents argued that the disciplinary authority had considered the whole enquiry report and after considering all the facts mentioned by the enquiry officer in the enquiry report, he considered that



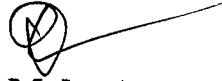
the charge No. IV was proved. There was no necessity to prepare dissenting note separately in the case when the enquiry officer has held that the charge No. IV is partly proved. The enquiry officer did not hold that the charge No. IV is not proved at all. Thus, this Original Application has no merits and is liable to be dismissed.

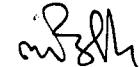
6. After hearing the learned counsel for the parties and on careful perusal of the records and pleadings, we find in the finding given by the enquiry officer in his enquiry report dated 29.12.1999 it is mentioned that the charge in Article-IV is partially proved and partially not proved against the charged officer. But the disciplinary authority while passing the final punishment order dated 4th September, 2003 (Annexure A-22) has held that "it can be held that the charged officer attempted to manipulate the records to cover up his misdeeds. Hence, the Article IV is also proved" and the penalty of reduction to the lower post of Assistant Commissioner in the pay scale of Rs. 8,000-13,500/- until he is found fit, after a period of three years from the date of issue of the order, to be restored to the higher post of Deputy Commissioner in the pay scale of 10,000-15,200/- was imposed on the applicant. Legally, in the case when the disciplinary authority is dissenting from the findings of the enquiry officer he should have prepared the dissenting note by himself after giving due reasonings and grounds for such disagreement and he should also have informed the applicant about this disagreement by preparing the dissenting note. The applicant should also be given the opportunity of hearing in such cases according to the rules and law. It is a mandatory provision which is ignored by the disciplinary authority in the present case. Hence, on this ground alone the present Original Application deserves to be allowed and the impugned order dated 4th September, 2003 is liable to be quashed and set aside.

7. Accordingly, the present Original Application is allowed and the impugned order dated 4th September, 2003 (Annexure A-22) is quashed



and set aside. The matter is remanded back to the disciplinary authority from the stage of issuance of dissenting note to the applicant. No costs.


(Madan Mohan)
Judicial Member


(M.P. Singh)
Vice Chairman

“SA”

पृष्ठांकन सं ओ/न्या.....जबलपुर, दि.....
 पत्रिलिखि आवो धिन:—
 (1) राधिन, उच्च न्यायालय वार एसोसिएशन, जबलपुर
 (2) आमेलठ श्री/श्रीमती/चु.....के वार्ताल
 (3) पत्पर्यायी श्री/श्रीमती/चु.....के लाइसेन्स
 (4) विधायक, देशभाषा, जबलपुर एवं नीठ
 सूचना एवं आवश्यक कार्यकाली हेतु

D.M. mathur
Madan
SA Dharmadhikari
DDV. 0030

Issued
On 14/3/05
BB

संपर्क संग्रहालय