

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
Original Application No. 338 of 2002

Jabalpur, this the 14th day of August, 2003.

Hon'ble Mr. J.K. Kaushik, Judicial Member
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

Radhey Shyam Maheshwari
S/o Shri Mangi Lal Modi
R/o : IV/9, I.T. Colony,
Bharat Nagar, Bhopal (M.P.)
Occupation: Assistant Commissioner,
Customs and Central Excise, Bhopal
MP

APPLICANT

(By Advocate - Shri M. Sharma)

VERSUS

1. Union of India
Through : Secretary
Ministry of Finance,
Department of Revenue,
Central Board of Excise
and Customs, New Delhi - 110001
- 2 The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi-110001
3. The Member (P&V),
Central Board of Excise & Customs,
North Block, New Delhi-110001

RESPONDENTS

(By Advocate - Shri B. Dasilva)

O R D E R

By J.K. Kaushik, Judicial Member -

Shri Radhey Shyam Maheshwari has filed this Original Application for seeking the following main reliefs :

- "1. Call for the entire records of the case leading to the issuance of the impugned Charge Sheet and the initiation of the departmental enquiry, the D.E. proceedings and any other relevant material, for its kind perusal.
2. Quash and set aside the impugned charge sheet memorandum dated 04.03.1999 initiating departmental enquiry against the applicant (Annexure A-1) and the Enquiry Officer's report dated 03.07.2000 (Annexure A-2), and the conduct of D.E. and declare the same as null and inoperative.
3. Prohibit the respondents to conduct any further proceedings in pursuance of the memorandum dated 24.03.2002 (Annexure A-3) impugned in this application."

2. A short profile of facts of this case would suffice for resolving the controversy involved. The applicant joined in Group A service (Indian Customs and Central Excise Service Group A) in

September 1994 as a Probationer. During the probation period in the year 1996 he was posted as Assistant Commissioner, Customs and Central Excise, Division Bhandara upon completion of his training. He was entrusted with the function of implementation of the provisions of the Central Excise Act, 1944 and rules framed there under regarding levy and collection of central excise duty on excisable goods produced or manufactured in his territorial jurisdiction. As per Section 11B of the Central Excise Act, 1944 (hereinafter to be referred as the act), Assistant Commissioner of Central Excise is competent to decide the refund claim filed by any person. In that power the applicant ordered for a refund of Rs. 1,11,75,467/- on 26.08.1996. The refund claim was adjudicated by the applicant and acting as a quasi-judicial authority has ^{passed an} ~~order~~ sanctioning the refund on 26.11.1996. A reference was made to the Chief Commissioner for clarification as to whether the action was to be initiated under the Customs Act or to file an appeal against the refund order. The Chief Commissioner directed to pursue both the courses of action simultaneously and the matter was proceeded accordingly.

3. On the other hand the applicant was served with a charge sheet vide memo dated 04.03.1998 alleging three charges mentioned in the statement of article of charges annexed to the Annexure A-1. The applicant denied all the three charges and an enquiry officer was appointed. Thereafter the applicant has been supplied with a copy of the enquiry report vide letter dated 03.07.2000. The first and third article of charge has been held to be not proved and the second article of charge has been proved. A detailed discussion has been made in the Original Application relating to the law position involved and as also regarding the very charges in as much as an endeavour has been made to indicate that the very charge framed does not constitute a misconduct and is contrary to the law.

4. The Original Application has been filed on number of grounds and the main ground being that the applicant was functioning in quasi-judicial capacity and any action thereof done by the applicant could not be construed as a misconduct and incase there was any error of judgment the provision of appeal could very well been invoked.

5. A detailed reply has been filed on behalf of the respondents, wherein it has been submitted that the enquiry has practically reached to its logical end and the applicant has taken part in it without any objection. The Original Application is not only pre-mature but is totally misconceived and against the settled principle of law. He could take all the grounds before the disciplinary authority. It has further been averred that the competent authority is yet to decide on the findings of the enquiry officer. The proper course as per the law would be to await the decision of the competent authority. It has also been averred that there has been clear cut violation of the circular No. 33/90, dated 31.05.1990 as per the provision contained in Section 37B of the act. The circular provided certain safeguard and is not intended to take away the judicial independence. It is for the competent authority to decide whether any misconduct has been committed by the applicant which shall be based upon the evidence absurd during the enquiry. Hence the Original Application needs to be dismissed.

6. A rejoinder has also been filed in the matter and a copy of the recommendation of the Central Vigilance Commission is also placed on record, wherein advise has been given for imposition of major penalty on the applicant.

7. We have heard the elaborate arguments advanced on behalf of both the parties and have earnestly considered the submissions pleadings and the records of this case.

8. The learned counsel for the applicant has reiterated the pleadings and has placed reliance on number of judgments on the point that the applicant was exercising his statutory powers as a quasi-judicial authority and the said act could not have been construed as a misconduct. Therefore the applicant has not at all committed any misconduct and the very charge sheet is against the rules and the same deserves to be quashed in addition to all the subsequent proceedings thereof. He has also submitted that the applicant did not make any objection regarding the conducting of the enquiry, since he was under impression that the authorities would adhere to the rules and give him a fair treatment in the matter. But nothing such has happened.

9. On the other hand the learned counsel for the respondents has been very brief and succinctly submitted that the applicant did not think of challenging the charge sheet and he chosen to go for the enquiry. The filing of this Original Application at this interlocutory stage is nothing but an after thought exercise. The applicant has rushed to this Tribunal just because the enquiry officer has found him guilty on one of the charge. The disciplinary authority is yet to pass the order. There are catena of judgments on this matter as per the law which has been settled by the Hon'ble Supreme Court, the Tribunal will not entertain any matter relating to disciplinary proceeding until the alternative remedy as provided under Section 20 of the Administrative Tribunals Act are exhausted. He has placed heavy reliance on the judgment of the Hon'ble Supreme Court in the case of Union of India and others Versus Upendra Singh reported in (1994) 27 ATC 200 and has drawn our attention to para 6 of the same. He has very mildly submitted that the applicant should first avail the alternative remedies in the matter and allow the Department to conclude the disciplinary proceedings.

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10. We have considered the rival contentions made on behalf of both the parties. The admitted facts of the case are that the applicant was issued with a charge sheet on dated 4th March 1999 and the enquiry proceedings are going on in the matter. The applicant has participated in the enquiry and he has rushed to this court only when the enquiry was finalised and only final order was to be passed by the disciplinary authority. He had no objection regarding continuance of the enquiry and really he has chosen to participate in the enquiry. Thus it could easily be concluded that the applicant has done an after thought exercise and it is only when the enquiry officer submitted his report holding him guilty of one of the charge. He has invoked the jurisdiction of this Tribunal. On this point we are inclined to subscribe with the views of the learned counsel for the respondents.

11. As regards the interference in the disciplinary proceedings the law is ofcourse settled but each case will have to be examined on its own merit. As per the normal practice if it is a case of no misconduct or charge sheet is without jurisdiction one can immediately take up the matter and the courts may consider to entertain the same considering it an extra-ordinary situation. But such is not the position here. In the present case the enquiry proceedings are at final stage and only final order is required to be passed. To appreciate the law position we find it necessary to reproduce the relevant portion from para 6 of the judgment passed in the case of Upendra Singh '(supra) :

"In the case of charges framed in a disciplinary inquiry the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be."

[Signature]

The perusal of the aforesaid clearly reveals the position and we have not been shown any contrary law on the subject. In the present case we do not find that any interference is called for at this stage.

12. However before parting with the case we would like to observe that the learned counsel for the applicant had made ample emphasis on the point that the applicant was acting in the quasi-judicial authority and even instruction which is issued to put a restriction on his decision would be void and uncalled for. Otherwise that would mean that his powers are curtailed and he is not in a position to act independently. We find that if we ^{quasi- i.e. D.A.} interfere at this stage when a judicial authority who is also acting as a quasi-judicial authority is obstructed, and that ^{cause} would also an interference in his functioning as a quasi-judicial authority who is required to work in statutory powers and it would tantamounts to the same objection which the learned counsel for the applicant has stressed. In this view of the matter it is not a case where the case could be entertained in an extra-ordinary circumstances.

13. In the premises, we are of the firm opinion that the Original Application is pre-mature and the same is dismissed as such without going into the merit. No costs. The interim order granted earlier on 15.05.2002 is hereby vacated.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

J.K. Kaushik
(J.K. Kaushik)
Judicial Member

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