

05/12/07

order pronounced today in the
open court by the aforesaid
Bench.

3
05/12/07.

C - O.

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 402/2006.

Jaipur, this the 5th day of December, 2007.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. Tarsem Lal, Administrative Member.

M. K. Gautam
S/o Shri O. P. Gautam,
Aged 49 years,
R/o 423-424, Sanjay Nagar-D
Near Joshi marg,
Jhotwara, Jaipur.

... Applicant.

By Advocate : Shri Madhukar Sharma.

Vs.

1. Union of India,
Through the Chairman,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block,
New Delhi.
2. Commissioner,
Central Excise Jaipur-I,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur (Raj.)
3. Additional Commissioner (P&V)
Disciplinary Authority,
Central Excise Commissionerate Jaipur-I,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.
4. Shri J. R. Lalwani,
Inquiry Officer, Superintendent,
Central Excise through Additional Commissioner
(P&V) Central Excise Commissionerate,
Jaipur.

... Respondents.

By Advocate : Shri Kunal Rawat.

: O R D E R :

Per Hon'ble Mr. Tarsem Lal, Administrative Member.

(A)

Mr. M. K. Gautam, the applicant has filed OA No.402/2006 and asked for the following reliefs :-

- "a) By an appropriate writ order or direction impugned order dated 7.3.2006 (Annexure-A/1) & Order dated 25.2.2005 (Annexure A/2) be declared illegal and be quashed and set aside.
- b) The Inquiry Report dated 24.9.2004 (Annexure A/4) should be declared null and void.
- c) By an order or direction respondents may be directed not to implement the order dated 25.2.2005 (Annexure A/2) & Order in appeal (Annexure A/1).
- d) By an order or direction respondents may also be directed to grant the payment of arrears, if any due to such illegal order of withholding of increment of the applicant, with interest on the amount remained with the respondent department till its payment.
- e) Any other relief which is found just and proper in the facts and circumstances of the case be passed in favour of the applicant."

2. The brief facts of the case are that the applicant was appointed as UDC in the Custom and Central Excise Department and was promoted to the post of Inspector on 19.10.1983. He was issued a Memo dated 29.06.1990 (Annexure A/5) while he was posted at Balotara (District Barmer) wherein following allegations were made :-

"(a) Attempt of Political influence was made by the applicant for his transfer to Alwar, when the applicant was transferred from Central Excise Range, Alwar to Customs Range, Balotara vide Establishment Order dated 18.1.1990.

(b) The wife of the applicant by mentioning herself as President of Janta Dal threatened the Assistant Commissioner, Central Excise Division, Jaipur through Phone No.77655 on 04.06.1990 for

not transferring the applicant to Alwar and also misbehaved with him."

3. The applicant furnished a reply to the above memo vide his application dated 12.7.90 (Annexure A/6) and explained that his wife remained indoor patient from 3.6.1990 to 6.6.1990 in Mehta Nursing Home, Alwar, therefore, there is no alleged communication through phone by his wife to Shri Saheb Singh, Assistant Collector. He further denied any political interference for his transfer. In the meanwhile, he was transferred from Balotara to Jaipur at his own request vide letter dated 12.09.1990 (Annexure A/7).

4. Subsequently, after a period of 13 years a charge sheet dated 24.2.2003 (Annexure A/3) was issued containing following allegations :-

"(i) Brought/attempted to bring political influence to bear upon the superior authorities to further his interests in respect of matters pertaining to his service under Government.

(ii) Instigated his wife to threaten Shri Sahab Singh, the then Assistant Collector, Customs and Central Excise, Jaipur in the matter of his transfer and

(iii) Made a false statement before the superiors to the effect that his wife was admitted in a nursing home in Alwar on the date of threatening."

5. The applicant was directed to submit the written statement of his defence vide letter dated 16.4.2003 (Annexure A/10). Mr. J. L. Lalwani, Superintendent in

AO

the office of Respondent No.2 was appointed as Inquiry Officer and Inquiry Report dated 24.9.2004 (Annexure A/4) was submitted. The Inquiry Officer concluded that charge No.1 relating to political interference for his transfer from Balotara to Alwar was proved.

6. Based on the above findings of the Inquiry Officer, a penalty of withholding of 3 increments with cumulative effect under Rule 11 (iv) of the CCS (CCA) Rules, 1965 was imposed vide order dated 25.2.2005 (Annexure A/2) which was to be effective on expiry of penalty imposed on him in another case vide order dated 17.01.2005.

7. The applicant has requested the respondents through his representation dated 2.12.2004 that issue of charge sheet after a lapse of 13 years was unwarranted and may be quashed. The applicant has relied on the case of State of M.P. v/s Bani Singh, AIR 1990 S.C. 1308, State of Punjab v/s Chaman Lal Goyal, 1995 2 SEC 570 and in the case of State of A.P. V/s N. Radhakishan, AIR 1998 SC 1833.

8. The applicant has pleaded that under the instructions issued by the Government of India, Department of Personnel and Training vide its letter dated 12.01.1995 (Annexure A/8) under which he can be advised to desist from approaching Member of Parliament/Members of State Legislatures to further his

interest pertaining to service conditions. The applicant filed an appeal to Respondent No.2 and the same was also rejected vide order dated 7.3.2006 (Annexure A/1). Aggrieved by the above orders, the applicant has filed this OA and asked for the relief as given in Para 1 of the OA.

9. On the other hand, respondents have filed a detailed reply to the OA and not agreed to any of the relief asked for by the applicant. The respondents have pleaded that the applicant was transferred from Alwar to Balotara in the year 1990. On 05.06.1990 the then Assistant Collector, Customs & Central Excise Jaipur, Mr. Sahab Singh submitted a note to the Additional Collector stating therein that on 04.05.1990 at around 19.12 hours one Mrs. Gautam who introduced herself as President of Janta Dal, rang up at his residence and inquired from his wife about him. On being told that Shri Sahab Singh was not at home the said Mrs. Gautam instructed his wife to ask him to bring her up at telephone number 77655 in Jaipur. At around 19.35 hours Shri Sahab Singh rang up at the given number and the phone was received by a lady who introduced herself as wife of Mr. M. K. Gautam, Inspector, Customs & Central Excise, Jaiur who had been transferred from Alwar to Balotara. She complained that her husband was being considered for transfer back to Alwar but Shri Sahab Singh requested the Collector not to consider Shri Gautam for transfer. When Shri Sahab Singh



asked her to meet the Collector she told that there was no need for her to meet the Collector as Mr. Mange Lal, PS to Shri N. R. Mirdha had already spoken to the Collector.

10. The department called for an explanation of the individual vide letter dated 29.06.1990 to which the applicant stated that he has not brought any political interference in the matter of his transfer and his wife was admitted in a nursing home at Alwar during the period from 3.6.1990 to 6.6.1990. The respondents got the above factual position verified which was found to be incorrect. In fact Mrs. Sunita Gautam, wife of applicant, had taken only regular outdoor patient treatment during the period from 3.6.1990 to 6.6.1990.

11. The respondents have also pleaded that the OA has been filed within one year from the order of the appeal i.e. 7.3.2006, but the applicant has not exhausted all the remedies available under relevant Service Rules as the revision application against the order in appeal can be filed to the Chief Commissioner within a period of six months which has not been done.

12. The respondents have stated that the Inquiry Officer after giving the reasonable opportunity of hearing and perusing the material brought on record submitted his Inquiry Report and held that Charge No.1 i.e. political

influence for seeking his transfer from Balotara to Alwar has been proved and Charge No. (ii) & (iii) are not proved. All the submissions made by the applicant vide his letter dated 2.12.2004 have been considered by the Disciplinary Authority and the case was decided on 25.2.2005 as per provision of law and rules and accordingly a speaking order was issued by the Disciplinary Authority. In view of the above position, explained by the respondents, they have requested that the OA may be dismissed with exemplary cost. The appeal made by the applicant has been considered and rejected by the competent authority vide orders dated 7.3.2006.

13. Learned Counsel for the parties have been heard. Learned Counsel for the applicant reiterated all the arguments given in his OA and stated that the charge sheet has been issued after a period of 13 years and a penalty of reduction of withholding of 3 increments with cumulative effect has been given. The applicant filed an appeal which has also been rejected by the competent authority.

14. Learned Counsel for the applicant particularly laid emphasis on the instructions issued by the Department of Personnel & Training O.M.No.11013/12/94-Estt. (A) dated 12th January, 1995, which stipulates as under :-

"(1) Procedure to be adopted for dealing with communications from public representatives/outside



authorities relating to the service matters of Government employees-Rule 20 of the CCS (Conduct) Rules, 1964, provides that no Government servant shall bring or attempt to bring any political or other outside influence to bear upon any superior authority to further his/her interest in respect of matters pertaining to his/her service under the Government. The Government of India has from time to time emphasized that Government servants should not approach Members of Parliament or State Legislatures or other political/outside authorities to sponsor their cases in respect of service matters. As per the existing instructions vide O.M. No.11013/7/85-Estt. (A), dated 22.5.1985, the following action should be taken against Government servants approaching Members of Parliament or State Legislatures for sponsoring individual cases :-

- (i) A Government employee violating the aforesaid provisions of the Conduct Rules for the first time should be advised by the appropriate disciplinary authority to desist from approaching Members of Parliament/Members of State Legislature to further his/her interest in respect of matters pertaining to his/her service conditions. A copy of this advice need not, however, be placed in the CR Dossier of the employee concerned.
- (ii) If a Government employee is found guilty of violating the aforesaid provisions of the Conduct Rules a second time despite the issue of advice on the earlier occasion, a written warning should be issued to him/her by the appropriate disciplinary authority and a copy thereof should be placed in his/her CR dossier.
- (iii) If a Government employee is found guilty of violating the aforesaid provisions of the Conduct Rules, despite the issue of warning to him/her, disciplinary action should be initiated against him/her by the appropriate disciplinary authority under the provisions of CCS (CCA) Rules, 1965."

15. Learned Counsel for the applicant submitted that even in case the applicant had brought political pressure for transfer from Balotara to Alwar, he should have been advised by the appropriate authority to desist from

approaching the Members of Parliament/Members of State Legislature to further his/her interest instead of issuing a charge sheet for major penalty and that too after a period of 13 years.

16. Learned Counsel for the applicant relied on the judgment dated 11.08.2005 decided by Hon'ble the Rajasthan High Court in DB Civil Writ Petition No. 4716/2005, Union of India & Ors. Vs. Mahesh Kumar Jawa & Anr., wherein the Hon'ble High Court of Rajasthan has held as under :-

" However, in the opinion of the Tribunal the Department cannot initiate a departmental enquiry after an inordinate delay. The Tribunal has based its view on number of decisions of the Apex Court. It has referred to State of Punjab & Ors. vs. Chaman Lal Goyal reported in 1995 (2) SCC 570, State of AP vs. N. Radhakrishnan reported in 1998 (4) SCC 154, State of MP vs. Bani Singh & Anr. Reported in 1990 (2) SLR 798. It has also referred to a Division Bench decision of this Court in Kuldeep Sharma vs. State of Raj. & Ors. reported in RLW 1999 (1) 168 wherein number of cases of Apex Court have been considered.

.....

There is not a word to explain the delay of 7 years in not initiating the departmental enquiry against the respondent. A serious prejudice has been caused to the respondent because of not initiating the enquiry within a reasonable time. No interference is warranted with the order of the learned Tribunal."

17. The Learned Counsel for the respondents reiterated all arguments given in his reply to the OA and stated

(S)

that delay had taken place as the case had been lost sight and remained pending in one of the files.

18. We have considered the case carefully and perused the documents placed on record. It is seen that political influence was brought by the individual in the year 1990 for his transfer from Balotara to Alwar whereas he was transferred on the basis of his own request from Balotara to Jaipur and not to Alwar. The charge sheet for taking disciplinary action has been initiated in the year 2003 after a period of 13 years.

19. There is a judgment given by Coordinate Bench of this Tribunal at Principal Bench in OA No.641/2006 decided on 14th December, 2006, wherein it was also held that the Hon'ble Supreme Court in a catena of judgments has held that when there is unexplained delay of 10 years or more in instituting disciplinary proceedings vitiates the enquiry and for this purpose the Principal Bench has relied upon M.V.Bijlani vs. Union of India and Ors., 2006 (5) SCC 88, State of Andhra Pradesh v. N.Radhakrishnan, JT 1998 (3) SC 123, State of M.P. v. Bani Singh and Anr., 1990 (2) SLR 798 and P.V.Mahadevan v. MD T.N.Housing Board (supra).

20. The CAT, Jaipur Bench, in the case of Mukesh Viz. vs. Union of India & Ors., decided by the DB on 24.05.2007 passed in CA No.188/2006, wherein he

Executive Engineer, Bhopal, had committed certain irregularities during the period from 3.6.1992 to 29.05.1996 and the charge sheet was issued after a period of 10 years, has held as under :-

"9. Therefore, we are of the considered opinion that in this case inordinate delay had taken place in issuing the chargesheet to the applicant and there is no satisfactory explanation for inordinate delay. So we find that as per the law laid down by the Hon'ble Supreme Court in the case of M. V. Bijlani, N. Radhakrishnan, Bani Singh and P. V. Madhavan (supra) as applied by the Coordinate Bench at Principal bench which is also binding on us, and we have no reason to differ from the same. As such, we find that the OA has sufficient merits and deserves to be allowed. We, therefore, allow the OA and quash and set aside the chargesheet. No order as to costs.

21. In view of the above discussion, it is clear that the applicant had brought political influence for seeking his transfer from Balotara to Alwar whereas he was transferred on the basis of his own request from Balotara to Jaipur. A chargesheet has been issued after a period of 13 years. There is a settled law that charge sheet issued after a considerable delay is not sustainable in the eyes of law. We find that in reply to the OA, no explanation for such an inordinate delay has been given. The charge sheet has been issued in violation to the guidelines issued by the Government of India, Department of Personnel & Training vide their letter dated 22.5.1985.

22. In view of the above impugned orders dated 25.2.2005 (Annexure A/1) under which penalty was issued and order dated 7.3.2006 ^{(AII) Tarsem Lal} under which the appeal was rejected are quashed and set aside. The individual will be entitled to all the consequential benefits. The OA is allowed. No order as to costs.

Tarsem Lal
(TARSEM LAL)
ADMINISTRATIVE MEMBER

(M. L. Chauhan)
JUDICIAL MEMBER

P.C./