

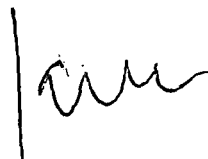
(8)

3.8.07

Mr. Suresh Jain for applicant
Ms. Kavita Bhatia, Proxy counsel to
Mr. Kunal Kumar for resp no. 1 & 2
Smt. Parvati Jain and Mr. Abhay Jain
for resp no. 3

Heard the learned counsel
for the parties.

The OR is disposed^{of} by a
separate order for the reasons stated
therein.


(Kuldip Singh)
vice chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH,

JAIPUR, this the 3rd day of May, 2007

ORIGINAL APPLICATION No.470/2006

CORAM:

HON'BLE MR. KULDIP SINGH, VICE CHAIRMAN

K.K.Kaushik
S/o late Shri A.N.Kaushik,
Aged about 55 years,
r/o 8, Jammalal Bajaj Marg,
Jaipur

.. Applicant

By Advocate: Shri Sameer Jain)

Versus

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Central Board of Excise and Customs,
through the Chairman,
North Block,
New Delhi.
3. The Commissioner of Central Excise,
Jaipur-II,
NCRB,
Statue Circle,
Jaipur.

.. Respondents

(By Advocate: Ms.Kavita Bhati, proxy counsel to Mr. Kunal Rawat for Res.No. 1 and 2, Smt. Parintoo Jain and Mr. Abhay Jain for Res. No.3)



O R D E R (ORAL)

The applicant has been issued a minor penalty charge sheet under Rule 16 (1)(b) of CCS (CCA) Rules, 1965 on the following allegations:-

"Shri K.K.Kaushik, Superintendent, Customs and Central Excise, Jaipur while functioning as such in Central Excise Division, Udaipur during the year 1998 failed to maintain devotion to duty and acted in a manner unbecoming of a government servant in as much as:-

1. While recommending sanction of refund claims amounting to Rs. 1,63,309/- and Rs. 4,78,250/- filed by M/s Kay Polyplast Ltd., Udaipur on 17.8.98 Shri K.K.Kaushik, Superintendent failed to examine and ensure that the amount of credit sought to be refunded had actually not been utilized by the assessee.
2. He endorsed and submitted a false note in the file recommending admissibility of the above said refund claims suppressing the material information available on the file itself.
3. He did not submit the matter to the competent authority recommending its forwarding to the Headquarters office for pre/post audit.

Thus and said Shri KK Kaushik, Superintendent, Customs and Central Excise, Jaipur has contravened the provisions of Rule 3(1) (ii) and 3(1) (iii) of the Central Civil Services (Conduct) Rules, 1964."

The applicant submitted a reply thereto. Thereafter the applicant was imposed a penalty vide impugned order 29th August, 2005 withholding of one increment without cumulative effect for a period of three years. The applicant has challenged the same on the ground that the impugned order has been passed in arbitrary manner and is



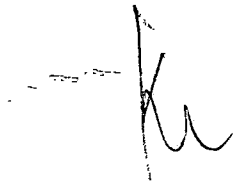
perverse and based upon factual inaccuracy. The applicant has taken a plea that the impugned order says that the applicant has partially accepted the lapses on his part whereas in his defence reply he has denied these allegations in toto. On merits, the applicant has submitted that the applicant was working as Superintendent (Technical). It is the Assistant Collector who is final authority to recommend refund of the claim as per Circular No.23/88 dated 4.4.1988.

The learned counsel further submitted that as per para 40-A of Adjudication Manual it is the adjudicating officer under the Central Excise Act and Rules or the Customs Act, acts in a quasi-judicial capacity and that he should after the enquiry, take an unbiased decision in each case applying his own mind to the materials disclosed in enquiry independently. From this point of view, any positive suggestions in regard to the penalty etc. whether in an office note or elsewhere is liable to be regarded as an interference with the function of the Adjudicating Officer thereby vitiating the decision. Office notes should not, therefore, go to the extent of recommending the final decision or the actual penalty, in the adjudication of the offence cases. Relying upon this, the learned counsel for the applicant submitted that as per provisions of para 40-A, the applicant merely being a Superintendent (Technical) was not supposed to give recommendation about refund of claim and assuming for the sake of arguments that vide note



dated 22.9.1998, the applicant had recommended that the documents are in proper shape and refund is admissible which is first of all should not be on the basis of the advise of the Superintendent and consequently this could not have been taken into consideration by the Adjudicating Officer since the positive suggestion in regard to the penalty etc. whether in an office note or elsewhere is liable to be regarded as interference with the functions of the Adjudicating officer, the Adjudicating officer has to apply his mind independently of the office note. Thus, if there was a note recorded by the applicant on 22.9.1998, that was an individual innocuous note and the final authority, who has to recommend the refund was not supposed to act on that without applying its independent mind.

The learned counsel for the applicant further submitted that the Disciplinary Authority while imposing the penalty has referred to the advice of the UPSC on the basis of which punishment has been imposed by him. The advice of the UPSC and the order of the Disciplinary Authority says that the applicant was working as Superintendent (Technical), Udaipur on 22.9.98 as well as on 30.9.1998, whereas the applicant has placed on record documents showing that he had been transferred from Udaipur to Nagpur on promotion vide order Ann.A5 and had been relieved on 25.9.1998 and assumed charge at Nagpur on 28.9.1998 . Any how, Ann.A5 shows that the applicant was



relieved on 25.9.1998 from the post of Superintendent (Technical), Udaipur. Thus, the advice given by the UPSC and the fact recorded by the Disciplinary Authority in the final order passed by the Disciplinary Authority shows that these were influenced by the incorrect fact that the applicant was still working as Superintendent (Technical) at Udaipur on 30.9.1998. In this regard, I may also refer to the UPSC report which shows that the Disciplinary Authority had audacity to inform the UPSC that the applicant was relieved after 30.9.1998 and that is why probably, the UPSC has also advised imposition of minor penalty and which fact has been accepted by the Disciplinary Authority while imposing penalty which shows a total non-application of mind since the applicant was not working as Superintendent (Technical) on 30.9.1998 and as per record of respondents, applicant had been relieved on 25.9.1998 from the post of Superintendent (Technical), Udaipur.

2. However, the learned counsel appearing for the respondents tried to convince this Court that though the note sheet of 22.9.1998 was recorded by the applicant and the note sheet dated 30.9.1998 was recorded by some other officer, but perusal of the note sheet dated 30.9.1998 would suggest that the other officer has accepted note sheet of the applicant dated 22.9.1998 and he has particularly noted about the note recorded by the applicant




and it is on that basis it should be held that the applicant has not discharged his duty properly and pinpointed any discrepancy in his note about on 22.9.1998 and as such penalty order imposed on the applicant should be maintained.

3. However, I am unable to agree with the contention raised by the learned counsel for the respondents because this Court while exercising the power of judicial review cannot go to analyse the facts and also cannot go into the minds of the successor of the applicant if he was influenced by the note dated 22.9.1998 recorded by the applicant, but the fact remains that the advice given by the UPSC as well as the order passed by the Disciplinary Authority show that the applicant was working as Superintendent (Technical) on 30.9.1998, which is factually incorrect as per the documents placed on record at Ann.A5. This fact has caused serious prejudice to the applicant as penalty has been imposed on the presumption that the applicant was working as Superintendent (Technical) on 30.9.1998 ^{when} ~~which is~~ the last note before sending the file to adjudicating authority. ^{was recorded by} Thus, the order passed by the Disciplinary Authority based on incorrect facts cannot be sustained.

4. In view of the above circumstances, I find that the applicant first ^{at} all was not supposed to give any

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suggestion and as per Adjudicating Manual, if any part of refund is due, the Adjudicating authority was supposed to apply its mind independently irrespective of the office note. Secondly, the applicant was not working on 30.9.1998 which was also made basis for punishing the applicant. Hence, the impugned order is quashed with all consequential benefits. The increment withheld should be restored and the arrears should be paid to the applicant within 3 months from the date of receipt of copy of this order. No costs.



(KULDIP SINGH)
Vice Chairman

R/