

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 31ST day of March, 2010

ORIGINAL APPLICATION No.484/2006

CORAM :

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISITRATIVE MEMBER

K.M.Kuldeep,
Superintendent,
O/o Deputy Commissioner,
Central Excise,
Division Sikar (Raj.)

... Applicant

(By Advocate : Shri Madhukar Sharma)

Versus

1. Union of India through the Chairman,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. Chief Commissioner,
Central Excise (Jaipur Zone),
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.
3. Commissioner,
Central Excise Jaipur-I,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.
4. Addl.Commissioner,
Central Excise Jaipur-I,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.
5. Shri S.L.Thakur,
Addl.Commissioner (P&V),

18/3/10

Through Commissioner,
Central Excise Jaipur-I,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.

... Respondents

(By Advocate : Shri Vineet Kumar Pareek, proxy counsel for
Shri Hemant Mathur)

ORDER

PER HON'BLE MR.B.L.KHATRI

The applicant has filed this OA against the order dated 16.3.2006 (Ann.A/1) passed in revision by respondent No.2..

Through this OA, the applicant has prayed for the following relief :

- "a) By an appropriate writ order or direction impugned order dated 16.3.2006 (Ann.A/1), order dated 2.7.2004 (Ann.A/15) & order dated 6.2.2004 (Ann.A/13) be declared illegal and be quashed and set aside.
- b) The inquiry report dated 6.8.2003 (Ann.A/10) should be declared null and void.
- c) By an order or direction respondents may be directed not to implement the order dated 16.3.2006 (Ann.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. Brief facts of the case are that the applicant was posted as Inspector in the office of Superintendent, Central Excise Range Urban-II, Kota, from 17.2.1992. He was initially posted without any specific charge, but in the month of April, 1993.

BW

there was an order to assist the Range Officer in the matters of M/s J.K.Synthetics (Tyre Cord Unit). M/s J.K.Synthetics Ltd., Kota, had filed a CWP No.1377/81 before the Hon'ble Delhi High Court and had obtained conditional stay on 14.5.1985 subject to furnish bank guarantees in compliance of the said order, which were renewed from time to time. In the year 1993-94, the assessee did not renew the bank guarantees and their validity period expired, which resulted into loss of revenue to the exchequer to the tune of Rs.2,11,15,668/-. During this period, the applicant was working as Section Sector Officer of the assessee. It was alleged that the applicant had failed to monitor the validity of the bank guarantee. As such, a memorandum dated 27.11.2001 was issued to him under Rule 14 of the CCS (CCA) Rules, 1965 for contravention of Rule 3(1)(ii) and (iii) of the CCS (Conduct) Rules, 1964. It was alleged that while functioning as Inspector in the Central Excise Range, Urban-II, Kota, during the period 1993 to 1995 failed to maintain devotion to duty and acted in a manner which is unbecoming of a government servant. The charges levelled against him read as under :

- "a) He failed to ensure that government revenue to the tune of Rs.3,85,99,259/- locked up in CWP No.1377/81 pending before Delhi High Court was properly safeguarded by way of asking the unit M/s J.K. Synthetics Ltd., Kota, to furnish extension of validity of the following bank guarantees beyond the dates mentioned against the same, to keep the same in force till disposal of the CWP.
- b) He failed to properly maintain the record of bonds and bank guarantees in the form of 335 P register in the Range office in respect of the matter relating to CWP No.1377/81.

Bar

- c) He failed to bring the matter to the notice of the superior authorities for timely review of the validity of bank guarantees furnished by the unit in the matter of CWP No.1377/81.
- d) He failed to initiate the matter for taking timely action for recovery of the revenue involved amounting to Rs.3,85,99,259/- which was required to be taken immediately after the party's failure to keep the bank guarantees alive.
- e) Above acts of omission on part of the applicant resulted in a huge loss of revenue being occasioned to the government to the tune of Rs.2,11,15,668/- which would have otherwise been secured by, and could have been realized by way of encashment of valid bank guarantees."

3. The inquiry officer held all the charges proved as per his findings on each article of charge, which read as under :

- i) The charge that the charged officer has failed to ensure that government revenue of Rs.3,85,99,259/- locked up in CWP No.1377/81 pending before Delhi High Court was properly safeguarded by way of asking the unit, M/s J.K. Synthetics Ltd., Kota, to furnish extension of validity of eight numbers of Bank Guarantees to keep the same in force till disposal of the CWP No.1377/81 is proved.
- ii) The charge that the charged officer has failed to properly maintain the record of bonds and bank guarantees in the form of 335 P register in the Range Office in respect of the matter relating to CWP No.1377/81 is proved.
- iii) The charge that the charged officer has failed to timely review the validity of bank guarantees furnished by the unit in the matter of CWP No.1377/81 is proved.
- iv) The charge that the charged officer has failed to take timely action for recovery of the revenue of Rs.3,85,99,259/- which was required to be taken immediately after the party's failure to keep the bank guarantees alive which resulted in loss of revenue of Rs.2,11,15,668/- is proved."

4. The disciplinary authority, vide order dated 6.2.2004 (Ann.A/13), imposed the penalty of reduction by five stages in



the time scale of pay for a period of three years under Rule 11(v) of the CCS (CCA) Rules, 1965 with the further condition that during the said period the applicant shall not earn any increment of pay but on expiry of the said period the reduction will not have the effect of postponing the future increments of his pay.

5. In the order-in-appeal dated 2.7.2004 (Ann.A/15), the penalty order dated 6.2.2004 (Ann.A/13), passed by the disciplinary authority, was modified to the extent that the reduction will be by three stages for a period of two years. However, rest of the portion of the penalty order will remain operative as such.

6. In the order-in-revision dated 16.3.2006 (Ann.A/1) the order-in-appeal was modified and it was held that ends of justice would be met by imposing the penalty of reduction by two stages in the time scale of pay for a period of two years.

7. Learned counsel for the applicant vehemently contended that there was no failure on the part of the applicant and as per the standing instructions it was the duty of the Superintendent/Assistant Commissioner of the Range to maintain the record of bonds/bank guarantees and to review/renew the validity of the bank guarantees in time. He had, inter-alia, made the following submissions :

- i) That the applicant submitted his defence brief on 7.5.2003 (Ann.A/9), wherein it was explained that no

132

statutory duty was cast on the applicant to accept the bonds and Bank Guarantee and maintain/monitor records thereof. The Standing Order No.55/82 dated 24.12.1982, Exhibit 'D-1' cast such duty on Assistant Commissioner and Range Superintendent. Further, the circular dated 7.9.87 of the Board (Central Board of Excise & Customs) Exhibit 'D-2' also cast the duty on senior officers and the office of the Assistant Commissioner has been assigned to upkeep the records and Bank Guarantees and he has to take special care with regard to those Bonds & Bank Guarantees which had obligations for the earlier period and were not having current liabilities/obligations. Para 335 P of TEM, Exhibit D-3', asked that such records being not the regular records are to be kept by Range Office/Assistant Commissioner. Further, the applicant submitted that the charge of case file related to CWP No.1377/81 and records were not with him at material period. The prosecution also failed to prove the charges against the applicant through witnesses.

- ii) That the applicant submitted a representation on 15.1.2004 (Ann.A/12), wherein he submitted that he was not appointed as Officer-in-Charge of CWP No.1377/1981 filed by M/s J.K. Synthetics Ltd., before Hon'ble Delhi High Court. The office of the jurisdictional Assistant Commissioner was Officer-in-Charge as the counter affidavits were filed by him. The applicant further

pbh

submitted that being a Sector Officer he was required to provide assistance, if any, required by the Officer-in-Charge. Further, the applicant submitted that the Bank Guarantee's Bonds, case file and the other records were not entrusted to him. Being a junior employee, the applicant was not in a position to inspect such record maintained by seniors. Further, the Standing Order No.55/82 dated 24.12.82 casts such duty on the Assistant Commissioner/Range Superintendent. The Circular No.150/87 dated 7.9.87 assigns the work of keeping/maintaining records of Bonds & Bank Guarantees to the office of Assistant Commissioner.

- iii) That the applicant submitted a revision petition on 2.8.2004 (Ann.A/16) before the Chief Commissioner, Central Excise (Jaipur Zone), Jaipur [Respondent No.2], wherein the applicant submitted that specifically the Assistant Commissioner/Range Superintendent had been made authority to monitor/upkeep the bank guarantees/ bonds and also to scrutinize 335 P Register under the Standing Order No.55/82 dated 24.12.1982 (Ann.A/17) and Board's Circular No.38/87-CX-6 dated 7.9.1987 (Ann.A/19). Further, the CWP No.1377/81 is related to old issue and the issue involved duty at immediate stage was resolved by 1989, much before his joining on 17.2.1992 in the Range. As such, the CWP was not having current liabilities/ obligations. The Bank Guarantee, if any, submitted in compliance to Hon'ble

Bar

Delhi High Court's order dated 14.5.1983 had obligation for earlier period and were not having current obligation. The Board's Circular No.38/87 dated 7.9.87 and instruction No.150/87-Gen dated 27.9.87 (Ann:A/18) cast responsibility on the Assistant Commissioner to monitor such Bonds and Bank Guarantee had obligation for earlier period. The applicant was neither entrusted nor handed over the case file or charge related to CWP No.1377/81. The 335 P Register was also not required to be maintained at Inspector's level during the relevant period and in fact the said register was in the custody of the Range Superintendent. The Range Superintendent had kept the 335 Register as per directions given at Para 335 P of Tobacco Excise Manual.

- iv) That no witness was cited in Ann.A-IV to the Memorandum dated 27.11.2001 (Ann.A/5) to prove the charges against the applicant. The Inquiring Authority Shri S.L.Thakur, Additional Commissioner, was transferred from Jaipur to Chandigarh but the inquiry proceedings remained continued even after his transfer to different Commissionerates and Zone i.e. Chandigarh, which is evident from the facts mentioned in the inquiry report that the hearings were fixed on 3.2.2003m 17.2.2003, 4.4.2003 & 28.4.2003 at Central Revenue Building, Sector-17C, Chandigarh.

BM

8. Notice of this application was given to the respondents, who have filed their reply opposing the claim of the applicant. Learned counsel for the respondents has vehemently argued that specific duty of monitoring the time limit or renewal of the bank guarantee was assigned to the Inspector i.e. the applicant and he was required to maintain the Scrutiny Register 335 P and, inter-alia, he submitted that the applicant was posted as Sector Officer of the Unit and was responsible for each and every matter of the said Unit including keeping vigil over the position regarding renewal of Bank Guarantees relating to the CWP No.1377/81. As per the instructions contained in Board's Circular No.38/87-CX.6 dated 7.9.1987, the Sector Officer-in-Charge of the Unit assisting the RO in his normal functioning was also directly responsible for monitoring of records related to the Bonds and Bank Guarantees and other matters. Hence, it is crystal clear that the applicant was responsible to upkeep the record of the Unit. In the instant case, had the applicant been vigilant and bothered to check the records to ascertain the validity period of the Bank Guarantees, he certainly would have been in a position to take up the matters for renewal of the Bank Guarantees.


9. It was further submitted by learned counsel for the respondents that the applicant being Sector Officer of the Unit was responsible for the affairs related to CWP No.1377/81 and to monitor the Bond and Bank Guarantees furnished by the Unit. 335 P Register was not a confidential document. The applicant could check and update the 335-P Register and could

P/v

have brought the anomaly to the notice of his Range Superintendent.

10. Learned counsel for the respondents also contended that as per the instructions contained in Basic Manual on Excisable Manufactured Products, Standing Order No.54/82 dated 10.12.1982 issued by the erstwhile Central Excise Collectorate, Jaipur, and instructions contained in Board's Circular No.38/87-CX.6 dated 7.9.1987 circulated to field formations vide instructions No.150/87-Gen. dated 29.9.1987, the range staff was required to review the bonds and bank guarantees at frequent intervals and to scrutinize the records i.e. 335-P Register to see the validity period of the Bank Guarantees as well as to ensure that the Bank Guarantees are renewed from time to time so as to enable the department to enforce the liabilities as and when any such need arises.

11. Learned counsel for the respondents also submitted that the applicant was posted in the Range Office to assist the Officer-in-Charge i.e. Superintendent. The applicant being Sector Officer of the Unit was first responsible officer for all the matters of Unit for the reason that the applicant was to look after the charge assigned to him intensively whereas the Range Superintendent was required to supervise the work of all the Sector Officers posted in his Range. The applicant was not posted simply to sit idle and wait for instructions of the senior officers.



12. Learned counsel for the respondents further contended that as per the provisions it is not necessary to produce the witnesses even where the charges are proved beyond doubt on the basis of documentary evidences. Moreover, the applicant has not challenged the genuineness of the documents indicted in Ann.III to the Memorandum dated 27.11.2001. The applicant being Sector Officer-in-Charge of M/s J.K. Synthetics Ltd. (Tyre Cord), Kota, was supposed to look after all the affairs including review of entries made in 335-P Register of the concerned Range to see that Bank Guarantees are being renewed timely, wherever required, but no such attempts were made by the applicant. Hence, the disciplinary authority had rightly imposed the penalty upon the applicant vide order dated 6.2.2004 (Ann.A/13) and the present OA deserves to be dismissed.

13. We have heard the rival submissions and perused the records. In this case, the applicant was working as Inspector in the Central Excise Range, Urban-II, Kota, during the period 1993 – 1995 and following charges were levelled against him :

- "a) He failed to ensure that government revenue to the tune of Rs.3,85,99,259/- locked up in CWP No.1377/81 pending before Delhi High Court was properly safeguarded by way of asking the unit M/s J.K. Synthetics Ltd., Kota, to furnish extension of validity of the following bank guarantees beyond the dates mentioned against the same, to keep the same in force till disposal of the CWP.
- b) He failed to properly maintain the record of bonds and bank guarantees in the form of 335 P register in the Range office in respect of the matter relating to CWP No.1377/81.

16/11/04

- c) He failed to bring the matter to the notice of the superior authorities for timely review of the validity of bank guarantees furnished by the unit in the matter of CWP No.1377/81.
- d) He failed to initiate the matter for taking timely action for recovery of the revenue involved amounting to Rs.3,85,99,259/- which was required to be taken immediately after the party's failure to keep the bank guarantees alive.
- e) Above acts of omission on part of the applicant resulted in a huge loss of revenue being occasioned to the government to the tune of Rs.2,11,15,668/- which would have otherwise been secured by, and could have been realized by way of encashment of valid bank guarantees."

14. The inquiry officer held the charges proved, as per the findings given by him at page-57, which read as under :

- i) The charge that the charged officer has failed to ensure that government revenue of Rs.3,85,99,259/- locked up in CWP No.1377/81 pending before Delhi High Court was properly safeguarded by way of asking the unit, M/s J.K. Synthetics Ltd., Kota, to furnish extension of validity of eight numbers of Bank Guarantees to keep the same in force till disposal of the CWP No.1377/81 is proved.
- ii) The charge that the charged officer has failed to properly maintain the record of bonds and bank guarantees in the form of 335 P register in the Range Office in respect of the matter relating to CWP No.1377/81 is proved.
- iii) The charge that the charged officer has failed to timely review the validity of bank guarantees furnished by the unit in the matter of CWP No.1377/81 is proved.
- iv) The charge that the charged officer has failed to take timely action for recovery of the revenue of Rs.3,85,99,259/- which was required to be taken immediately after the party's failure to keep the bank guarantees alive which resulted in loss of revenue of Rs.2,11,15,668/- is proved."

15. Learned counsel for the applicant had mainly relied upon the Standing Order No.55/82, wherein specific attention of the

Divisional Assistant Collectors and the Range Superintendents was pointedly drawn to the fact that all claims under the guarantee bond should be made and lodged with the bank within the period specified in the relevant guarantee bond. Learned counsel for the applicant had also relied upon the Circular No.38/87-CX.6 dated 7.9.1987 (Ann.A/19) and specifically referred to para-5 of the same, which reads as under :

"5. It is hardly needs any emphasis that the view of bonds executed for discharging obligation under the Central Excise Rules is required to be made at frequent intervals. It is the duty of the senior officers to scrutinize the records (335P Register) prescribed for the maintenance of bonds in order to see as to whether the obligation have been fulfilled (unreasonable). They should also see as to whether sureties executed in (unreadable) are financially sound and have been verified from time to time. It is also to be seen that the bank guarantees have not expired and renewed from time to time so as to enable enforcement liabilities as and when any such need arises. It has been that the scrutiny of the 335 P Register by senior officers is generally not satisfactory. The inspections undertaken by the Directorate and its Regional Units reveal that the bank Guarantees and other securities executed are generally found to have expired which makes it difficult to enforce the liabilities standing against the bonds. In view of this (unreadable) DGI has been asked to also monitor this aspect of work ending furnish quarterly on the periodical review understanding bonds/securities/sureties which have not been omitted. Collector should accordingly furnish quarterly report to DGI in this regard."

16. Learned counsel for the applicant had also invited attention of the Bench to Ann.A/20 [page-88] to submit that the register should be maintained by the Collector and Assistant Collectors in respect of those bonds which have been accepted by them. The Circle Officers and Range Officers

Man

should, however, maintain this record for all the bonds pertaining to their jurisdiction that pass through them.

17. On the basis of these orders, learned counsel for the applicant specifically submitted that it was the duty of the Assistant Commissioner or the Superintendent-in-Charge to do the needful in time.

18. After having considered the facts of the case and relevant circulars on the point, we find that in the month of April, 1993, there was a specific order for the applicant to assist the Range Officer in the matters of M/s J.K. Synthetics (Tyre Cord Unit). It was held by the appellate authority that the charges have been proved. It was also held that monitoring of Bond and Bank Guarantee is the collective responsibility of Range Staff as well as of Divisional Staff and the applicant is not solely responsible for the lapse and, therefore, the penalty awarded by the Disciplinary Authority has been reduced by the Appellate Authority. The applicant being the Sector Officer of the Unit, was required to review the 335P Register periodically to monitor the renewal of Bank Guarantees and to suggest remedial action to the senior officer/Officer-in-Charge.


19. In this case, displeasure of the President was also conveyed to the Assistant Commissioner. Thus, from perusal of the facts of the case, we find that the applicant was given specific duty of assisting the Range Officer in the matter of M/s J.K. Synthetics (Tyre Cord Unit). It is admitted that it was the

B.M.

primary statutory duty of the Assistant Commissioner or the Superintendent to get the validity period of the Bank Guarantee extended. However, the Assistant Commissioner/ Superintendent could not take such steps in time as the applicant's primary duty ^{was} to scrutinize 335-P Register but he failed to properly maintain the record of Bonds/Bank Guarantees. He also failed to bring the matter to the notice of the superior authorities for timely renewal of the validity of the bank guarantees furnished by the Unit in the matter of CWP No.1377/81. As mentioned in para-13 of the reply, as per the instructions contained in Board's Circular No.38/87-CX.6 dated 7.9.1987, Sector Officer-in-Charge of the Unit, i.e. the Inspector, assisting the Range Officer in his normal functioning was also directly responsible for monitoring of records related to the bonds and bank guarantees and other matters.

20 After having considered the facts of the case and the reasons given in this order, we are of the opinion that the applicant has not been able to make out any case for interference by this Tribunal. In the result, the order dated 6.2.2004 (Ann.A/13) passed by the disciplinary authority, order dated 2.7.2004 (Ann.A/15) passed by the appellate authority, and the order dated 16.3.2006 (Ann.A/1) passed by the revisionary authority are hereby upheld and the present OA stands dismissed with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

vk