

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

Jaipur, this the ^{18th} day of February, 2010

Original Application No.101/2008

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)
HON'BLE MR. B.L.KHATRI, MEMBER (ADMV.)

Anil Kumar Jain,
s/o Shri N.C.Jain,
r/o 73, Mahaveer Colony,
Bedla Road Post Office,
Badgaon, Udaipur, presently posted
as Supdt. in the office of Additional
Commissioner, Custom, Kuchaman Bungalow,
Ratnada, Jodhpur.

.. Applicant

(Applicant present in person)

Versus

1. Union of India
through its Secretary,
Ministry of Revenue,
Government of India,
New Delhi.
2. The Commissioner, Customs Preventive,
Headquarter at NCR Building, Statue Circle,
C-Scheme, Jaipur
3. Central Vigilance Commission through its
Director Satarkata Bhawan,
GPO Complex, Block-A, IMA, New Delhi.

.. Respondents

(By Advocate: Ms.Parintoo Jain)



ORDER

Per Hon'ble Mr. M.L.Chauhan, M(J)

The applicant has filed this OA thereby praying that the disciplinary proceedings initiated vide memo dated 11.2.2008 may kindly be held illegal invalid and void ab initio and the same may be quashed and set-aside alongwith consequential benefits.

2. Briefly stated, facts of the case are that the applicant was issued chargesheet on 11.2.2008 by the Commissioner, Custom, Jaipur whereby allegation against the applicant was that he replaced 2.533.Kgs. of silver by lead which was seized on 29.11.1987 and he has failed to get tested the seized goods by the experts on the same day on which it was seized and also he failed to seal the seized material with departmental seal on 29.11.1987 and further that he failed to send the sample of the seized goods to the Chemical Examiner for analysis. Based on these allegations, the aforesaid memo was issued to the applicant. The case of the applicant is that he neither remained Malkhana Incharge nor the seized ^{in goods} remained in his custody, thus the allegation of replacement of silver is baseless. It is further case of the applicant that even on 29.11.1987 after the seizure the detained packet was kept by the Malkhana Incharge Shri Prakash Ramawat, the then Inspector and now Joint Commissioner and in his case no chargesheet has been issued by the department. Further case of the applicant is that the seized silver packet which was got tested on 30.11.87 was handed over to him on 15.12.1987 under the order of Superintendent

Incharge of the post which was handed over by him to the Assistant Collector, Customs, Jodhpur on the same day in intact position. Since the sealed packet of silver remained in the custody of Jodhpur Malkhana was opened by the Superintendent Malkhana, Jodhpur on 24.5.89 in the presence of two witnesses, it was found to be lead inspite of silver. Thus, according to the applicant, he cannot be held responsible for this lapse and the chargesheet issued at this belated stage is required to be quashed.

3. The respondents have filed reply. Alongwith the reply, the respondents have annexed documents as Ann.R/1 containing list of events as to how the matter was processed at different levels which resulted into issuance of impugned chargesheet dated 11.2.2008 (Ann.A/1). According to the respondents, the contention of the applicant that wrong packet was opened on 25.4.1989 is incorrect as the packet opened on 25.4.89 had same malkhana E.No. intact seals and same paper slips bearing signatures of officer's witnesses and accused persons of seizure dated 29/30.11.1987 which was the only seizure of that day. It is further stated that when the contents of the packet was checked on 24.5.89, the same were found to be different than those said to be sealed on 30.11.1987. Hence the charge of replacement of silver by lead has rightly been levelled against the applicant. Further, the Inspector (Malkhana), Jaisalmer is also being issued the chargesheet on the same ground under whose custody seized goods remain for the period from 30.11.1987 to 15.12.1987. According to the respondents, since chargesheet is subject matter of enquiry and the applicant has contended that

rigging with the sealed packet had occurred after it was deposited in Malkhana either at Jaisalmer or Jodhpur on the ground that different packing materials were emerged from the sealed packets at different stages i.e. on 24.5.89 and 6.11.2003, as such, the matter requires enquiry proceedings where the applicant can led his evidence. Thus, according to the respondents, the matter cannot be interfered at this stage.

4. We have heard the applicant who was present in person and the learned counsel for the respondents.

5. The undisputed facts are that the applicant while working as Inspector in Customs Range, Jaisalmer has participated in the seizure of 2.533 kg. of silver on 29.11.1987. The packet was not sealed and the same was deposited in the Malkhana. Further, the sample was got tested on the next day on 30.11.1987 and it was found to be a silver of 99.5% of purity. Panchname dated 30.12.1987 was drawn and paper slips bearing the signature/thump impression of the witness, seizing officers were pasted and then kept in a cloth bag and sealed with seal no. '3', Assistant Collector, Customs, Jodhpur and it was thereafter that the sealed packet was kept on 30.11.87 in Malkhana, Jaisalmer. It is also admitted fact that on 15.12.87 the seized good was taken from Malkhana, Jaisalmer and handed over to the applicant for further despositing the same into Malkhana at Custom Division at Jaisalmer. The sealed packet was deposited in Jodhpur Malkhana on 16.12.1987 and the seized goods remained in the custody of the applicant between 15.12.87 to 16.12.87. However, the sealed packet was opened on 24.5.89 in the

presence of two independent witnesses and the same was found to be lead instead of silver. The sample was opened in the presence of witnesses. The piece of the seized material was again tested on 6.11.2003 in the presence of two witnesses and it was certified that the metal is made of lead instead of silver. On the basis of these facts, the applicant was issued chargesheet. Thus, the question which requires consideration is whether the rigging with the sealed packet had occurred after it was deposited in Malkhana or seized silver was replaced before sealing the packet on 30.11.1987 which is subject matter of enquiry. At this stage, it is not permissible for us to give findings whether the applicant is guilty of the charge or not. According to us, the present OA is premature and the same cannot be entertained at this stage especially when it is not a case of the applicant that chargesheet issued by the respondents is wholly without jurisdiction or for some other reason it is wholly illegal. This is what the Apex Court has held in the case of Union of India and anr. vs. Kunisetty Satyanarayana, (2007) 2 SCC (L&S) 394 whereby in para 13,14 and 16 has held as under:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause vide Executive Engineer, Bihar State Housing board vs. Ramesh Kumar Singh, (1996) 1 SCC 327, Special Director vs. Mohd. Ghulam Hourse, (2004) 3 SCC 440, Ulagappa vs. Divisional Commr., Mysore, (2001) 10 SCC 639, State of U.P. v. Brahm Datt sharma, (1987) 2 SCC 179 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any

by

party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

6. Thus, in view of the law laid down by the Apex Court as noticed above, it is not permissible for us to interference in the matter to quash the chargesheet. The applicant has further argued that in this case incident took place in the year 1987 and the chargesheet has been issued after a lapse of 19 years, as such, in view of the decision taken by this Tribunal in OA No.403/2006, M.K. Gautam vs. Union of India decided on 5th December, 2007, the present OA is also required to be allowed. According to us, the applicant cannot take any assistance from this judgment. That was a case where the applicant therein was imposed punishment after conclusion of enquiry and that was not a case for quashing the chargesheet. Further, as can be seen from the facts of that case, the charge levelled against the applicant was that service revolver was required to be deposited after returning from tour. In spite of returning to headquarter, the delinquent official proceeded on

leave w.e.f. 14.11.1992 and reported for duty on 22.2.1993 but still he failed to deposit the service revolver despite the fact that reminders to that effect was also issued to the applicant after his joining service on 22.2.1993. However, the service revolver alongwith catridges was desposited on 29.4.1993. Thus, as can be seen from the facts as stated above, the charge against the applicant was regarding late deposit of service revolver by few months. The explanation of the applicant in the aforesaid case was that he has proceeded on leave as his son had sustained injury during communal riots, as such, service revolver could not be deposited. He joined duty on 22.2.1993 and thereafter the same was deposited on 29.4.1993 within a period of 7 days as directed vide order dated 26.4.1993. The department did not take any steps thereafter and it is only after a lapse of 10 years that the chargesheet for major penalty was issued. It was under these circumstances, this Tribunal held that the respondents has not given any explanation why the respondents did not take any steps for issuance of the chargesheet in the year 1993. In the instant case, the respondents have given a detailed explanation as to how the matter was processed at different levels which has resulted into chargesheet.

7. Be that as it may, since the mater is at charge stage and it is not permissible for us to go into merit of the case at this stage and no interference is warranted at this stage in the light of the law laid down by the Apex Court especially when it cannot be said that chargesheet issued by the respondents is wholly without jurisdiction or the applicant is not at all involved in the incident.

to

8. For the foregoing reasons, the OA the bereft of merit which is accordingly dismissed with no order as to costs.


(B.L. KHATRI)

Admv. Member


(M.L. CHAUHAN)

Judl. Member

R/