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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

08.09.2011

OA No. 42/2008

Mr. Praveen Purohit, Proxy counsel for
Mr. Rajendra Arora, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

On the request of the proxy counsel appearing on
behalf of the applicant, put up for hearing on 15.09.2011.

Anil Kumar

(Anil Kumar)
Member (A)

12. S. Rathore
(Justice K.S. Rathore)
Member (J)

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15/09/2011

OA No. 42/2008

Mr. Rajendra Arora, Counsel for applicant.
Mr. Mukesh Agarwal, Counsel for respondents.

Heard.

The O.A. is disposed of by a
separate order on the separate sheet
for the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

12. S. Rathore
[Justice K. S. Rathore]
Member (J)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 15th day of September, 2011

ORIGINAL APPLICATION No. 42/2008

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Prem Das Charan, LDC, Central Excise Commissionerate,
Jaipur through the Commissioner Central Excise, Jaipur II,
NCR Building, Statue Circle, S-Scheme, Jaipur.

... Applicant

(By Advocate: Mr. Rajendra Arora)

Versus

1. Union of India through the Chairman, Central Board of Excise & Customs, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. Chief Commissioner, Central Excise, Jaipur Zone, NCR Building, Statue Circle, C-Scheme, Jaipur.
3. The Commissioner, Central Excise, Jaipur -I, NCR Building, Statue Circle, C-Scheme, Jaipur.
4. The Additional Commissioner (P&V), Central Excise Commissionerate, NCR Building, Statue Circle, C-Scheme, Jaipur.
5. Shri P.L. Garhwal, Inquiring Authority & Superintendent, Customs & Central Excise, NCR Building, Statue Circle, C-Scheme, Jaipur.

... Respondents

(By Advocate: Mr. Mukesh Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

"(a) To set aside the order dated 1st Feb., 2005 (Annexure A/6) passed by the Disciplinary Authority and the order dated 7th March, 2006 (Annexure A/8) passed by the Appellate Authority interalia imposing penalty of reduction of pay to the lowest stage in the time scale of pay i.e. 3050-75-3950-80-4590 for a period of ten years under Rule 11(v) of the CCS (CCA) Rules, 1965. It was also stated in the said order that the Applicant during the said period shall

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not earn any increment of pay and that on expiry of the said period the reduction will have the effect of postponing the future increments of his pay. The period of punishment has been reduced from ten years to two years by the Revision Authority vide his order dated 12th Jan., 2007 (Annexure A/1). Whereas the applicant should have exonerated from all the allegations and charges levelled against him. Thus the said Order dated 12th Jan., 2007 also deserves to be quashed and set aside.

b) To direct the Respondents to restore the basis pay as he would got but for the orders passed against him or modified on account of Memorandum dated 22nd Jan., 2003. The applicant should also be granted all other consequential benefits as he would have got but for the orders passed by the Disciplinary Authority and modified by the Revision Authority.

c) To direct the respondents to continue to pay the salary and grant the increment which he would have got but for these impugned orders.

d) Any other order, directions or reliefs as may be deemed fit, just and proper under the facts and circumstances of the case and are in favour of the applicant may also be passed.

e) That the cost of this application may be awarded in favour of the applicant."

2. Brief facts of the case are that the applicant while working as LDC, Customs & Central Excise, Jaipur was charged under Rule 14 of the Central Excise Services (Classification, Control & Appeal) Rules, 1965 vide Memorandum dated 22.01.2003 (Annexure A/2) wherein the following articles of charge were framed against him that he while working as such in Central Excise, Jodhpur:-

- (i) Misbehaved with a government servant and also beat him up.
- (ii) Interfered with performance of duty of the public servant and also refused to comply his lawful order.
- (iii) Generally involved himself during working hours in assisting his wife in her business activities.
- (iv) While on duty on 30.10.2000 and 31.10.2000, absented himself from office during working

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hours to assist his wife in her business activities.

- (v) Failed to inform the government about the involvement of his wife in a Commission Agency.
- (vi) Involved himself in the business activities of his wife without obtaining previous sanction of the government.
- (vii) Failed to comply with the direction issued by the superiors.
- (viii) Tarnished the image of department.
- (ix) Suppressed the material information from the department in respect of filings of challan by police and taking cognizance of criminal offences by the Court against him.

Thus he contravened the provisions of Rule 3(1)(i), 3(1)(ii), 3(1)(iii), 15(1)(a) & 15(1)(3) of Central Civil Services (Conduct) Rules, 1964.

2. The applicant vide his reply dated 10.02.2003 (Annexure A/3) did not accept the articles of charges framed against him. Therefore, Inquiry Officer and Presenting Officer were appointed vide order dated 18.02.2003 vide letter dated 18.02.2003 to further inquire into the matter.

3. The applicant vide his representation dated 08.01.2004 (Annexure A/4) requested to change the Inquiry Officer but no heed was paid to his request and inquiry continued in gross violation of principles of natural justice without advising any decision to the applicant's representation dated 08.01.2004.

4. The Inquiry Officer submitted its report dated 09.09.2004 (Annexure A/5) wherein he concluded that all the articles of charges levelled against the applicant except

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charge no. vii stand proved. According to the applicant, the findings of the inquiry authority were perverse as the same were not based on the material brought on record during the inquiry proceedings. Moreover, the proceedings were not conducted in fair and proper manner. The applicant was not provided adequate opportunity to defend his case. He was not provided the documents sought by him, which were essential and relevant for his defence. The Inquiry Officer had given his findings even on the allegations, which were being tried by the criminal court and also on the points, which were outside his jurisdiction.

5. That the Disciplinary authority instead of rejecting the report and finding of the Inquiry Authority, concurred with the findings and report dated 09.09.2004 and had imposed penalty of reduction of pay to the lowest stage in the time scale of pay i.e. 3050-75-3950-80-4590 for a period of ten years under Rule 11(v) of the CCS (CCA) Rules, 1965 vide order dated 01.02.2005 (Annexure A/6). It was also stated in the said order that the applicant during the said period shall not earn any increment of pay and that on expiry of the said period the reduction will have the effect on postponing the future increments of his pay.

6. The applicant preferred an appeal dated 14.03.2005 (Annexure A/7) against the order of the Disciplinary Authority but the same was rejected by the Appellate

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Authority vide its order dated 07.03.2006 (Annexure A/8). Thereafter, the applicant filed a Revision Petition (Annexure A/9), which was disposed of the Revision Authority vide order dated 12.01.2007 (Annexure A/1) vide which penalty imposed by the Disciplinary Authority vide order dated 01.02.2005 has been modified from a period of ten years to two years.

7. Thereafter the applicant submitted a representation dated 15.01.2007 (Annexure A/10) to the Revision authority that he should have been exonerated from all the allegations and charges levelled against him as he had not committed any act or omission which may be termed as misconduct but the same has not been considered by the Revision Authority.

8. The respondents have filed their reply. The respondents in their reply have denied that the letter dated 08.01.2004 (Annexure A/4), which was a request from the applicant to change the Inquiry officer and the Presenting Officer was ever received in their office. There is no entry of the said letter in the Receipt Register maintained at the Division Office. Therefore, this letter appears to be a after thought. They have also denied that the applicant had not been provided adequate opportunity to defend his case. The said fact is evident from the statement of Shri Laxman Singh tendered on 03.09.2003 and 04.09.2003 wherein the applicant, Prem Dan Charan,

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had cross examined the witnesses for two full days and as many as 94 questions were asked to the witnesses. Besides this, the applicant had also cross examined other witnesses namely, S/Shri Gopal Rao, Durga Singh and Shri Arjun Singh on 14.10.2003. S/Shri D.K. Jabda and Itzar Ali on 16.10.2003 and S/Shri Manoj Kumar and Shaitan Singh on 05.11.2003 and their statement were completed only after the applicant had submitted that he had nothing more to question. Therefore, the contention of the applicant that he was not provided enough opportunity to defend his case is not correct. The Inquiry officer had properly conducted the inquiry as per the procedure and the Disciplinary Authority had passed the order after taking into consideration the facts & relevant material and documents of the case. They have further stated that the Revision Petition dated 26.07.2006 was decided on 12.01.2007 i.e. after more than five months and all the records till date were considered in deciding the Revision Petition. The letter dated 15.01.2007 referred to by the applicant could not be taken into consideration as order on revision petition had already been passed on 12.01.2007 and the applicant was duly intimated to this effect by the Additional Commissioner (CCO), Jaipur vide letter dated 22.01.2007. That the Revising Authority after considering all the facts of the case had reduced the penalty imposed by the Disciplinary Authority. Therefore, this OA is not maintainable and liable to be quashed.

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9. The respondents have further stated that the presence of the applicant in the post office on 30.10.2000 and 31.10.2000 during office hours has been established from the evidence of all the witnesses during the inquiry. The SB forms submitted by the complainant during the course of inquiry prove beyond doubt that the applicant has active involvement in the business activities of his wife in as much as the forms contain signature of the applicant as a messenger and as recipient for the amount withdrawn. That the statement of complainant, witnesses and FIR registered in the matter of interference caused by the applicant in the official duty of the Sub Post Master confirm the fact that the applicant was present in the Post Office on the alleged dates. Moreover, the three SB-7 Forms show the presence of the applicant in the Post office as an authorised messenger. The receiving of payment on 30.10.2000 from the said Post Office are enough evidence to conclude that the applicant was present in the Post office on 30.10.2000 and 31.10.2000. According to the respondents, once the applicant's presence is proved in the Post office then nothing could be served by the attendance register.

10. The respondents have also stated that the findings of the Inquiry Officer are just & legal and liable to be upheld in its letter and spirit. The Appellate Authority had passed the order after due application of mind and considering all the evidence brought on records by the prosecution as well

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as by the applicant. The applicant has not raised the question which has been raised in the present OA before the Revisionary Authority and raising the same in the OA before this Tribunal is nothing but an effort to save him.

11. As regards the penalty of reduction to the lower stage in the time scale for a period of ten years imposed on the applicant by the Disciplinary Authority is concerned, it is stated that it had already been reduced to two years by the Revisionary Authority, which is not severe.

12. The respondents have further stated that the fact that the applicant is facing criminal trial does not mean that the penalty imposed upon the applicant deserves to be quashed. The inquiry initiated against the applicant under the CCS (CCA) Conduct Rules, 1965, which has no relevance with the criminal trial. Further the points raised by the applicant in his representation dated 15.01.2007 were nothing but afterthought to save him from the penalty. If these points were the facts then the same could have been brought in the notice of the Inquiry Officer/ Disciplinary Authority/ Appellate Authority or the Revisionary Authority. It is surprise to note that after seven years of the incident, the applicant came to know that Miss Arpita Choudhary and Shri Intizar Ali were not present on the alleged date in the Post Office that is clearly an afterthought. As such no cognizance is required to be taken on the representation dated 15.01.2007 of the

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applicant. Thus the OA has no merit and the same may be dismissed with exemplary cost.

13. Having heard the rival submission of the parties and after perusal of the documents on record, we are of the opinion that there is no ground to interfere with the impugned order dated 12.01.2007, order passed by the Disciplinary Authority on 01.02.2005 (Annexure A/6) and the order of Appeal dated 07.03.2006 (Annexure A/8). The Inquiry Officer had submitted his report after following due process and according to the rules on the subject. There is no irregularity committed by the Inquiry officer while conducting the inquiry. He has followed the procedure prescribed for the same. The Disciplinary Authority had imposed the penalty of reduction of pay to the lowest stage in the time scale of pay i.e. 3050-75-3950-80-4590 for a period of ten years and during the said period the applicant shall not earn any increment of pay and that on expiry of the said period, the reduction will have the effect of postponing the future increments of his pay. The order of the Disciplinary Authority is a well reasoned and speaking order which is based on inquiry report and relevant material before the Disciplinary Authority. Therefore, there is no illegality/infirmity in this order. The Appellate Authority has also passed the order after due consideration of the facts and material before him and taking into account the facts, as stated by the applicant in his appeal. Therefore, there is no need to interfere with

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the order of the Appellate Authority. The Revisionary Authority while considering the revision petition of the applicant passed a detailed & speaking order after considering the case record, findings of the order passed by the Disciplinary Authority as well as Appellate Authority and submissions made by the applicant and reduced the penalty imposed by the Disciplinary Authority from the period of ten years to two years and during the said period, the applicant shall not earn any increment of pay and on expiry of the said period, the reduction will not have the effect of postponing the future increments of his pay. Thus the Revisionary Authority has already reduced the penalty imposed on the applicant which cannot be said to be harsh looking into nature of the misconduct of the applicant. We find no irregularity/illegality in the impugned order dated 12.01.2007 (Annexure A/1) passed by the Revisionary Authority.

14. Accordingly, we find that there is no merit in the present OA. Hence OA is dismissed with no order as to costs.


(Anil Kumar)
Member (A)


(Justice K.S. Rathore)
Member (J)

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