

CENTRAL ADMINISTRATIVE TRIBUNAL,**JAIPUR BENCH**

O.A.No.269/2011

Orders pronounced on: 7.10.2016
(Orders reserved on : 04.10.2016)**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. MEENAKSHI HOOJA, MEMBER (A)**

D.K. Bangard

Son of Shri Purshottam Dass Bangard,

Aged around 45 years,

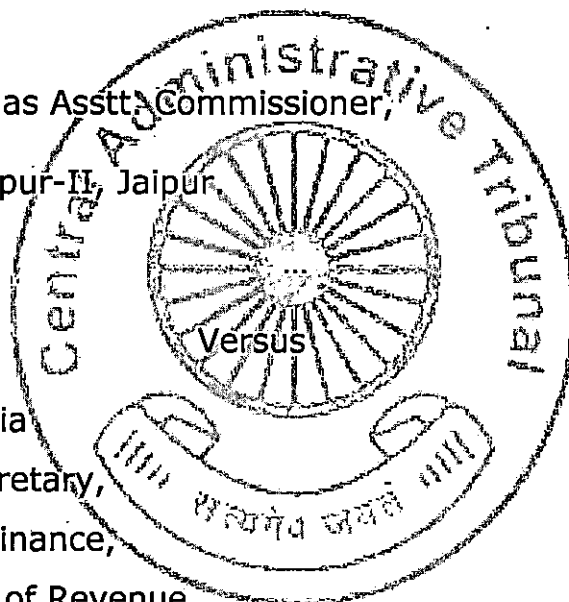
Resident of 56, Moji Colony, Malviya Nagar,

Jaipur,

Presently working as Asstt. Commissioner,

Central Excise, Jaipur-II, Jaipur.

Applicant



1. Union of India
through Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.
2. The Chairman,
Central Board of Excise and Customs,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

...

Respondents

Present: Mr. Amit Mathur, Advocate, for the applicant.
Mr. S. Shrivastava, Advocate, for Respondents.

ORDER
HON'BLE MR. SANJEEV KAUSHIK , MEMBER (J)

1. The applicant has filed this O.A., inter-alia, for quashing of the order dated 4.11.2009 (A-1) vide which he has been given an administrative warning despite the fact that the disciplinary proceedings stand dropped.
2. The facts leading to the filing of the case are that the applicant was served with memorandum dated 9.3.2005 under rule 14 of the Central Civil Services (Control, Classification & Appeal) Rules, 1965, for certain misconduct. On denial of allegations, an enquiry was held against the applicant. The Inquiry Officer submitted his report on 28.8.2008, holding that charge is not proved against the applicant. The Disciplinary Authority too toed the same line vide communication dated 23.7.2009 (A-4) which was also accepted by the Director General (Vigilance) on 4.8.2009. The matter was sent to Central Vigilance Commission for dropping of the proceedings against the applicant and another official. An advice was tendered that it will be appropriate to drop the charge but an advice came to issue an administrative warning to the applicant. It is on that basis that impugned order, Annexure A-1, came to be passed against the applicant which according to him would be an obstacle and grant of promotional benefits to him. Hence the O.A.
3. The respondents have filed a reply admitting that the warning indeed has been issued on the basis of advice

tendered by the CVC which was accepted by the former and as such there was due application of mind on the part of the disciplinary authority.

4. No rejoinder has been filed by the applicant.
5. We have heard the learned counsel for the parties at length and examined the material on file.
6. We find that in the inquiry report, the officer has clearly held that at best it could be alleged that the applicant had failed to exercise supervisory control and accepted the market enquiry reports of the Inspector as such but that was not the case of the disciplinary authority or the charge against the applicant. This exoneration was accepted by the disciplinary authority as well as by Additional Commissioner (Vigilance) and matter was sent to the CVC for dropping of charges against the applicant. However, the CVC took a view that it was necessary for the applicant to have exercised greater control in enquiring that the market enquiry was conducted scrupulously and as such he cannot be completely absolved of his negligence etc and as such it was advised to issue an administrative warning" which has been accepted and a formal warning was issued vide order, Annexure A-1.
7. Even though in the written statement the respondents say that the disciplinary authority has applied its mind to the facts and circumstances of the case but the impugned order does not support their plea. It has not been explained as to how they have tried to resolve the contradiction in their stand inasmuch as earlier they had clearly concluded that

there was nothing against the applicant and a conscious decision was taken to drop the charges but suddenly on surfacing of the advice of CVC, the disciplinary authority has concluded that ends of justice would be met if the advice of the CVC in the matter is accepted. However, there is no reasoning, whatsoever, before reaching to such a conclusion to accept the advice and as such it can safely be concluded that the advice has been accepted without any application of mind or one can say blindly. Secondly, the Disciplinary Authority has been kind enough to drop the disciplinary proceedings but in the same breath it has warned him to be "more careful in future". If the disciplinary proceedings itself have been dropped, where is the question of issuance of any warning as the very basis of any penalty stands taken away by the disciplinary authority. In other words, it would be a penalty without any charge against an employee and would be in violation of principles of natural justice.

8. An identical issue was considered by the Hon'ble Rajasthan High Court at Jodhpur in D.B., CWP No. 1350 of 2009 titled **Rajendra Singh Sisodia Vs. Union of India & Others**, decided on 22.3.2010 in which the Hon'ble High Court has clearly held that once the disciplinary authority has taken a decision to drop the proceedings, it cannot taken a contrary decision and opinion given by any authority cannot be taken into consideration to surpass the decision taken by the disciplinary authority as provided in the Statute. The relevant observations are as under :-

"In our opinion, the learned Tribunal has committed a serious error of law while ignoring the fact that power of decision as to initiating the inquiry or not to initiate the inquiry, vests in the Disciplinary Authority and only the Disciplinary Authority is competent under Rule 14(2) of the CCS (CCA) Rules, 1965; and, once the Disciplinary Authority has exercised the power while giving show-cause notice to the petitioner and took decision not to proceed for inquiry after considering the explanation given by the petitioner, then, it is not open to any of the authorities to take contrary decision. The rule of law must prevail and opinion given by any other authority cannot be taken into consideration to surpass the decision taken by the Disciplinary Authority as provided in the statute.

Hon'ble apex Court, in the case of Negara Shivarao Karjagi Vs Syndicate Bank Head Office, Manipal and Another, reported in AIR 1991 SC 1507, in para 19, held as follows :

"The corresponding new bank referred to in S.8 has been defined under S.2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. **No thirds party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer.** (See: De Smith's Judicial Review of Administrative Act, Fourth Edition, p.309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters."