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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 28.05.2014

OA No. 34/2011

Mr. P.N. Jatti, counsel for applicant.
Mr. V.K. Pareek, counsel for respondents.

Heard learned counsel for the parties.

Order is reserved.

(M. NAGARAJAN)
JUDICIAL MEMBER

Anil Kumar
(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

27.23.7.2014

Order pronounced today in the open
Court by the Honble Bench.

[Signature]
23/7/14
COURT JAIPUR

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

Original Application No. 34 of 2011

Reserved on : 28-05-2014

Decided on : 23-7-2014

CORAM :

HON'BLE SHRI ANIL KUMAR: MEMBER(A)

HON'BLE SHRI M. NAGARAJAN: MEMBER(J)

Pushpa Devi : Applicant(s)

Mr.P.N.Jatti : Advocate for the applicant

Versus

Union of India & Ors. : Respondent(s)

Mr.V.K.Pareek : Advocate for the respondents

ORDER

1. Whether reports of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 34/2011

Order Reserved on: 28/05/2014
Order pronounced on: 23./..7./2014

Coram:

Hon'ble Mr. Anil Kumar, Administrative Member
Hon'ble Mr. M. Nagarajan, Judicial Member

Pushpa Devi w/o late Shri Harish Kumar, aged about 40 years r/o Near primary School Kalpura, Nayapura Kota, presently removed from the o/o Central Excise Office Division Kota.

....Applicant

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union Of India, Through The Secretary (Revenue) Ministry of Finance Vitty-Bhawan, New Delhi.
2. The Chief Commissioner, Custom and Central Excise Jaipur-1, Government of India, Statue Circle, Jaipur
3. Commissioner, Custom And Central Excise Jaipur-1, Revenue building, Statue Circle Jaipur-1
4. Upper-Commissioner (Ka and Sat), Custom And Central Excise Jaipur-1, Revenue building, Statue Circle Jaipur-1
5. Administrative officer, Custom And Central Excise Jaipur-1, Revenue building, Kota.
6. Joint Commissioner (P and V) Central Excise Commissionerate Jaipur-I.

....Respondents

Mr. V.K. Pareek, Counsel for the respondents.

r. V. K. Pareek

ORDER (ORAL)

Per : Hon'ble Shri M. Nagarajan, Judicial Member

The applicant has presented this Original Application with the prayer to quash the orders dated 05/08/2010, 19/10/2010 and 23/12/2008 respectively at Annexure-A/1, A/2 and A/3. She is also seeking a direction to the respondents to take her on duty and the period ordered as dies-non w.e.f. 04/07/2007 to 26/07/2010 be treated as on leave.

2. The charge-memo dated 23/12/2008 (Annexure-A/3) was issued to the applicant under Rule 20 of CCS (CCA) Rules, 1965 requiring the applicant to submit her statement of defence in respect of charges mentioned therein. Charges leveled against the applicant in the said memo of charges dated 23/12/2008 (Annexure-A/3) is that applicant was absent from 04/07/2007 and that she disobeyed the orders of superior officers. In pursuance of the issuance of memo of charges dated 23/12/2008, an inquiry was initiated which resulted in dismissal of the applicant from service by issuing the impugned order dated 05/08/2010 (Annexure-A/1) by the Disciplinary Authority. The applicant preferred an appeal against the punishment order of dismissal dated 05/08/2010 before the Appellate Authority and the appeal preferred by the applicant was

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rejected by the Appellate Authority vide order dated 19/10/2010 (Annexure-A/2).

3. The brief facts which give rise to this O.A. as stated by the applicant are that she was appointed in the office of Central Excise at Kota w.e.f. 09/11/1998. On appointment, her first posting was in the office of Central Excise at Kota and she worked at Kota upto 2004.

4. The applicant was transferred from Kota to Chittorgarh and she joined duty at Chittorgarh in the year 2004. But in view of the fact that her in-laws were residing at Kota, she submitted an application for her transfer from Chittorgarh to Kota. According to the applicant, her request for transfer from Chittorgarh to Kota was not considered by the respondents immediately and also in view of the fact that there were certain quarrels between the family Members, she took a decision not to get her transfer to Kota and submitted an application dated 29/06/2007 to cancel her transfer order dated 22/06/2007. She further submits that on 03/07/2007, She was relieved to join duties at office of Deputy Commissioner, Central Excise Division, Kota. According to the applicant, she could not report for duty at Kota in view of the threats posed on her by her family members. Consequently, she made a request by a representation dated 29/06/2007 (Annexure-A/5) to

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cancel her transfer. According to the applicant, instead of considering her request to cancel her transfer from Chittorgarh to Kota, the respondents issued the impugned charge memo dated 23/12/2008 under Rule 20 of CCS (CCA) Rules 1965. The impugned charge-memo was addressed to the office address at Chittorgarh.

5. The applicant claims that though the impugned charge-memo dated 23/12/2008 was served on her, the inquiry in pursuance of the said charge-memo dated 23/12/2008 was not conducted as per the procedure prescribed in the CCS (CCA) Rules, 1965. Contending that the order of dismissal was passed without following the procedure prescribed under said CCS (CCA) Rules, the applicant presented this O.A. with a prayer to quash the charge-memo dated 23/12/2008, the order of dismissal dated 05/08/2010 passed by the Disciplinary Authority and the order of Appellate Authority dated 19/10/2010 respectively at Annexure-A/3, A/1 & A/2.

6. In pursuance to the notice of the O.A. the respondents entered appearance and filed their reply. In their reply, they have denied the allegation of the applicant that the inquiry was not conducted in accordance with the procedure prescribed under the said CCS (CCA) Rules, 1965. In their reply the respondents submitted that in

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pursuance of transfer order dated 22/06/2007 from Chittorgarh to Kota, though the applicant was relieved from Chittorgarh on 03/07/2007 with a direction to report for duty at Kota, she did not honour the directions of Higher Authorities and unauthorisedly remained absent from duties and as such the initiation of departmental inquiry for remaining absent unauthorisedly cannot be faulted upon.

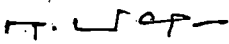
7. The respondents have further submitted that the inquiry was conducted in accordance with the procedure prescribed under the said CCS (CCA) Rules, 1965 and by observing the Principle of Natural Justice. In spite of several opportunities provided by the inquiry officer to the applicant to appear before him and to participate in inquiry on the dates i.e. 18.08.2009, 30.04.2010 and on 17.05.2010, she did not appear before the inquiry officer. Since the applicant deliberately did not participate in the inquiry, the inquiry officer held the enquiry exparte and submitted his report. On receipt of the report of the inquiry officer, further action was taken, in accordance to the Rule 14 of CCS (CCA) Rules, 1965. It is contended that the applicant is liable to be dismissed from service on the charges of remaining unauthorisedly absent w.e.f. 04/07/2007. The respondents further submitted that the Appellate Authority has duly considered the appeal of the applicant against the order of dismissal dated 05/08/2010

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(Annexure-A/1) passed by the Disciplinary Authority and having found no valid reason to modify or cancel the same, rejected the appeal.

8. Heard Shri P.N. Jatti, learned counsel for the applicant and Shri V.K. Pareek, learned counsel for the respondents. Perused the pleadings and documents annexed to the pleadings of respective parties.

9. Shri P.N. Jatti, learned counsel for the applicant argued that the impugned order of dismissal passed by the Disciplinary Authority is liable to be set aside on the ground that the same is in violation of Principle of Natural Justice and in utter disregard to the procedure prescribed in CCS (CCA) Rules, 1965. In support of this submission, the learned counsel for the applicant invited our attention to the report of inquiry officer dated 16/07/2010 (Annexure-A/12). Relevant portion of the same reads as:

"In this connection, it is further submitted that for conducting the enquiry proceedings in this matter, the dates were fixed by me on 18.08.2009, 30.04.2010 and on 17.05.2010. On 17.05.2010, the Presenting Officer Shri P.K. Bairwa, Inspector was appeared before me but Smt. Pushpa Bai, Sepoy did not appear before me even after posting of the letters of hearing on her address, as she was not found available there." 

By referring to the aforesaid portion of the report of the Inquiry Officer, learned counsel for the applicant Shri P.N. Jatti submitted that inquiry officer himself has admitted the fact that notices of the inquiry was not served upon the applicant. On the perusal of the aforesaid portion of the report of the inquiry officer, we find that the notice of the inquiry was not duly served upon the applicant. It was well within the knowledge of the Inquiry Officer that the notice of the inquiry could not be served upon the applicant for the reason that she was not found at the address to which notices were sent. As such, the Inquiry Officer ought to have taken further steps to serve notice of inquiry upon the applicant. Instead he considered it proper to conduct inquiry proceedings exparte. No doubt inquiry can be conducted exparte provided that the notice of inquiry is duly served upon the delinquent official. On the perusal of the inquiry report, we found that the inquiry officer has not taken any step to see that the notice of inquiry was duly served upon the applicant and that the Inquiry Officer has not at all followed the prescribed procedure under Rule 14 of the CCS (CCA) Rules, 1965. In this regard, it is necessary for us to refer to refer to Sub-Rule (11), (20) and (23) of Rule 14 of the CCS (CCA) Rules, 1965 which reads as under :

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14. Procedure for imposing major penalties.

(11) *The Inquiring Authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence—*

- (i) Inspect within five days of the order or within such further time not exceeding five days as the Inquiring Authority may allow, the documents specified in the list referred to in sub-rule (3);*
- (ii) submit a list of witnesses to be examined on his behalf;*

NOTE.— If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in sub-rule (3), the Inquiring Authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the Disciplinary Authority.

- (iii) give a notice within ten days of the order or within such further time not exceeding ten days as the Inquiring Authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in sub-rule (3).*

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NOTE.— The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(20) *If the Government servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Inquiring Authority or otherwise fails or refuses to comply with the provisions of this rule, the Inquiring Authority may hold the inquiry exparte.*

(23) *(i) After the conclusion of the inquiry, a report shall be prepared and it shall contain—*

- (a) the articles of charge and the statement of the imputations of misconduct or misbehavior;*
- (b) the defence of the Government servant in respect of each article of charge;*
- (c) an assessment of the evidence in respect of each article of charge;*
- (d) the findings on each article of charge and reasons therefor.*

EXPLANATION.— If in the opinion of the Inquiring Authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The Inquiring Authority, where it is not itself the Disciplinary Authority, shall forward to the

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Disciplinary Authority the records of inquiry which shall include—

- (a) the report prepared by it under Clause (i);*
- (b) the written statement of defence, if any, submitted by the Government servant;*
- (c) the oral and documentary evidence produced in the course of the inquiry;*
- (d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and*
- (e) the orders, if any, made by the Disciplinary Authority and the Inquiring Authority in regard to the inquiry.*

The requirement of the aforesaid Rule has not at all been met by the Inquiry Officer as evident in the inquiry report dated 16/07/2010 at Annexure-A/12. The inquiry officer ought to have borne in mind that his job is not at all affected by the absence of the charged officer. He is charged with the scrutiny of the evidence, both verbal and record and then come to a finding respecting to each of the charges leveled against the delinquent official. The only difference is that the employee himself has denied the opportunity of cross examining. In exparte proceedings, the inquiry officer has to see that the notices of all hearing have duly been served on the delinquent official. In exparte proceedings the entire gamut of the enquiry has to be gone through. The enquiry authority should record the reason as to why he is proceeding exparte. He is required to take all

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the steps and to ask the official to take part in the inquiry strictly by following the procedure prescribed in the said rules. The inquiry officer has to examine the records and witness so as to enable him to come to a valid and reasoned conclusion as to the culpability of the charged officer based on the evidence laid before him. The inquiry officer has done this all, thereafter the charged official can not later on plead that he was not given reasonable opportunity. The inquiry officer has to ensure that he comes to a finding solely on the basis of evidence, both oral and documentary produced before him. As already noticed, none of these requirements has been followed by the inquiry officer. Hence, we hold that the inquiry conducted against the applicant in pursuance of the charge-memo dated 23/12/2008 (Annexure-A/3) is not at all conducted by following the procedure prescribed under the Rule 14 of CCS (CCA) Rules, 1965. The inquiry initiated in pursuance of memo of charge dated 23/12/2008 (Annexure-A/3) suffers for want of observance of statutory provisions and violation of Principle of Natural Justice and consequently impugned order dated 05/08/2010 and 19/10/2010 respectively at Annexure A/1 & A/2 are liable to be quashed and set aside.

10. The next question which arises for our consideration is that "whether on account of our finding that the inquiry

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initiated in pursuance of memo of charge dated 23/12/2008 (Annexure-A/3) suffers for want of observance of statutory provisions and violation of Principle of Natural Justice and consequently impugned order dated 05/08/2010 and 19/10/2010 respectively at Annexure A/1 & A/2 are liable to be quashed and set aside, the applicant is entitle for reinstatement into service?"

11. To answer this question we are guided by the principle laid down by the Hon'ble Supreme Court in the case of ***Chairman, Life Insurance Corporation of India and Others Vs. A. Masilamani in Civil Appeal No. 8263 of 2012*** decided on 23/11/2012 [(2013) 6 SCC 530] where at Para 16 of the said judgment, the Hon'ble Supreme Court has held as:

"It is settled law that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated and conclude the same."

In view of the above the dictum of Hon'ble Supreme Court, we remand matter to the Disciplinary Authority to conduct the inquiry. The applicant shall submit her written

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defence to the charge-memo within 15 days from the date of receipt of a copy of this order and disciplinary authority, on receipt of written defence statement of the applicant within a period of one month from the date of receipt of this order, is required to consider the same and to further proceed in the matter strictly in accordance with the procedure prescribed under provision of Rule 14 of the CCS (CCA) Rules, 1965. On examination of written submission of the applicant, the disciplinary authority were take a decision to hold an enquiry, such inquiry shall be completed within four months from the date of receipt of a copy of this order and thereafter by following prescribed procedure, the final order shall be passed within two months. Thus the whole exercise shall be completed within six months from the date of receipt of a copy of this order.

12. However, we make it clear that quashing of impugned order dated 05/08/2010 and 19/10/2010 respectively at Annexure A/1 & A/2 does not entitle the applicant to claim the reinstatement into service and further it is made clear that the whole exercise as directed above is not completed by the disciplinary authority within a period of six months from the date or receipt of a copy of this order, it is deemed that the respondents have abandoned the inquiry initiated against the applicant in pursuance of charge-

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memo dated 23/12/2008 (Annexure-A/3) and the applicant is entitled to claim reinstatement into service.

13. With these observations Original Application is disposed of. No order as to costs.

M. Nagarajan
(M. NAGARAJAN)
MEMBER (J)

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

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