

(Reserved on 28.03.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 01st **Day of MAY 2018**)

Hon'ble Mr. Justice Dinesh Gupta-Chairman
Hon'ble Dr. Mrutyunjay Sarangi - AM

CCP No.3 of 2017
(Arising out of Original Application No.986 of 2012)

1. Rakesh Srivastava Son of Late Shyam Ji Srivastava, presently Retired from the post of Superintendent, Central Excise, 38 Mahatma Gandhi Marg, and permanent Resident of 7/15 Tashkand Marg, Civil Lines, Allahabad.

..... **Applicant**

By advocate: Shri Vishal Tandon

Versus

1. Dr. Hashmukh Adhia, Secretary, Ministry of Finance, Department of Revenue, 6th Floor, Hudco Vishala Building, Bhikaji, Connaught Place, North Block, New Delhi. (110001).

..... **Respondents**

By advocate: Shri Saurabh Srivastava
Shri L P Tiwari

ORDER

Delivered by Hon'ble Mr. Justice Dinesh Gupta –Chairman

The present contempt petition has been filed by the applicant due to non-compliance of the order dated 16.10.2015 (Annexure No. 4 to the contempt petition) passed in O.A. No. 986 of 2012 wherein the following order was passed:-

"...We accordingly mould the relief as sought in the O.A. to the extent that the Respondent no. 3 is directed to reconsider the quantum of punishment imposed upon the applicant by order dated 26.08.2010 and pass suitable orders proportionate to the nature of misconduct. The order should be speaking and shall be passed within a period of three months. The punishment imposed should not take into account charges contained in

Article 10 of the charge sheet and should not be arbitrary, vindictive and excessive."

2. On 13.01.2016, one modification application was filed by the respondents with a prayer to modify the order dated 16.10.2015 by directing the respondent no. 1 i.e., Secretary, Ministry of Finance, Department of Revenue, Govt. of India in place of respondent no.3, being the competent authority in case of the applicant. Another application was filed by the respondents on the same date for extension of the time granted by this Tribunal for compliance of the order dated 16.10.2015. Both the applications were allowed by this Court on 03.03.2016 (Annexure No. 7 to the contempt petition) and this Tribunal granted further two months time to the respondent no. 1 to comply with the order dated 16.10.2015.

3. Thereafter, on 30.06.2016, another time extension application was filed by the respondents for compliance of the order dated 16.10.2015 and this Tribunal vide order dated 26.07.2016 (Annexure No. 9 to the contempt petition) again granted further two months further time to the respondents to comply with the order dated 16.10.2015. When the respondents failed to comply with the order dated 16.10.2015 in spite of sufficient time granted by the Court, the applicant filed this contempt petition.

4. The respondents filed another time extension application no. 1349 of 2017 on 14.07.2017 seeking six months time to comply the modified order dated 03.03.2016. In the time extension application it has been stated the consequent upon this Tribunal directing the respondents to reconsider the quantum of punishment imposed on the applicant, the Charged Officer attaining the age of superannuation on 31.12.2013, the departmental proceedings against the applicant have become deemed

proceedings under Rule 9(2) (a) of the CCS (pension) rules, 1972 and are to be conducted and completed in the same manner as if the applicant had continued in the service except that an order of punishment under Rule 9 (1) of the said Rules can be passed by the president only. Further, as per proviso below Rule 9 (1) the UPSC shall be consulted before any final order is passed. The matter was referred to the Central Board of Excise & Customs vide letter C. No. II (10)69-Confl./Disc/2008/Pt./1027-28 dated 09.06.2016 for taking necessary action in the matter. The respondent no. 1 vide circular F. No. C-11016/03/2016-Ad. V, dated 23.06.2016 in order to avoid delay in examination of proposal received from field formations under Rule 9 of CCS (Pension) Rules, 1972, introduced the single window system for receiving the proposal from field formations. Vide letter F. No. C-18013/32/2016-Ad-V/1540 dated 03.03.2017, the Under Secretary, Central Board of Excise & Customs directed the Commissioner, Central Excise, Allahabad to send complete proposal as per the U.P.S.C. proforma to decide the quantum of Penalty and to send the documents and to depute a well conversant officer to deliver the proposal in Single Window System in Ad. V Section. During the preparation of the said proposal for submitting the record to the Ministry for decision under Rule-9 of the CCS Pension Rule, 1972, it was observed that the procedure of General Examination under Rule – 14 (18) of CCS CCA Rules, 1965 was not followed. The requirement to follow the due procedure in departmental proceedings was recently emphasized by the DoPT O.M. F. No. 11012/03/2015-Estt (A), dated 18.02.2015. The proforma/check list for sending disciplinary proceeding cases to UPSC in column k (iii) seeks information specifically regarding general examination of the Charged Officer, Accordingly, a letter C. No. II (10) 69-Confl. /Disc. /2008/Pt.0 648-49 dated 01.05.2017, The Inquiry Officer was directed to conduct the general examination and to submit the report immediately so that complete proposal may be sent to the respondent no. 1 through Single Window System. The Inquiry Officer

vide letter dated 04.05.2017 gave an opportunity to the applicant to appear before him on 09.05.2017 for General Examination or to submit his written representation under Rule – 14 (18) of CCS CCA Rules, 1965. After complete records of the case are delivered to respondent no. 1, the matter will be placed before the competent authority for forming a tentative view. If the competent authority finds that there is no grave misconduct or gross negligence resulting into loss to the exchequer, it may pass a final order exonerating the applicant. However, if the competent authority holds a contrary view, then the case will be sent to UPSC for their advice. The UPSC takes around three to four months time to give its advice. As per DoPT OM No. 39011/12/2009-Estt (B) dated 16.11.2010 minimum 3 to 4 months time is to be made available to the UPSC to consider and advice in a disciplinary case involving CAT/Court direction. As per Rule 15 (3) of the CCS (CCA) Rules, 1965, a copy of the advice of UPSC is required to be provided to the Charged Officer for his representation and then the competent authority will pass final order after considering such representation, if any, received from the charged officer.

5. It has been submitted that the respondents have already initiated action for compliance of modified order dated 03.03.2016 passed by this Tribunal. The Inquiry Officer submitted his report including General Examination under Rule – 14 (18) of CCS CCA Rules, 1965, vide C. No. 06-DGPM (ERU)/Enq.Pro/Rakesh Sr.17 dated 09.05.2017. Vide letter C. No. II (10)69-Conf/Disc/2008/Pt dated 12.05.2017, the Commissioner, Central Excise, Allahabad sent a complete proposal under single window system to the Under Secretary (Ad-V) for taking decision under Rule 9 of CCS (Pension) Rules, 1972. The Under Secretary (Ad-V) CBEC vide their letter F. No. C-14012/28/2017/ Ad-V dated 07.07.2017 has written a letter to the Commissioner Central Excise Allahabad intimating the deficiency memo issued by Under Secretary, Services-1, Branch of Union Public Service Commission, New Delhi. The complete

proposal sent under single window system has been returned back by the UPSC to the Under Secretary (Ad-V), CBEC pointing out some discrepancies after scrutiny of the same. The legible copies of Exhibits at SI No. 1 & 2 of the proposal have been required with the direction to resubmit the case to the UPSC for their advice after getting time extension as the time allowed by this Tribunal is already over.

6. Learned counsel for the applicant filed objection to the time extension application filed by the respondents wherein it has been stated that by way of the time extension application the respondents are seeking modification of the earlier orders dated 03.03.2016 and 26.07.2016 passed by this Tribunal while it was sitting on the original side, the same cannot be done and that too when this Tribunal has already granted sufficient time to the respondents to comply with the order dated 16.10.2015 and furthermore a last opportunity for filing compliance affidavit has already been granted vide order dated 06.04.2017. Since, 03.03.2016 more than one year and four months have passed and now again the respondents are seeking time to comply with the aforesaid order, which is illegal. The respondents are just trying to linger on the matter on one pretext or the other.

7. Furthermore, it has also been submitted that the applicant was called by the respondents to submit his written representation vide communication dated 04.05.2017 and in pursuance of the communication dated 04.05.2017, the applicant submitted his reply dated 08.05.2017.

8. Heard the counsels for both the parties and perused the pleadings available on record.

9. Since the respondents after receiving the opinion of the Union Public Service Commission sent the said opinion to the applicant asking for his comments and the applicant also submitted his comments to the respondents. Now only course left to the respondents to sent those comments and inquiry proceedings to the disciplinary authority to take decision and for that purpose, the respondents are granted two months' time to take final decision in compliance of the aforesaid directions passed by this Tribunal and respondents cannot take shelter that the matter for the opinion of the UPSC is pending there.

10. It is also made clear that this Court has shown displeasure to the way the respondents are conducting the case of the applicant leisurely. Hence, it is expected that respondents will take a decision in the case of the applicant as expeditiously as possible, preferably within a period of two months from the date of receipt of certified copy of this Order.

11. List this case on 09.07.2018 for filing the compliance affidavit.

(Dr. Mrutyunjay Sarangi)
Member (A)

(Justice Dinesh Gupta)
Member (J)

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