

(Reserved on 09.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application No. 330/00136/2010

This the *13th* day of *July, 2018*

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A)

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Mahendra Pal Singh, Son of Shri Narayan Lal, age 46 years, resident of H. No. MIG-86, BDA Colony, Tibrinath Mandir, Bareilly – 243001 (U.P), presently employed as Senior Tax Assistant, Central Excise Division, Rampur Garden, Bareilly (U.P) - 243011 .

.....Applicant

By Advocate: Shri M.K. Sharma proxy to Shri J.H. Khan

Versus

1. Union of India through the Commissioner, Central Excise Commissionerate, Bhaisali Ground, Shaheed Park, Delhi Road, Meerut -II .
2. The Additional Commissioner (P&V), Central Excise Commissionerate, Bhaisali Ground, Shaheed Park, Delhi, Meerut-II.

.....Respondents

By Advocate : Shri D. Tiwari proxy for Sri R.K. Srivastava

ORDER

DELIVERED BY:-

HON'BLE MR. GOKUL CHANDRA PATI, (MEMBER-A)

By way of the instant original application, the applicants have prayed for following main relief:-

“a. to set aside the impugned Appellate Order C. No. II(27)58-Vig/M-II/05/186 dated 06.06.2008 passed by the Hon'ble Commissioner, Central Excise Commissionerate, Meerut-II with all consequential reliefs.

a.a. To further set aside the impugned order dated 16.8.2005 (Annexure-23) passed by disciplinary authority be also set aside”:-

2. The brief facts of the case as stated in the OA are that while the applicant was working as UDC in the Central Excise Department, Kanpur, a charge-sheet dated 13.2.202 (Annexure A-6 to the OA) was issued against him. Enquiry Officer was appointed and penalty was imposed by the respondent no. 2 vide order dated 23.6.2004. The appellate authority on appeal, remanded the matter to the disciplinary authority who supplied a copy of the inquiry report to the applicant. Vide order dated 16.8.2005 (Annexure A-23), the respondent no. 2 again issued the same penalty as the earlier order dated 23.6.2004 i.e. reduction in rank and pay for a period of 5 years. The applicant filed the OA No. 1241/2005 against the punishment order, and this Tribunal directed the applicant to first exhaust the statutory remedy first. Accordingly, the appeal dated 21.9.2007 (Annexure A-24) was filed before the appellate authority who passed the order dated 06.06.2008 (Annexure A-1), which is impugned in this OA.

3. In the appeal order dated 06.06.2008, the appellate authority (i.e. respondent no. 1) after detailed consideration of the appeal reduced the penalty to reduction in rank and pay for a period of 2 years, after which he will be restored to the higher grade of pay at the minimum level. The challenge to the appellate authority's order is mainly on the following grounds as stated in the OA:-

- Copy of the enquiry report dated 18.03.2004 was not given to the applicant within limitation before passing the first penalty order dated 23.6.2004, imposing a major penalty of reduction of rank and pay for 5 years and reduction of pay with cumulative effect. After this order was set aside by the appellate authority, the disciplinary authority supplied a copy of the inquiry report and then imposed the same penalty order vide order dated 16.08.2005 (Annexure A-23).
- The punishment imposed was combination of different penalties, which is not permissible under the rule 12(1) of the CCS(CCA) Rules, 1965.
- Different penalties were imposed on different charged officers, although it was a common proceeding. No other charged officer was given minor penalty, but the applicant was given a major penalty.
- The appellate authority accepted the contention of the applicant that he did not detain the truck in question. But he passed the order to modify the punishment of reduction of rank for 2 years and the order was passed beyond the time allowed by the order of this Tribunal.
- The case is on the basis of false information, not on evidence.
- The applicant was also transferred vindictively, apart from the proceedings due to which he has been denied promotion to Inspector from 6.12.2002 till date.
- Both the penalty order by the disciplinary authority modified by the appellate authority were severe and multiple and hence, it is illegal.
- There is violation of the principles of natural justice
- There is abnormal delay of 8 years in finalizing the disciplinary proceedings against the applicant.

4. The respondents have filed their Counter Affidavit stating that the Deputy Commissioner, on 23.7.2000 on receiving a complaint regarding

illegal detention of a truck by some Central Excise officers and he took statement of the staff about the complaint. It is also stated that the action of the respondents is in conformity with the rules and the applicant failed to come up with valid grounds for filing the OA.

5. In the Rejoinder, the applicant mainly reiterated the averments in the OA. It is further stated that subsequently the complain was withdrawn by the complainant, but the respondents initiated the disciplinary proceedings after a delay of 18 months. As per the guidelines, the action is to be taken within three months from the dated of suspension. In this case, the applicant continued under suspension for about six months before chargesheet was served on him. Further, he was given two punishments which is against the rules. The Inquiry Officer has failed to conduct inquiry as per the rules. The respondents have denied the contentions in the Rejoinder through a Supplementary Counter Affidavit, reiterating the stand in the Counter Affidavit.

6. We have heard learned counsels for both the parties who reiterated the contentions in respective pleadings and note the limited role this Tribunal has as per the law laid down by Hon'ble Apex Court. In the case of ***S.R. Tewari vs. Union of India 2013 (7) Scale page 417***, Hon'ble Apex Court has held that:-

“The role of the court in the matter of departmental proceedings is very limited and the court cannot substitute its own views or findings by replacing the findings arrived at by the authority on detailed appreciation of the evidence on record. In the matter of imposition of sentence, the scope for interference by the court is very limited and restricted to exceptional cases. The punishment imposed by the disciplinary authority or the appellate authority unless shocking to the conscience of the court, cannot be

subjected to judicial review. The court has to record reasons as to why the punishment is disproportionate. Failure to give reasons amounts to denial of justice. The mere statement that it is disproportionate would not suffice.”

7. In the case of ***Union of India Vs. P. Gunasekaran 2015 (2) SCC page 610*** in para 12 Hon’ble Supreme Court has held as under:-

“Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

- a. the enquiry is held by a competent authority;***
- b. the enquiry is held according to the procedure prescribed in that behalf;***
- c. there is violation of the principles of natural justice in conducting the proceedings;***
- d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;***
- e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;***
- f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;***
- g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;***

- h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;***
- i. the finding of fact is based on no evidence.”***

8. In the case of ***B.C. Chaturvedi vs. Union of India & Ors. 1995 (6)***

SCC 749, Hon'ble Supreme Court has observed as under:-

“Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.”

9. The grounds mentioned in the O.A include the ground that the punishment impugned was a combination of different penalties, which is not permissible under the rule 12(1) of the CCS (CCA) Rules, 1965 and that there is violation of the principles of natural justice. As regards the punishment, the appellate authority's order dated 06.06.2008 states as under: -

"I, hereby order that Shri M.P. Singh, appellant shall be reduced to the lower time scale of pay of Rs. 4000-100-6000 from the pay scale of Rs. 5000-150-8000 for a period of two years with effect from 16.08.2005 i.e. the date of the original order of penalty. His pay will be fixed in the lower grade at the stage of Rs. 4000/- in time scale of pay of Rs. 4000-6000 and he will not draw increments during the period of reduction mentioned above. He will be restored to the higher grade of pay of Rs. 5000-150-8000 but at a minimum. Thereafter, he shall start earning his regular increments subject to other available provisions."

10. It is noted that rule 11(v) and 11(vi) of the CCS (CCA) Rules, 1965 states the following : -

- " (v) save as provided for in clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;
- (vi) reduction to lower time-scale of pay, grade, post or Service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time-scale of pay, grade, post or Service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period -

- (a) the period of reduction to time-scale of pay, grade, post or service shall operate to postpone future increments of his pay, and if so, to what extent; and
- (b) the Government servant shall regain his original seniority in the higher time scale of pay , grade, post or service;”

11. The punishment imposed by the appellate authority, as indicated above, is the penalty as specified under rule 11(vi) and hence, is a major penalty. The contention of the applicant that it is a combination of penalty, is therefore, not correct since the penalty imposed by the appellate authority is major penalty as specified under rule 11(vi). The applicant has also not exhibited in his pleadings to justify the contention that the punishment imposed is a combination of penalty.

12. Applying the ratio of the judgments discussed above, we are of the considered view that the grounds mentioned in the OA cannot be entertained in judicial review of the disciplinary proceedings. But we note that the applicant has filed this OA without filing any revision under the rule 29 of CCS (CCA) Rules, 1965 before the competent authority, who can consider the grounds that would be advanced by the applicant including the grounds mentioned in this OA against the punishment orders passed by the disciplinary and appellate authority.

13. Accordingly, we dispose of this OA with a direction that if the applicant files the revision petition under the CCS (CCA) Rules, 1965 before the competent authority/revisionary authority within one month from the date of receipt of a copy of this order, then the aforesaid authority shall consider the said revision petition treating it to have been filed within the time as stipulated under the CCS (CCA) Rules, 1965 and

dispose of the revision petition by passing a speaking and reasoned order as per law within three months from the date of receipt of the revision petition by the revisionary authority.

14. It is made clear that we have not expressed any opinion about the merits of this OA. No costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A

Anand...