Central Administrative Tribunal
Principal Bench: New Delhi

RA No.162/2015
in
MA No.1217/2015
(OA No.15/2014)

Reserved on: 15.09.2015
Pronounced on: 08.10.2015

Hon'ble Mr. Justice Syed Rafat Alam, Chairman
Hon'ble Dr. B.K. Sinha, Member (A)

Praveen Jain s/o late Sh. A.K. Jain
Commissioner (Appeals)
Central Excise, Customs & Service Tax
Saurabh Bungalow- next to Adarsh Hospital,
Race Course, Gotri Road,
Vadodara. ...Applicant

(By Advocate: Sh. Vinay Kumar Jain)

Union of India through
1. Secretary,
Department of Revenue,
North Block,
New Delhi-110 001.

2. Central Board of Excise & Customs
Through its Chairman,
North Block,
New Delhi- 110 001.

3. Director General of Vigilance,
Central Board of Excise & Customs,
Samrat Hotel, Chankya Puri,
New Delhi.

(By Advocate: Sh. Gyanendra Singh)

O R D E R

By Dr. B.K. Sinha, Member (A):

The instant review application has been filed seeking review of the Tribunal's order dated 29.05.2015 passed in MA

No.1217/2015 in OA No.15/2014, *inter alia,* stating that the same is against judicial record; exceeding the powers conferred under law; and against the explicit provisions of CCS (CCA) Rules, 1965 [hereinafter referred to as Rules of 1965] framed under Article 309 of the Constitution.

2. The applicant has contended that he had filed MA No.522/2015 submitting that it is the respondents who were delaying the enquiry and, hence, sought direction to the respondents to supply records to the applicant and conduct day-to-day enquiry. The respondents had also filed MA No.1217/2015 wherein it was submitted that while directives had been issued in OA No.15/2014, the applicant approached the Hon'ble High Court of Delhi by way of WP (C) No.7692/2014, which came to be dismissed vide order dated 09.12.2014 with imposition of cost quantified at Rs.50,000/- upon the applicant. Accordingly, the respondents directed the enquiry officer to complete the enquiry within a period of three months. However, the applicant desired certain additional documents to which the enquiry and the presenting officers had agreed to. The respondents further submitted in the MA that it was not desirable to bring any extraneous material on record of the enquiry without following due procedure for introduction of such documents. The respondents further submitted that the enquiry was still in a preliminary stage,

and in the aforementioned circumstances, they sought six months time to complete the same pursuant to Tribunal's directives.

3. Both the MAs were taken up for consideration and disposed of after having heard both the parties in the open court, vide order dated 29.05.2015, recall/review whereof has been sought in the instant Review Application.

4. The applicant in the OA had opposed the extension of three months sought for by the respondents and alleged that the enquiry was being delayed by the respondents. The respondents, in turn, submitted that the documents desired by the applicant were so disbursed with different authorities that they have not been made available and that extraneous matters are being brought on record just to delay the proceedings so that the time allowed may elapse and the Court may take a view to drop the proceedings. As a consequence of this, the Tribunal passed the following order:-

> "*Having heard both the parties, we note that despite our clear directions to conclude the proceedings within three months, the respondents have not proceeded in the matter. We had also made it plain that where the applicant does not cooperate with the proceedings, the same can be proceeded ex-parte for reasons to be recorded in writing. Similarly, where the applicant asked for irrelevant material just to deliberately delay the enquiry, the respondents have the powers to reject the same for the reasons to be recorded in writing. At this stage, we do not want to go into the claim of*

applicants, however, we decide this MA with the following directions:-

(i) To dispose of the enquiry within a period of two months from the date of receipt of a certified copy of this order.

(ii) The respondents are advised to hold the proceedings on day to day basis.

(iii) The applicant should remain present in person in the proceedings and not to try to take escape in its disposal.

We have also given liberty to the respondents to decide the case ex-parte in case of non cooperation."

5. In the present RA, the applicant has submitted that the proceedings were not being delayed on account of the applicant who has been personally present on all the 18 hearings. The applicant had sought certain additional documents for his defence which had been agreed to by the presenting and enquiry officers. However, the documents could not be made available on account of which the proceedings have not progressed. The applicant has further submitted that there was no provision under which a matter could be heard ex parte or that the documents asked for could be refused. Such orders, therefore, are contrary to the provision of Rules of 1965 and, therefore, need to be recalled.

6. The respondents have also filed their counter affidavit in which it has been submitted that a charge memo had been served upon the applicant on 10.09.2013. However, the applicant filed OA No.15/2014 filed on 02.01.2014 in which

the proceedings were stayed. The OA was finally disposed of vide order dated 13.10.2014 directing that disciplinary proceedings should be completed within a period of three months. The Tribunal in its order had also noted in para no.19 as under:-

> *"19. We also echo in the sentiments that instead of meeting the issues headlock and proving his innocence at the floors of the departmental enquiry, the applicant has engaged himself in getting the charge sheet quashed on some technical issues, which do not appear to be sustainable. We also take into account the persistent attempt on part of the applicant to obfuscate the issues behind a smoke screen of technicality and do not abide by it."*

The applicant approached the Hon'ble High Court of Delhi against the Tribunal's order by way of WP (C) No.7692/2014 which was dismissed vide order dated 09.12.2014. The Hon'ble High Court while dismissing the writ petition held as under:-

> *"In view of the above discussion, this Court is of the opinion that the present petition is devoid of merit. Considering that the petitioner has tried to prolong the proceedings repeatedly and that the CAT adequately safeguarded his right by making a time limit for conclusion of the enquiry, the present petition is entirely speculative. Consequently, the petition is dismissed with costs quantified at Rs.50,000/- to be paid to the respondent within four weeks."*

7. After having heard both the parties, we are swayed by the following consideration:-

(i) The observation that the applicant had been trying to obfuscate the issue and was adopting dilatory tactics had been made by this Tribunal while deciding OA No.15/2014. While dismissing the Writ Petition preferred by the applicant, the Hon'ble High Court not only took note of all the arguments advanced by the applicant but also imposed a cost quantified at Rs.50,000/- upon the applicant. As a consequence of this, the order passed by the Tribunal dated 13.10.2014 merged with the order of the High Court. It does not need to be reiterated that the observation of this Tribunal that the applicant was trying to obfuscate the issue behind technicalities and adopting dilatory tactics stands confirmed by the High Court. As such, this observation cannot be reviewed by this Tribunal now.

(ii) We are further swayed by the consideration that both the applicant and the respondents had asked for extension of time. The applicant had not given any time period by which the extension should have been made. The respondents, on the other hand, had submitted that a period of six months was required to complete the enquiry as the applicant had asked for certain documents which were so disbursed with different authorities and could not have been provided.

Further, they had made observations regarding extraneous matters being introduced. The applicant opposed this prayer as has been stated earlier on the ground that it was the respondents who were responsible for the delay. The order dated 29.05.2015 passed in MA No.1217/2015 also makes a record as has been cited for the sake of clarity. The applicant has challenged this statement now stating that the learned counsel for the respondents had never made these submissions. However, the legal position as stands is that this order was dictated in open court and had there been anything incorrect in the order, it was for the learned counsel for the applicant to have drawn the attention of the Tribunal to such inaccuracies. Instead, the applicant filed the instant RA on 25.06.2015 i.e. almost 26 days after the order passed in the MA. Moreover, as we have already held that in view of the provisions, conduct of the applicant has already been taken note of in para 18 of the order dated 13.10.2014 passed in OA No.15/2014 and has been confirmed by the Hon'ble High Court that the applicant has been trying to obfuscate the issue, adopting dilatory tactics and hiding himself behind the smoke screen of technicality. It was for the applicant

to have challenged this observation before superior courts as per law which the applicant has failed to do.

8. We also take note of the fact that since both the applicant and the respondents had prayed for similar relief in their respective MAs that extension of time be granted to complete the enquiry. However, the applicant did not prescribe any time period, the respondents had prayed for six months. Thus, granting extension for a period of two months is rather liberal on part of the Tribunal weighed towards the applicant and, as such, the applicant can possibly find no fault in Tribunals' order under review. It is also to be noted that the directives given for holding the enquiry on day-to-day basis or even for ex parte enquiry is not contrary to the legal position.

9. Clause 20 of Rule 14 of the Rules of 1965 provides as under:-

> *"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 refuse to comply with the provisions of this rule, the Inquiring Authority may hold the inquiry ex parte."*

It is clear that when an official despite having been served with articles of charge does not submit his written statement of defence or does not appear on the specified date or fails or ceases to comply with the provisions of this Rule, enquiry

officer may hold the enquiry *ex parte*. It is to be noted here that it is the disciplinary authority which, in ordinary course of action, who is to decide when an enquiry is to be held and when it is to be closed or what punishment is to be awarded. Rules of 1965, or for that matter, Rule 14 or 16 of the Rules *ibid* do not provide for any time period within which the enquiry is to be concluded. Any directive given by the Tribunal or courts are otherwise exceptions to these Rules.

10. It is also to be noted that departmental enquiries are being conducted under the mandate of Article 311(2) of the Constitution of India. However, Article 311(2) also provides for certain exceptions, relevant sub-section is extracted hereunder:-

> *"(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.*
>
> *Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:*
>
> *Provided further that this clause shall not apply-*
>
> > *(a) Where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or*

> *(b) Where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or*
>
> *(c) Where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State it is not expedient to hold such inquiry."*

11. This is also backed by judicial pronouncements of various courts. In case of ***R.V. Sharma V/s. Kendriya Vidyalaya Sangthan*** (OA No. 3118/2009 decided on 12.11.2009), this Tribunal observed that it was not expedient to hold a regular departmental enquiry under the Rules of 1965, as it would cause serious embarrassment to the girl students and their parents/guardians, and that apart, holding of regular enquiry was not found to be expedient because of the tender age of the girl students as their safety and security was to be ensured by preventing their exposure to the tardy process of cross examination in the inquiry in relation to the conduct of a teacher involving moral turpitude, and, therefore, holding of the regular enquiry needed to be dispensed with. Thus, the Tribunal held that it was not right to conclude that holding *ex pare* enquiry is against the provision of law and illegal.

12. Another point which we note is that why these directions were given. Once the Tribunal has considered the prayer for extension of time, it was also necessary to get the enquiry completed at the earliest possible. However, nowhere these directions imply that it was the respondent who was guilty of not holding the enquiry. They only talk of a situation where such eventualities may arise, the respondents, in consonance of the relevant provisions in force, may hold the enquiry on day-to-day basis. We also note that even the applicant has also sought direction to hold the enquiry on day-to-day basis and, now, he cannot, by any stretch of imagination, call it illegal.

13. In conclusion, we recapitulate that certain remarks regarding the applicant that he was trying to obfuscate the issue and adopting dilatory tactics were made by this Tribunal in its order dated 29.05.2015, which have since been confirmed by the Hon'ble High Court of Delhi in its order dated 04.10.2015. As a consequence of this, Tribunal's order has merged into the order of the High Court and it is not subject to review by the Tribunal.

14. Moreover, we have also taken note of the fact that in both the MAs, the prayers were the same i.e. seeking extension of time with the only difference that the applicant had not specified the period within which the enquiry should be

completed. Hence, granting a period of two months to the respondents to conclude the enquiry was rather lenient to the applicant. Further, the provision of *ex parte* enquiry is as per Rule 14(20) of the Rules of 1965. Moreover, day-to-day hearing had been sought by the parties, and where papers are not becoming available for any reason and are not relied upon, the same may not necessarily be provided. Moreover, the directives have been given as a precautionary measure since the power of the enquiry officer to let the enquiry proceed on its own pace are being restricted, which is the necessary part of the order so as to make it realistic. Hence, we find that there is nothing wrong with our order and note with regret that such MAs create doubt in the minds of officers conducting or pursuing the enquiry. Therefore, the instant Review Application is dismissed.

(Dr. B.K. Sinha)
Member (A)

(Syed Rafat Alam)
Chairman

/AhujA/