

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No.1395/2016

New Delhi this the 22nd day of April, 2016

HON'BLE MR. JUSTICE M.S. SULLAR, MEMBER (J)
HON'BLE MR. K.N. SHRIVASTAVA, MEMBER (A)

Anish Gupta
Aged 31 years,
S/o Shri Rajnish Gupta
IRS (C&CE: 2009)

Resident of:

344, Nimri Colony,
Delhi-110052.

....Applicant

(Argued by: Shri Prateek Tushar Mohanty)

Versus

1. Union of India through
The Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.
 2. The Chairperson,
Central Board of Excise and Customs (CBEC),
Department of Revenue,
Ministry of Finance, North Block,
New Delhi.
-Respondents

ORDER (ORAL)

Justice M. S. Sullar, Member (J)

Applicant, Anish Gupta, has preferred the instant

Original Application (OA), claiming the following reliefs:-

- “(i) to allow the present application;
- (ii) to quash the impugned order of revocation of suspension dated 17.02.2015 of the applicant [fifth document of Annexure A: A-1 (Colly)] as bad in laws inasmuch as it is detrimental to the applicant;
- (iii) to declare that the period spent by the applicant on suspension (21.08.2013 to 11.02.2015) should be treated as duty for all purposes;

(iv) to direct the Respondent Ministry to pay the applicant full salary and all allowances for the periods spent by the applicant on suspension (21.08.2013 to 11.02.2015) within a specified period;

(v) to direct the Respondent Ministry to pay the applicant interest @ 18% per annum, compounded monthly, on the arrears of pay and allowances that is due to the applicant from the date the amount was due;

(vi) to direct the Respondent to pay suitable compensation to the applicant as this Hon'ble Tribunal deems fit and proper in the circumstances of the case;

(vii) to issue any such and further order/directions this Hon'ble Tribunal deems fit and proper in the circumstances of the case; and

(viii) to allow exemplary costs of the application”.

2. The crux of the facts and material relevant for deciding the present OA is that the applicant, while functioning as Assistant Commissioner of Customs, is alleged to have committed grave misconduct. As a consequence thereof, he was served with the following Articles of Charge:-

“Article of Charge-I:

That the said Shri Anish Gupta, Assistant Commissioner while functioning as Assistant Commissioner of Customs, Appraising Group 2(H-K) Jawaharlal Nehru Custom House during the period between June 2013 and July 2013 deliberately delayed the clearance of colour paper of mix size and GSM imported @ US \$325 per m.t. from United States of America vide Bill of Entry No.2310191 dated 03.06.2013 with ulterior motive. Shri Anish Gupta, the then Assistant Commissioner, Group-2(H-K), JNCH failed to discharge his responsibility of proper disposal of the case, in the manner and method expected of him with respect to the Bill of Entry No.2310191 dated 03.06.2013 by re-assessing the same in terms of Section 17(4) of the Customs Act, 1962 as per the Group practice, immediately after receiving the examination report and samples from Docks. He did not re-assess the said Bill of Entry even after the order dated 4.7.2013 of the Additional Commissioner, Group-2(H-K) in this regard with the motive to use this Bill of Entry to call the importer for demanding and negotiating bribe money for another RMS facilitated Bill of Entry which was pending at Docks for clearance. Thus, it appears that Shri Anish Gupta, the then Assistant Commissioner, Group 2(H-K), JNCH have failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby violating Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

Article of Charge-II:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Anish Gupta initially demanded Rs.20 Lakhs which was later reduced to Rs.15 Lakhs for showing favour to the importer for smooth clearance of the second consignment of Misprinted Décor Paper vide Bill of Entry No.2387105 dated 11.06.2013 at mutually agreed price and for forbearing initiation of actions for recovery of duty liabilities on the past imports of Misprinted Décor Paper.

He demanded the amount of bribe through the Custom House Agent, M/s Ajay Logistics Pvt. Ltd., Mumbai and informed him that the bribe money would be collected by his person Shri Mangesh. When the CHA Director Shri S.C. Joshi met Shri Mangesh, he gave him his mobile number and asked to pay the amount at the CHA's office to his boy named Shri Santosh More. Thus, it appears that Shri Anish Gupta, the then Assistant Commissioner appears to have failed to maintain absolute integrity, exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. servant, thereby violating Rule 3(1)(i), 3(1)(ii) and 3 (1)(iii) of the Central Civil Services (Conduct) Rules, 1964.

Article of Charge-III:

That during the aforesaid period and while functioning in the aforesaid office, the said Shri Anish Gupta did not cooperate with investigating agency and tried to mislead the vigilance investigation by giving false statement and thus appears to have acted in a manner unbecoming of a Govt. servant, thereby violating Rule 3(1)(i), 3(1)(ii) and 3 (1)(iii) of the Central Civil Services (Conduct) Rules, 1964".

3. Sequel, an Enquiry Officer (EO) was appointed and departmental enquiry was initiated against him. In contemplation of the departmental enquiry, he was placed under suspension with immediate effect vide impugned order dated 21.08.2013 (Annexure A-1 Colly). Subsequently suspension period was extended vide orders dated 28.11.2013, 08.05.2014 and 08.08.2014 (Annexure A-1 Colly) by the competent authority. Although the Review Committee recommended for further continuation of

suspension period, but the President, being the competent authority, after careful consideration of the facts of the case and noting the fact that investigation has been completed by the investigating agency, has decided that the suspension of the applicant be revoked with effect from 12.02.2015 by means of order dated 17.02.2015 (Annexure A-1 Colly).

4. Now instead of allowing the enquiry proceedings to proceed smoothly, getting it completed and awaiting its outcome, the applicant has straightaway jumped to file the present OA and has prayed for treating the period of his suspension as spent on duty for all purposes and seeking payment of full allowances and salary for the said period. He has also prayed, as an interim measure, for an order of injunction against the respondent-Ministry from passing any order in the matter.

5. After hearing the learned counsel for the applicant and after going through the record with his help, we are of the firm view that there is no merit in the instant OA.

6. Ex-facie, the argument of the learned counsel that since suspension period of the applicant was revoked, his period of suspension should be treated as period spent on duty and that he is entitled to the payment of full salary and allowances with interest @ 18% per annum, is not tenable. The observations of Hon'ble Delhi High Court in the case of ***Hira Lal Vs. DDA 1995 Lab. IC 2196*** (Annexure A-3 Colly)

and of this Tribunal in OA No.4358/2013 decided on 18.03.2015 in the case of **Pratap Kumar Bisi Vs. UOI** (Annexure A-3 Colly), are also not at all applicable to the present case wherein while interpreting the scope of Rule 54-B of Fundamental Rules (FR), it was observed that normally when the suspension is without justification, the employee cannot be denied any portion of his pay and allowances for the period of his suspension and which has to be treated as spent on duty. But at the same time, it was categorically held that the competent authority is empowered to determine an amount less than the whole amount of pay and allowances payable to the employee on his reinstatement after revocation of his suspension as contemplated under sub-rule (8) and proviso to sub-rule (3). There can hardly be any dispute with respect to the aforesaid observation but same would not come to the rescue of the applicant at this stage.

7. As is evident from the record that very serious and glaring allegations of corruption have been made against the applicant for which he has been charge-sheeted and a regular departmental enquiry is in progress. As to whether the period of suspension of the applicant is to be treated as 'spent on duty' or not and as to whether he is entitled to full pay and allowances during the said period are the intricate questions, a decision on whom would depend on a variety of

factors and can only be decided by the Disciplinary Authority after the conclusion of the departmental proceedings.

8. Be that as it may, in any case, no extraordinary ground, much less any cogent one has been made out by the applicant so as to entertain the instant OA, even without the Disciplinary Authority having passed the final order. In view of the law laid down by the Hon'ble Apex Court in cases of ***S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582*** and ***The Govt. of A.P. and Others Vs. P. Chandra Mouli and Another (2009) 13 SCC 272***, the OA is not maintainable. The applicant appears to have filed the OA only to delay the departmental proceedings and hence it deserves to be dismissed with cost.

9. In the light of the aforesaid reasons and without commenting further anything on merits, lest it may prejudice the case of either side during the course of the DE proceedings, the OA is dismissed with a cost of Rs.2000 to be paid by the applicant to the respondent-Ministry.

Needless to mention that nothing observed hereinabove would reflect in any manner on the merits of the case vis-a-vis the disciplinary proceedings as the same has been recorded for the limited purpose of deciding the OA at this preliminary stage.

(K.N. SHRIVASTAVA)
MEMBER (A)

Rakesh

(JUSTICE M.S. SULLAR)
MEMBER (J)