

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.2659/2012

Order Reserved on:01.02.2016

Pronounced on:04.03.2016.

Hon'ble Mr. Raj Vir Sharma, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

K.K.Rai,
S/o Shri R.S. Rai
R/o 127, New Awas Vikas,
Saharanpur
Presently working as:
Superintendent
Central Excise Range, Deoband,
Division Saharanpur.

..Applicant

(By Advocate: Mr. Vishvender Verma)

Versus

1. Union of India
Ministry of Finance
Department of Revenue
New Delhi THROUGH
It's Secretary.
2. The Commissioner
Central Excise & Customs
Commissionerate, Meerut-I,
Uttar Pradesh
3. The Commissioner
Central Excise & Customs
Commissionerate, Noida
Uttar Pradesh.

-Respondents

(By Advocate: Shri R.N. Singh)

O R D E R

Mr. K.N. Shrivastava, Member (A):

This O.A. has been filed under Section 19 of the Administrative Tribunals Act, 1985. The specific reliefs prayed for in it read as under:-

- “i) To set aside the Impugned Orders dated 03.02.2006 and 15.03.2011 passed by the respondent. And after setting aside the same grant all consequential benefits to the applicant.
- ii) To pass any other and further orders as may be deemed fit and proper in the interest of justice; and
- iii) To award costs in favour of the applicant.”

2. The brief facts of this case are as under.

On 02.02.1986 when the applicant was posted as Inspector of Central Excise at Gorakhpur Division of Central Excise under Allahabad Collectorate (now called Commissionerate of Customs and Central Excise) he accompanied his superior Shri Bachhai Lal, Superintendent of Gorakhpur Division along with three Inspectors and four Sepoys to conduct a raid on the premises of M/s Purshottam Jewellery House in the Bazar Gorakhpur. In the said raid 743 pieces of gold ornaments weighing 3.545 kg valued then at Rs.6,02,650/-, were seized. A seizure memo was drawn. The said firm and its proprietor were tried in a court of

law for violating the provisions of Old Gold Control Act, 1968. The department confiscated the seized gold and imposed a penalty of Rs.1,00,000/- on the firm and Rs.50,000/- on the proprietor of the firm. The delinquent firm was punished by the court of law. However, a charge-sheet was issued to the applicant vide Annexure-5 order No.C.No.II(1)0132-Conf1/87/621 dated 03.05.1988 (Annexure A-5) against the applicant, which contained the following articles of charges:

“ARTICLE NO.I

It is alleged that during the course of search in the business/residential premise of M/s. Purshottam Jewellery House; Hindi Bazar, Gorakhpur, Gold Dealer license No.6/Gold/79. On 02.02.1986, Shri K.K. Rai Inspector while taking search and effecting seizure in the business premises of the aforesaid gold dealer failed to resume the “Repair Register” of the party which was a vital record for strengthening the charge of violation of Gold (Control) Act, 1968 committed by the firm. Thus he is alleged to have failed to maintain absolute devotion of duty.

ARTICLE NO.II

It is further alleged that during the search operation the said Shri K.K.Rai, Inspector in whose name the search warrant was issued and was entrusted to complete all the seizure formalities, did not conduct proper check of the “Repair Register” and failed to put his signature on relevant entries of the “Repair Register” and thereby afforded opportunity to the party to manipulate the case. This act on the part of said Shri K.K. Rai, Inspector is highly unbecoming of a Government servant.

ARTICLE NO.III

It is also alleged that the said Shri K.K. Rai, Inspector was required to critically scrutinized

and examine the "Repair Register" of the party and to put his dated signature on the said register in token of having checked the same but he failed to do so. Further with a view to mislead the department and weakened the case against the party he falsely stated in his letter dated 19.03.1986 addressed to Assistant Collector, Central Excise, Gorakhpur that he had checked the "Repair Register" and signed the same whereas this statement was contrary to the fact. Thus it is alleged that this act on the part of Shri K.K.Rai smacks of ulterior motive and thereby he is alleged to have failed to maintain integrity as was enjoined upon him under Rule 3 (1) (i) of C.C.S. (Conduct) Rules, 1964.

The aforesaid act on the part of Shri K.K. Rai, Inspector Not only tantamount to glaring misconduct but also speaks about lack of integrity and dereliction of duty on his part which is highly unbecoming of a Government servant and thereby he is alleged to have contravened the provisions of Rules 3(1) (i), (ii) and (iii) of the C.C.S. (Conduct) Rules, 1964."

The inquiry was conducted for imposition of major penalty against the applicant. The IO submitted his report on 29.12.1993 in which he held that the charges against the applicant are **not proved**. The Disciplinary Authority (DA), namely Collector, Central Excise, Allahabad disagreed with the findings of the Inquiry Officer (IO) and after considering the materials available on record, vide his impugned Annexure A-6 order No.C.No.II(10)132-Conf1/87/297 dated 28.02.1995 imposed the penalty of reduction in pay by two stages from Rs.2420/- to Rs.2300/- in the time scale of pay of Rs.1640-2900 for a period of one year w.e.f. 01.03.1995.

Aggrieved by the order of the DA, the applicant preferred an appeal to the President of India vide his Annexure A-13 appeal memo, who vide his order No.03/97 dated 31.01.1997 set aside the penalty imposed on the applicant and remanded the case back to the DA with a direction to communicate to the applicant the points of disagreement with the IO's report and to re-adjudicate the matter. The points of disagreement were communicated to the applicant by the DA on 11.03.1997. The applicant replied to the said disagreement note on 10.04.1997. The respondent No.3, who had become the DA of the applicant due to re-organization of the department, passed the impugned order No.C.No.II(8)12/N/Vig./05/80 dated 03.02.2006, imposing the major penalty of reduction of pay by two stages from Rs.10,000/- to Rs.9500/- in the time scale of pay of Rs.7500-10500 for a period of one year with effect from 01.03.2006. The order also states that the applicant will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will have the effect of postponing his future increments of pay. On 14.01.2011 the applicant filed a Review Petition under Rule 29-A of the CCS (CCA) Rules, 1965 to the President, which was dismissed on 15.03.2011. Aggrieved by the same, the instant OA has been filed.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. The case was taken up for hearing the arguments of the parties on 01.02.2016. Shri Vishvender Verma, learned counsel for the applicant and Shri R.N. Singh, learned counsel for the respondents argued the case. Besides highlighting the issues raised by the applicant in the OA, the learned counsel submitted that the applicant on receipt of Annexure A-9 disagreement note dated 11.03.1997 had submitted his detailed reply to the disagreement note vide his Annexure A-10 letter dated 10.04.1997 but the same has not been considered appropriately by the DA. The learned counsel stated that after a long delay of almost 09 years, respondent No.3 in his capacity of DA has passed the impugned Annexure A-11 order dated 03.02.2006. The learned counsel further submitted that the main ground on which the Annexure A-11 order dated 03.02.2006 has been passed is that the applicant failed to seize the repair register from the jewellery firm. It was also submitted that the impugned order states that the repair register was a vital evidence for establishing the charge against the raided jewellery firm and its non-resumption provided an opportunity to the firm to manipulate the same and damage the case of the department. The learned counsel vehemently argued that the register relevant for recovery of gold, sales vouchers,

purchase vouchers etc. were resumed and the gold seized was tallied with the repair register and hence the raiding team did not consider it appropriate to seize the repair register. Concluding his arguments, the learned counsel submitted that the very fact that the raided firm has been successfully prosecuted in the court of law and that applicant was one of the members of the raiding team, which was headed by his superior Shri Bachhai Lal and also in view of the fact that the Reviewing Authority has not passed a speaking order, the applicant deserves to be granted the prayers made by him in the OA.

4. Per contra, learned counsel for the respondents submitted that on the one hand the applicant has been alleging long delay at the end of the DA in passing the impugned Annexure A-11 order, but on the other hand does not offer any explanation for filing his Review Petition before the President of India under Rule 29-A after five years. The learned counsel also submitted that the OA is hopelessly time barred. He also placed reliance on the judgment of the Hon'ble Supreme Court in the case of **Union of India v. P. Gunasekaran**, 2015 (1) SCT 5 to say that in disciplinary matters the scope of judicial review is very limited. He also relied on the judgment of the Hon'ble Supreme Court in the case of **Govt. of Andhra Pradesh v. V. Appala Swamy**, (2007) 14 SCC 49

to say that mere delay in concluding departmental proceedings will not vitiate it.

5. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings. Admittedly the raided firm namely M/s Purshottam Jewellery House have been penalized by the court of law. The applicant has clearly given the reasons as to why the raiding party did not consider it appropriate to seize the repair register whereas the respondents have not mentioned in the impugned order as to what kind of prejudice has been caused to the interest of the Government by not seizing the repair register. It is also important to mention that the respondents have caused inordinate delay in conducting the disciplinary proceedings against the applicant for which the lone sufferer has been the applicant himself. The DA, while passing the first order of penalty on 28.02.1995, failed to observe the procedure laid down for passing such an order when the DA had disagreed with the finding of the IO. No disagreement note was recorded and consequently the Appellate Authority quashed the said order of the DA and remanded the case for fresh consideration. The sufferer on account of the said defective order, the sufferer was the applicant against on account of the delay the Again the delay of 09 years in

passing the impugned order dated 03.02.2006 is indeed appalling. We are aware of the ratio laid down by the Hon'ble Supreme Court in the case of **P. Gunasekaran** (supra) with regard to the limited scope of judicial intervention in the case of a disciplinary inquiry. However, the inexplicable delay in concluding the disciplinary inquiry has definitely caused prejudice to the applicant. We have gone through the judgment of the Hon'ble Supreme Court in the case of **V. Appala Swamy** (supra). The relevant extract of the said judgment is reproduced below:

“12. So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

- (1) Where by reason of the delay, the employer condoned the lapse on the part of the employee;
- (2) **where the delay caused prejudice to the employee.**

Such a case of prejudice, however, is to be made out by the employee before the Inquiry officer.”

6. As is stated earlier, inordinate and inexplicable delay caused at the end of the respondents in passing the Annexure A-11 impugned order dated 03.02.2006 has caused irreparable damage and prejudice to the

applicant in terms of his career growth. We also take cognizance of the fact that Shri Bachhai Lal, who was the head of the raiding party and who was also issued the same Annexure A-5 charge memo dated 03.05.1988 has since been let off by the respondents by way of dropping the disciplinary proceedings against him by the respondents vide their F.No.C-16012/6/95-AD.V dated 23.04.2012 (Annexure A-12) but on the other hand the applicant who was just one of the members of the raiding party headed by Shri Bachhai Lal has been subjected to disciplinary proceedings and has been penalized by the impugned orders.

7. In view of these stark facts, we are of the view that the applicant has been unfairly treated by the respondents. No explanation is available on record from the respondents as to what kind of harm has been caused to the interest of revenue/Department by not seizing the repair register. Further, no explanation is offered by the respondents as to why such a long delay has taken place at their end in concluding the disciplinary proceedings and finally the review order passed by the Reviewing Authority under Section 29-A of the CCS (CCA) Rules, 1965 is again a non-speaking order. Taking all these things into consideration applying the principles laid down by the Hon'ble Apex

Court in **V. Appala Swamy** (supra) and also the fact that the raided jewellery firm has been convicted by the court of law, we are of the view that the ends of justice would meet only by setting aside the impugned orders dated 03.02.2006 (Annexure A-6) and 15.03.2011 (Annexure A-1) and they are accordingly set aside. The OA is allowed.

8. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Raj Vir Sharma)
Member (J)

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