

**Central Administrative Tribunal
Principal Bench**

OA No.555/2016

New Delhi, this the 28th day of August, 2018

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)**

Pradeep Kumar Sirohi
S/o Late Sh. Indrajit Singh Sirohi
R/o H.No.6186, Modern Housing Complex
Manimajra (UT), Chandigarh-160101
Aged about 65 years
Retired as Chief Commissioner, Central Excise
Chandigarh Zone Department of Revenue
Presently in Delhi. ..Applicant

(By Advocate: Ms. Jasvinder Kaur)

Versus

1. Union of India through Revenue Secretary
Ministry of Finance, Department of
Revenue, Central Board of Excise
& Customs, (CBEC), North Block
New Delhi-110001.
2. Union Public Service Commission
Through its Secretary
Dholpur House, Shah Jahan Road
New Delhi-110069. ..Respondents

(By Advocates: Shri Gyanendra Sinha, Shri Amit Sinha
for Shri R.V. Sinha and Shri Vaibhav Pratap Singh)

ORDER (ORAL)

Justice L. Narasimha Reddy:-

The applicant was working as Chief Commissioner
in the Central Excise at Chandigarh in the year 2009. A
charge sheet dated 25.03.2011 was issued to him

alleging that he demanded a sum of Rs.5lacs from one Shri M.K. Sondhi, Deputy Commissioner, Central Excise for transferring him to Jalandhar and the same constitutes serious misconduct. The applicant submitted explanation denying the charge. Therefore, an inquiry officer was appointed and departmental inquiry was conducted.

2. The inquiry officer submitted his report on 31.07.2013 holding the charges as proved. The applicant was given opportunity to submit representation to the same. He pleaded that he has since retired from service and that he is suffering from serious ailment and that his family is in hardship. The disciplinary authority passed an order dated 23.10.2015 imposing the punishment of reducing the monthly pension to minimum admissible, that too on permanent basis, forfeiting the entire gratuity admissible to him. This OA is filed challenging the order of punishment.

3. The applicant contends that the very allegation of payment of Rs.5 lacs to him, as an illegal gratification, for ordering transfer of Shri Sondhi, was not even spoken to by any witness in the departmental inquiry,

much less it was proved. It is also pleaded that the disciplinary proceedings were initiated against Shri Sondhi and despite his admission that he paid illegal gratification, for his transfer, which itself is an act of grave misconduct, the punishment of a lesser degree, namely, the withholding of 50% of pension for a period of five years without touching the gratuity was imposed, whereas in his case where no evidence was available even as per the report of the inquiry officer, a more severe penalty has been imposed.

4 The respondents filed counter affidavit opposing the OA. It is stated that the departmental inquiry was conducted, in accordance with law, the charge was held to be proved, and having regard to the gravity of the matter, the punishment was imposed. It is also stated that the Tribunal cannot sit as an appellate authority and the order of punishment does not warrant any interference.

5. We heard learned counsel for the applicant Ms. Jasvinder Kaur and learned counsel for the respondents Shri Gyanendra Singh and Shri Amit Sinha.

6. The charge framed against the applicant reads as under:-

"Article-I

Shri Pradeep Kumar Sirohi, chief Commissioner, Central Excise, Chandigarh Zone, demanded and accepted a bribe of Rs.5 lacs from Shri M.K. Sondhi, Dy. Commissioner, Central Excise, for posting him (Shri M.K. Sondhi) at Jalandhar.

By his above act, it has been imputed that Sh. Pradeep Kumar Sirohi, Chief Commissioner, has contravened the provisions of Rs 3(1)(i), Rule 3(1)(ii), Rule 3(1)(iii) and Rule 3(2)(i) of CCS (Conduct Rules) 194 and rendered himself liable for disciplinary action under CCS (CCA) Rules, 1965."

From the above, it becomes clear that there are two persons involved-one, as the bribe giver, and the other, the bribe taker. Both of them are very senior officers of the same department. It is a matter of record that against both of them, i.e., Shri Sondhi and the applicant herein, departmental proceedings were initiated. One aspect which needs to be taken into account is that Shri Sondhi is said to have approached CBI, with a request to arrange a device for recording his conversation with the applicant, as regards the payment of an amount of Rs. 5 lacs, and such a device was arranged by the CBI. However, they did not choose

to file an FIR, even after the device was analysed by them. It only shows either inaction on the part of the CBI, or their conclusion that the situation is that serious, warranting investigation and trial. We are not dwelling into the reasons for such a lapse or inaction. However, it will have its impact upon the nature of the proceedings that are initiated by the department.

7. We know the limitations of the Tribunal in the context of interfering with the disciplinary proceedings. Once the departmental proceedings are initiated, it is in the discretion of the disciplinary authority to impose punishment depending upon the gravity of the charge. It is only when the findings of the inquiry officer are based on no evidence or where the punishment is totally disproportionate to the proved acts of misconduct, that the possibility may exist for interference.

8. In the instant case, the allegation is that Shri Sondhi had paid a sum of Rs.5 lacs to the applicant through one Shri Rajinder Malhotra who too was an employee of the department. It is stated that though proceedings were initiated against him, it did not result

in any punishment, and on the other hand, he was promoted.

9. The record discloses, that Mr. Rajiner Malhotra deposed as witness, on behalf of the applicant herein. One important aspect which we have noticed is that Mr. Sondhi who is said to have paid the amount did not make that statement in his chief examination in the inquiry against the applicant. Most of the discussions proceeded with reference to the recording device and the other material. This aspect would certainly have an impact on the proceedings. Mr. Sondhi has also faced separate disciplinary proceedings. The charge against him was proved on his own admission and punishment was imposed upon him.

10. From the report of the inquiry officer also it is evident that no specific finding as to receipt of the amount was recorded. We are referring to this fact, only in the context of determining the proportionality of the punishment that too in comparison with the one that was imposed upon Shri Sondhi, who admitted his misconduct. Strictly speaking, he should have been imposed a punishment of higher nature than the

applicant, who denied the allegation. He was imposed the punishment of withholding of 50% of pension that too for a period of five years and his gratuity was kept intact. In contrast, the applicant against whom there was no direct evidence; was imposed the punishment of reduction of pension to the minimum level forever, and forfeiture of entire gratuity. We are of view that a semblance of comparative approach is warranted. We also find that the forfeiture of gratuity of the applicant is unwarranted. As regards the quantum of pension also, a different approach is needed. This, however, needs to be undertaken by the disciplinary authority.

11. We, therefore, allow the O.A. and set aside the impugned order, to enable the disciplinary authority to pass a fresh order, duly taking into account, the observations made by us in this order, within 3 months from the date of receipt of this order. Till such time, the applicant shall be paid pension, as at present. There shall be no order as to costs.

(AradhanaJohri)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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