

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.4102/2012

Wednesday, this the 1st day of August, 2018

**Hon'ble Mr. K.N. Shrivastava, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)**

Shri Rajbir Singh (aged about 55 years)
s/o late Sh. Hardev Singh
r/o B-590, MIG Flats
East of Loni Road
Delhi- 110 093

..Applicant

(Mr. T D Yadav, Advocate)

Versus

1. Govt. of NCT of Delhi
Through Chief Secretary
IP Estate, Delhi Secretariat
New Delhi
2. Principal Secretary (Finance)
Govt. of NCT of Delhi
Delhi Sachivalaya, New Delhi
3. The Commissioner VAT
Office of the Commissioner
Department of Trade & Tax
Vyapar Bhawan, New Delhi
4. The Commissioner of Excise
Entertainment and Luxury Tax
Govt. of NCT of Delhi
L Block, Vikas Bhawan, IP Estate
New Delhi

..Respondents

(Mr. Vijay Pandita, Advocate)

O R D E R (ORAL)

Mr. K.N. Shrivastava:

Through the medium of this O.A., filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following main reliefs:-

“(i) to set aside and quash, the impugned order dt. 10.10.2011 and 15.10.2012.

(ii) to set aside & quash the charge sheet/Memo dt. 11.08.2004.

(iii) to set aside & quash the findings of the Inquiry Officer dt. 25.03.2008.

(iv) to direct the Respondents to restore all the position/status of the applicant prior passing the impugned order dt. 10.10.2011 and grant all the consequential benefits like seniority promotion and arrears to the applicant.”

2. Factual matrix of the case, as noticed from the records, is as under:-

2.1 The applicant retired from the post of Section Officer in the Directorate of Education, Govt. of NCT of Delhi on 30.11.2017. In the year 2004, when he was in the grade of Upper Division Clerk Grade III and was posted as Sub Inspector at the Country Liquor (L-9) Bonded Warehouse of M/s. Som Distilleries, 51, Rama Road, New Delhi under the Commissioner of Excise, Entertainment & Luxury Tax, Govt. of NCT of Delhi, a memorandum of charges dated 11.08.2004 came to be issued to him. The article of charges read as under:-

“Article-I

Sh. Rajbir Singh, UDC/Gr. III, while posted as Sub Inspector in the Country Liquor (L-9) Bonded Ware-house of M/s. Som Distilleries, 51 Rama Road, New Delhi inbonded the consignment, having validity as per I.Ps upto 31.5.2004, 7.6.2004 and 15.6.2004 on 1.6.2004, 8.6.04 and 16.6.2004 without permission from the Competent Authority as required under the Provision of Punjab Excise Act, 1914.

Sh. Rajbir Singh, UDC/Gr. III, while working in above capacity misrepresented the stock position of the Bonded Ware-house vide

his report for the period 16.5.04 to 31.5.04, 1.6.04 to 7.6.04 and 1.6.04 to 15.6.04 as 4400 cases, 2400 cases and 3162 cases under clause 21 of terms and conditions of Country Liquor supply for the year 2004-05 whereas the actual report for the relevant period was 15200 cases, 10674 cases and 10400 cases respectively, thereby causing loss of excise revenue which would have occurred on account of penalty on the licensee.

Sh. Rajbir Singh, UDC/Gr.III, has therefore, not only violated the instructions/rules of Punjab Excise Act 1914 but also failed to maintain devotion to duty and acted in a manner unbecoming of Govt. Servant which is violative of the Rule 3 (1) (ii) (iii) of CCS (Conduct) Rules, 1964.”

2.2 The memorandum of charges was also accompanied with a statement of imputations of misconduct or misbehaviour in support of the article of charges framed. It is alleged that out of 27 consignments duly received at the said Warehouse, the applicant, in 21 cases, got the approval of the competent authority for inbonding the consignments, but in respect of the remaining 6, he inbonded them without obtaining specific approval of the competent authority. It was also found that there was some shortage in the stock.

2.3 The applicant submitted his reply to the memorandum of charge vide letter dated 20.08.2004 (Annexure B). Not satisfied with the explanation of the applicant, the disciplinary authority ordered conduct of disciplinary enquiry (DE) proceedings against the applicant and appointed enquiry officer (EO). The applicant participated in the DE proceedings. Finally, the EO submitted his report on 25.03.2008, in which he concluded as under:-

“7. Conclusion: After careful observation of the prosecution and additional documents, deposition of prosecution witnesses, general examination of C.O., the assessment of evidences was

done and briefs of P.O. and the C.O. were examined and concluded that the Article of Charge-I stand proved.”

2.4 The disciplinary authority, acting on the EO's report, vide its order dated 10.10.2011 under Rule 11 (v) of CCS (CCA) Rules, 1965, imposed the penalty of “reduction of 2 (two) increments in the time scale of pay for a period of 2 (two) years with the further direction that the Government servant will not earn increments of pay during the period of such reduction and on the expiry of such period, the reduction will have the effect of postponing the future increments of his pay”.

2.5 Aggrieved by the penalty order dated 10.10.2011 passed by the disciplinary authority, the applicant preferred an appeal dated 24.11.2011 (Annexure D) before the departmental appellate authority under Rule 23 of CCS (CCA) Rules, 1965. The appellate authority did not find any merit in the appeal and consequently, vide its order dated 15.10.2012, dismissed the appeal.

Aggrieved by this, the applicant has approached this Tribunal in the instant O.A., impugning the orders of the disciplinary and appellate authorities as well as the memorandum of charge dated 11.08.2004, and has prayed for their quashment and to set them aside.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply, to which the applicant has filed rejoinder. On completion of pleadings, the case was taken up for

hearing the arguments of learned counsel for the parties today. Arguments of Mr. T D Yadav, learned counsel for applicant and Mr. Vijay Pandita, learned counsel for respondents were heard.

4. The main contention of Mr. T D Yadav, learned counsel for applicant was that the applicant could not inbond the remaining 6 consignments, as the addresses of the consigners were not correctly mentioned. However, subsequently, these consignments were accepted and inbonded. He, however, conceded that the 6 assignments were inbonded by the applicant without the approval of the competent authority.

5. It is settled law that the scope of judicial review in DE proceedings is highly limited. The Courts/Tribunals can exercise their powers of judicial review only under the following circumstances:-

- (a) if principles of natural justice have been violated,
- (b) if the order has been passed by an incompetent authority,
- (c) if the order has been passed against law; and
- (d) if the punishment inflicted is disproportionate to the offence committed.

6. Elaborating the scope of judicial review, the Hon'ble Supreme Court in **Union of India v. P. Gunasekaran**,(2015) 2 SCC 610 has laid down the following parameters:

“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;”

7. We find that the applicant indeed had inbonded 6 consignments without the approval of the competent authority. The argument put-forth by his learned counsel that undue delay took place as the correct addresses of the consigners were not furnished is, in fact, a specious argument. Even if it is assumed that delay has taken place on this count, nothing prevented the applicant from seeking direction/approval of the competent authority before inbonding these delayed consignments. We also notice that the respondents have followed the laid down procedure in the conduct of the DE proceedings. The applicant has participated in the enquiry and at every stage of the DE proceedings, the principles of natural justice have been duly adhered to. The penalty orders have been

passed by the competent authorities and in accordance with the CCS (CCA) Rules. Even the punishment inflicted upon the applicant is not found to be disproportionate to the charge levelled. The charge, for which the punishment has been awarded, has also been duly proved during the course of the enquiry.

8. In the conspectus, we do not find anything amiss in the orders of disciplinary and appellate authorities as well as in the charge memorandum. As such, we dismiss this O.A., as we do not find any merit in it. No order as costs.

(S.N. Terdal)
Member (J)

(K.N. Shrivastava)
Member (A)

August 1, 2018
/sunil/