

Central Administrative Tribunal Principal Bench, New Delhi

O.A.No.1629/2018

M.A.No.1829/2018

Order reserved on 14th May 2018

Order pronounced on 23rd May 2018

Hon'ble Mr. Justice Dinesh Gupta, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

Sh. Govind Krishna
Designation: Commissioner of Customs, Noida
Aged 54 years
s/o sh. Ram Krishna Dixit
R/o L-42, Kalkaji
New Delhi – 110 019

..Applicant

(Mr. Sameer Aggarwal, Advocate)

Versus

1. The Finance Secretary,
Ministry of Finance
Department of Revenue
North Block, New Delhi
2. Chairman
Central Board of Indirect Taxes (CBIC) and
Department of Revenue
Ministry of Finance
North Block, New Delhi
3. The Chief Commissioner (AR)
CESTAT, R K Puram
New Delhi
4. The Chief Commissioner
(Meerut Zone)
Customs, Excise and Central Tax
Meerut UP
5. Chief Vigilance Officer
Central Board of Indirect Taxes & Customs (CBIC)
Ministry of Finance
New Delhi

6. Union Public Service Commission (UPSC)
Through its Secretary
Dholpur House, Shahjahan Road
New Delhi – 110 069

..Respondents

(Mr. Manjeet Singh Reen, Advocate for respondent Nos. 1 to 5 –
Mr. R N Singh, Advocate for Mr. R V Sinha, Advocate for respondent No.6)

O R D E R

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:-

“8.1 Quash / set aside the impugned order No. F.No.116/3/ST/2017/1634 dated 16.11.2017.

8.2 Quash / set aside the impugned order No.18/2013 dated 10.06.2013.

8.3 Direct the Respondents to immediate stop the recovery of 1/3rd of gross salary of the Applicant being contrary to law.

8.4 Direct the Respondents to pay to the Applicant the salary that he is entitled to be paid in the grade and post of Commissioner that he is presently holding.”

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

2.1 The applicant belongs to 1989 batch of Indian Revenue Service (IRS) (Customs & Central Excise). Vide a sanction order dated 23.08.2002, he was permitted by the respondents to pursue a course in Master of International Policy & Practice at The George Washington University, USA. This was one year course commencing from 03.09.2002. On completion of

the said course, the applicant did not return back to the country to join his duties, instead he joined another course of Master of Law in the same University, for which no permission was obtained from the respondents. He finally joined his parent department on 21.08.2009 after a gap of almost 6 years.

2.2 For his unauthorized absence, the applicant was proceeded against departmentally. Departmental Enquiry (DE) proceedings were started against him and finally, the President of India, as disciplinary authority, vide order No.18/2013 dated 10.06.2013 (Annexure A-2), imposed the penalty of “reduction of pay by two stages in the time scale of pay for a period of three years with further direction that he will not earn increments of pay during the period of such reduction and on expiry of the period, the reduction will have the effect of postponing his future increments of his pay”

2.3 The Chief Commissioner of Customs, Excise & Service Tax Appellate Tribunal, vide order dated 16.11.2017 (Annexure A-1), in compliance of the Annexure A-2 penalty order dated 10.06.2013, has refixed the pay of the applicant.

The applicant is aggrieved of the Annexures A-1 & A-2 orders and has challenged them in the instant O.A. He has prayed for the reliefs, as indicated in paragraph (1) above.

3. When the O.A. was taken up for admission on 24.04.2018, it was pointed out by the Tribunal to the applicant that Annexure A-1 order is not

an independent order and that it flows from Annexure A-2 order dated 10.06.2013, as it only seeks to implement the monetary implication of Annexure A-2 order, and that if at all the applicant wishes to challenge any order, it should be Annexure A-2 order, but for that he has to explain the limitation of time involved. Learned counsel for applicant then prayed for time to enable him to seek instructions.

4. The applicant, in terms of the observations of the Tribunal in its interlocutory order dated 24.04.2018, chose to file M.A. No.2108/2018 seeking condonation of delay, but making no prayer to that effect in it. On the contrary, in paragraphs 11 & 12 of the M.A., the applicant has stated that his grievance is limited to challenge the order dated 16.11.2017 (Annexure A-1 in the O.A.) and the said challenge is within the limitation period as per Administrative Tribunals Act, 1985. Other averments made in the said M.A. are basically reiteration of the averments made in the O.A. In nutshell, the applicant has not made any prayer for condonation of delay in this M.A.

5. The matter was taken up for further consideration on 03.05.2018. Mr. Manjeet Singh Reen, learned counsel for respondent Nos. 1 to 5 and Mr. Amit Sinha for Mr. R V Sinha, learned counsel for respondent No.6, on advance notice, were present in the Court.

6. Arguments of learned counsel for applicant on the issue of admissibility of this O.A. were heard. Mr. Sameer Aggarwal, learned counsel for applicant also submitted his written submissions.

7. Learned counsel for applicant has broadly argued as under:-

7.1 The currency of penalty imposed on the applicant vide Annexure A-2 order dated 10.06.2013 ended on completion of 3 years, i.e., 10.06.2016. Accordingly, the sealed cover relating to his promotion was ordered to be opened by the Central Board of Excise & Customs (CBEC) vide office order No.186/2017 dated 30.10.2017 (Annexure A-3), and he has been promoted to the grade of Commissioner on *in situ* basis.

7.2 Pursuant to his promotion vide Annexure A-3 office order, the applicant has assumed the charge of the post of Commissioner of Customs & Central Excise in the forenoon of 31.10.2017.

7.3 Vide Annexure A-1 order dated 16.11.2017, the respondents have attempted to implement the Annexure A-2 order dated 10.06.2013, which is illegal. The applicant is subjected to double jeopardy for the same violation, viz. (i) he was denied promotion and for almost 6 years. His promotion case was kept in sealed cover, and (ii) through Annexure A-1 order dated 16.11.2017, arbitrarily, the penalty is being imposed notwithstanding the fact that the disciplinary proceedings were concluded long time back.

7.4 Annexure A-2 penalty order dated 10.06.2013 has become legally infirm and incapable of implementation in terms of Vigilance Commission's extant guidelines on the issue.

7.5 The Hon'ble Finance Minister (disciplinary authority) has accepted on 04.10.2017 that the applicant's penalty was over on 09.06.2016 and the disciplinary proceedings stood concluded. Hence the same cannot be revived illegally by Annexure A-1 order dated 16.11.2017.

8. We have considered the arguments of learned counsel for the applicant. We have perused the impugned Annexures A-1 & A-2 orders. The Annexure A-2 order has imposed the penalty of reduction of pay by two stages in the time scale of pay for a period of three years on the applicant. Its currency ended on 09.06.2016. Obviously, the applicant could not have been promoted during the currency of the penalty. Accordingly, his case for promotion was kept in sealed cover and after the expiry of the currency of the penalty, he was promoted vide order dated 30.10.2017 (Annexure A-3).

9. As could be seen from the Annexure A-2 order, it penalizes the applicant even in monetary terms by way of reducing his pay by two stages in the time scale of pay for a period of three years. As observed by us hereinabove, Annexure A-1 order is not an independent order. It has got an umbilical link with Annexure A-2 order. The records would reveal that the respondents have inadvertently not given effect to the penalty of reduction of pay by two stages in the time scale of pay for three years on the applicant. He has been paid excess amount towards his salary oblivious of Annexure A-2 penalty order. Hence, we do not find anything amiss in impugned Annexure A-1 order dated 16.11.2017 in refixing the pay of the applicant after incorporating the impact of Annexure A-2 penalty order.

10. The argument of learned counsel for applicant that after the expiry of three years, the monetary aspect of Annexure A-2 order cannot be implemented, is specious and is repelled.

11. The Hon'ble Supreme Court in **Chandi Prasad Uniyal & others v. State of Uttarakhand & others** [2012 (7) SCALE 376] has held that any

excess payment made to a government servant is required to be recovered from him.

12. In the conspectus, we do not find any merit in this O.A. It is accordingly dismissed.

13. In view of dismissal of O.A., M.A. No.1829/2018 does not survive. It is also dismissed.

(K.N. Shrivastava)
Member (A)

(Justice Dinesh Gupta)
Chairman

/sunil/