

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO. 170/000539/2013

DATED THIS THE 22ND DAY OF AUGUST, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Sri. B.N. Sudheendra,
S/o B. Narayana Rao,
Aged about 42 years,
Inspector of Central Excise,
O/o the Assistant Commissioner of
Central Excise, Udupi Central Excise &
Service Tax Division, Vishnupriya Bldg,
L.B.S. Road, Ajjarakad,
Udupi – 576 101.

... Applicant

(By Advocate Shri N.G. Phadke)

Vs.

1. The Union of India,
Represented by its Secretary,
Ministry of Finance,
Department of Revenue
North Block, New Delhi – 110 001.
2. The Chief Commissioner of Central Excise,
Mysore Zone,
S1/S2, Vinaya Marga,
Siddhartha Nagar,
Mysore – 570 011.
3. The Commissioner of Central Excise & Service Tax,
Mangalore Commissionerate,
7th Floor, Trade Centre,
Bunt's Hostel Road,
Mangalore - 3.

... Respondents

(By Shri K. Gajendra Vasu, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following reliefs:

- “(i) Quash the Memorandum C.No.II/10A/03/2009 Vig. dated 03.02.2010 (Annexure A1) issued by the III-Respondent.*
- (ii) Quash the Report dated 05.01.2011 (Annexure A11) reported by the Inquiry Officer.*
- (iii) Quash the Order issued on the File No.11/10A/03/2009 Vig. dated 30.04.2012 (Annexure A14) passed by III-Respondent.*
- (iv) Quash the Order No.01/2013(Vig.) issued on the C.No.II/9/11/2012-CCM-I (Vig) dated 31.03.2013 (Annexure A17) passed by the II-Respondent.”*

2. The applicant while working as Inspector of Central Excise was issued a charge memo dated 03.02.2010 by the 3rd Respondent under Rule 14 of the CCS (CCA) Rules, 1965 (Annexure-A1). The applicant submitted his reply denying the allegation made in the said charge memo (Annexure-A2). The 3rd respondent then appointed an Inquiry Officer to hold inquiry into the charges leveled against the applicant. The applicant initially sought permission to engage a retired Central Government employee, who was a practicing advocate, as a Defence Assistant which was refused. The Inquiry Officer held his first sitting on 10.05.2010 wherein the applicant denied any charges. The applicant would say on the next sitting day on 21.06.2010 he requested for examining certain documents to his defence apart from his request for examining certain officers for his defence. The Presenting Officer agreed to provide information and documents relevant to the case. On the next date of hearing, i.e., 29.07.2010, the Presenting Officer submitted that the documents sought by the applicant is irrelevant and also the cross-examination of

witnesses other than the listed witnesses are not acceptable. On the next date of hearing on 01.09.2010 the applicant was asked to submit written statement of defence against the charges. Thereafter no further proceeding was held. The copy of the I.O's daily proceeding are annexed as Annexure-A5 to A9. The Inquiry Authority without recording any evidence both oral and documentary and merely based on the written briefs provided by both side submitted the Inquiry Report to the 3rd Respondent (Annexure-A11). The Respondent No. 3, i.e., the Disciplinary Authority, sent the Inquiry Officer's report to the applicant who in turn submitted the reply on the same. However without any application of mind the Disciplinary Authority imposed a major penalty vide order dated 30.04.2012 vide Annexure-A14 reducing the pay to the minimum in the revised Pay Band of PB-2 with immediate effect for a period of 3 years during which he will not earn increments and on expiry of the period the reduction will have the effect of postponing his future increments of pay. The applicant then preferred an appeal dated 20.06.2012 against the order of the Disciplinary Authority. However the 2nd Respondent without considering all aspects confirmed the penalty imposed on the applicant vide order dated 31.03.2013. Hence the present OA.

3. The applicant submits that the Presenting Officer neither examined the listed witnesses nor any listed documents were taken as documentary evidence by the Inquiry Authority. Therefore the report of the Inquiry Authority was not based on the legal evidence and the further order based on such an Inquiry Report is therefore unsustainable. The mandatory procedure prescribed under Rule 14 of the CCS (CCA) Rules was clearly violated

besides denying principles of natural justice to the applicant. Therefore he prayed for granting the relief as sought by him.

4. The respondents have filed a reply statement in which they submit that the request of the charged officer for engagement of a legal practitioner as Defence Assistant was rightly rejected as the Presenting Officer is not a legal practitioner. The applicant also wanted to examine certain witnesses but he was clearly informed that except for the persons mentioned in Annexure-IV of the charge memorandum he is not required to cross-examine any other person. The applicant has not made any statement at all to cross-examine the witnesses shown in Annexure-IV of the charge memo. The applicant had sought some documents which was not allowed as they were not relevant to the present case and not being relied upon. The Inquiry Officer had examined the written statement of the applicant and also the statement made by the Presenting Officer and submitted his report. Based on the report of the Inquiry Authority and the reply submitted by the applicant, the Disciplinary Authority considered the matter and imposed the penalty which was also upheld by the Appellate Authority. They submit that the contention of the applicant that he followed the duties assigned to him was not tenable and there are clear lapses for which the disciplinary proceedings was initiated. The Inquiry Authority in his report mentioned that he ensured the production of all material documents. He had observed that there is no set of form of disciplinary enquiries. In some cases oral evidence may have to be taken when witnesses are called to give evidence and offered for cross-examination. But in all cases that may not be the appropriate mode of enquiry. Therefore the Inquiry Report, the order of the Disciplinary Authority

and Appellate Authority had not violated the principles of natural justice. The applicant was given adequate time to prepare his defence statement and also reasonable time between one hearing and the other. Only the copies of statement that was not relevant to the case was denied. The cross-examination of the persons except the persons mentioned in Annexure-IV are not relevant and hence the same was denied. Therefore the respondents submit that there is no irregularity in the procedure adopted by them and the entire proceedings was just and fair and balanced.

5. The applicant has filed a rejoinder in which he reiterated that no evidence was placed before the Inquiry Officer to establish any charges made against the applicant more so when the applicant totally denied the allegation against him. The Inquiry Officer has not considered whether the request made by him is relevant or irrelevant and simply went by what the Presenting Officer submitted. Therefore there is no application of mind in the present case.

6. The respondents have filed additional reply statement in which they have reiterated the submission made in the reply and emphasized that the enquiry is held based on the evidence and the report submitted to the Disciplinary Authority. The Inquiry Officer had clearly indicated in the report that all documentary evidence were duly marked for evidence first on 10.05.2010 itself.

7. Heard the learned counsel for both the parties. The learned counsel for the applicant while reiterating the submission made in the OA and the rejoinder submitted that there was no proper enquiry in this case. None of the witnesses cited in Charge Memorandum were called for deposition and for

cross-examination by the charged official. Therefore no reliance can be placed on the averments made by any of the persons in the investigation. Further the documents relied upon in the Charge Memorandum were not marked in the course of enquiry and hence no reliance can be placed on any of the documents cited as evidence. The Daily Order sheet were not provided at the end of each day proceedings and were given in a bunch at the end of last hearing. When the applicant submitted request for certain documents the Inquiry Officer has not recorded his findings on the relevancy of the same nor have given reasons for holding the required documents as irrelevant. The decision on the above was left to the P.O. and the I.O. did not apply his mind in the issues involved. Therefore the enquiry procedure followed by the Inquiry Officer is patently irregular and hence the decision taken by the Disciplinary Authority based on such Inquiry Report cannot be sustained.

8. The learned counsel for the respondents on the other hand while reiterating the submission made in the reply statement stated that the applicant was given an opportunity to cross-examine prosecution witnesses in the enquiry but the applicant sought copy of other statements which is not relevant. The statement of witnesses recorded in the preliminary investigation and relevant to the case was made available to the applicant in advance. There was no violation of the disciplinary proceeding which was just and fair.

9. We have carefully considered the facts of the case and submissions made by either side. The main contention made by the applicant is that during the enquiry proceeding none of the persons listed as witness and whose statement were relevant to the case were called as witness and hence there

was no opportunity for the applicant to cross-examine them. None of the documents were marked and taken on record. Moreover the documents sought by the applicant was not provided and there is no specific order as to why they were not considered as relevant. He submits that the procedure laid down in the CCS (CCA) Rules were not followed and hence it is a clear case of denial of natural justice and non-adherence to laid down procedure prescribed under Rule 14 of the CCS (CCA) Rules.

10. It is clearly apparent from the records that the Inquiry Officer did not call the persons listed as witness at Annexure-IV for providing evidence and hence there is no opportunity for the charged official to cross-examine them. While the Inquiry Authority may refuse to summon persons other than those who were listed in the Annexure-IV to depose evidence before him, he ought to have called the persons who were listed in the Charge Memo as they were specifically named as persons by whom the charges are proposed to be sustained. Hence not calling of any of these persons for deposition and not subjecting them to cross-examination by the charged official are clearly irregular and unjustified. The CCS (CCA) Rules clearly empowers the Inquiry Authority for enforcing the attendance of witnesses and production of documents of departmental enquiries. Hence doing away with the deposition of persons who are listed as witnesses to sustain the charges is a clear lapse. When the applicant asked for other documents, the Inquiry Authority should have passed specific order as to how they are not relevant. If a document is not considered relevant or are to be relied upon then the I.O. is at liberty to deny such request but he should pass necessary order to that effect. In the absence of them, it would tantamount to an arbitrary decision. On a perusal of

the Inquiry Report, it appears that the entire enquiry proceeding was guided by the Presenting Officer. In case no documents are required to be produced during the enquiry or witness not to be examined then there was no necessity for holding the enquiry. Based on the report of the Presenting Officer and the defence statement the Inquiry Officer could have submitted his report. In a departmental proceeding documentary and oral evidence should be taken to prove the veracity of the charges but this was not done by the I.O. in the present case. When none of the witnesses were examined and were allowed to be cross-examined by the charged official, it would clearly mean as denial of natural justice to the charged official. The Disciplinary Authority should have looked into this aspect. Para 15(4) of the CCS (CCA) Rules mention as follows:

“(4) If the Disciplinary Authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.”

11. On careful consideration of the matter, we are clearly hold the view that the failure on the part of the Inquiry Authority to examine any of the witnesses and arriving at his finding based primarily on the note of the Presenting Officer and the defence statement is not in accordance with the provisions of CCS (CCA) Rules. The Inquiry Authority ought to have taken evidence of the witnesses listed in Charge Memo and based on whom the Articles of charges are proposed to be sustained more so when the applicant has totally denied the allegation made against him. Failure to do so clearly appears to be bad in law and also a case of denial of natural justice to the charged official.

Therefore we hold that due to non-adherence to the prescribed procedure, the Inquiry Report submitted by the I.O. cannot be sustained. The order passed by the Disciplinary Authority and the Appellate Authority based on such Inquiry Report can also not be sustained. Therefore we set aside the Inquiry Report as well as the order of the Disciplinary Authority and the Appellate Authority and direct the respondents to hold the enquiry afresh following the required procedure under CCS (CCA) Rules and considering the documentary evidences and also oral evidence of the listed witnesses and permitting cross-examination of the witnesses by the charged official.

11. The OA is accordingly allowed in terms of the above directions. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

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Annexures referred to by the applicant in OA No.170/00539/2013

Annexure A1: Charge Memorandum C.No. II/10A/3/2009 Vig dated 03.02.2010 issued by the 3rd Respondent.

Annexure A2: Applicant's reply dated 10.02.2010.

Annexure A3: Applicant's letter dated 06.05.2010 along with consent letter dated 05.05.2010 of the Advocate.

Annexure A4: Letter C.No.II/10A/03/2009 Vig dated 11.05.2010 issued by

Office of the Commissioner of Central Excise & Service Tax.

Annexure A5: I.O's daily order sheet dated 10.05.2010.

Annexure A6: Applicant's letter dated 21.06.2010 addressed to the I.O.

Annexure A7: I.O's daily order sheet dated 21.06.2010.

Annexure A8: I.O's daily order sheet dated 29.07.2010.

Annexure A9: I.O's daily order sheet dated 01.09.2010.

Annexure A10: Applicant's written brief dated 01.11.2010.

Annexure A11: I.O's Report dated 05.01.2011.

Annexure A12: 3rd Respondent's letter C.No.II/10A/3/2009 Vig/2790 dated 18.02.2011.

Annexure A13: Applicant's representation dated 14.03.2011.

Annexure A14: 3rd Respondent's Order File No. II/10A/03/2009 Vig dated 30.04.2012.

Annexure A15: Applicant's appeal dated 20.06.2012 addressed to the 2nd Respondent.

Annexure A16: Applicant's additional submission dated 11.10.2012.

Annexure A17: 2nd Respondent's Order-In-Appeal dated 31.03.2013.
