

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No. 730/2012

Date of C.A.V. : 08.09.2017

Date of Order :03.11.2017

Between :

K.D.V.N. Srinivas Kumar, S/o K.G.K.Murthy,
Aged about 43 years, Occ : Superintendent,
O/o Commissioner of Central Excise
and Customs, Visakhapatnam – II,
Central Excise Building, Port Area,
Visakhapatnam – 530035,
R/o Visakhapatnam.

... Applicant

And

1. Union of India, Rep. by the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Central Board of Excise and Customs,
Rep. by the Chairperson,
Government of India, Ministry of Finance,
Government of Revenue,
North Block, New Delhi.
3. The Member (P&V) and Revisionary Authority,
Office of the Chief Vigilance Officer,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
4. The Chief Vigilance Officer and Appellate Authority,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.
5. The Commissioner and Adhoc Disciplinary Authority,
Office of the Commissioner of Customs and Central Excise,
Visakhapatnam – II Commissionerate
Central Excise Building, Port Area,
Visakhapatnam. ... Respondents

Counsel for the Applicant ... Mr.Siva, Advocate
Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... ***Member (Judl.)***
Hon'ble Mrs.Minnie Mathew ... ***Member (Admn.)***

ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Member (Judl.) }

The applicant worked as Inspector in Biccavolu Range falling within the jurisdiction of Visakhapatnam II Commissionerate of Central Excise and Customs from 03.10.1994 to 31.07.1995. After completion of 4 years he was transferred out of the Range and a charge memorandum dated 29.09.2000 was issued by the Commissioner levelling a sole Article of charge touching upon the duties discharged by the applicant when he was working as an Inspector, Biccavolu Range. The charge is to the effect that the applicant did not exercise proper control over the affairs of the factory, which resulted in loss of revenue on the quantity of unaccounted cigarettes, failed to comply with statutory instructions contained in Cigarette Manual, Central Excise Rules, 1944, failed to make use of the Assesse's own records, colluded with the Assessee which facilitated clandestine production and clearance of unaccounted cigarettes and thus failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government Servant. The charge memo contained the list of documents basing on which the department would prove the charge, but does not contain any list of witnesses.

2. On receiving the charge memo the applicant submitted his explanation stating that there were no latches on his part and the sole charge levelled against him is without any basis and therefore the enquiry proposed against him requires to be dropped. His explanation was not accepted and the department decided to initiate inquiry against the applicant. An enquiry officer and presenting officer were appointed by the department. The applicant engaged one Sri P.Dwarakanath as defence representative. The enquiry was concluded and the enquiry officer wanted the presenting officer and the applicant to submit their respective briefs. The presenting officer submitted the brief. The applicant also submitted his brief on 08.10.2002 and followed it up with an additional brief on 26.10.2002. In consideration thereof, the enquiry officer in his report dated 06.02.2003 has returned a finding that the applicant is not guilty of the charge levelled against him. The enquiry officer found that the account and stocks of raw material and finished goods as existed in the factory were found tallied with the book balances, incriminating evidence in the form of receipt of raw materials, production of unaccounted for cigarettes, clearance of the same and receipt of the consideration for such cigarettes illicitly removed was not found in the factory records, but was obtained only as a result of the intelligence gathered and nationwide search operations carried out by the DGAE officers of the Madras Zone in pursuance of specific information received by them. The enquiry officer found that some loose papers, a writing pad and a register were recovered from the private brief case of Sri Deepak Kumar Shah, an Executive of the company during the search operations conducted on 10.10.1995. These two accounts though private, cannot be said to have been maintained during the regular course of business and in any case, they could not have been unearthed without a regular search which normally

the Range staff do not resort to as they have no specific information in this regard. The enquiry officer expressed the view that viewed from the point of practicability and taking a pragmatic view of the entire case, the charged officer cannot be held responsible for not making use of the private accounts of the company. He also found that the other records of the company provided adequate proof that the charged officer carried out the prescribed checks. The enquiry officer further held that the ground plan of the factory and reconciliation register sought for by him have not been supplied to the applicant and therefore the contention of the charge officer that had these documents been supplied to him, he would have been in a better position to prove his compliance with all the statutory requirements on his part, cannot be denied.

3. The enquiry officer went on to hold that the charged officer has furnished adequate corroborative evidence by way of his survey book pertaining to the Bonding Section that he had carried out the prescribed checks satisfactorily. He further held that there were no checks or controls on the factory during the holidays, during night time when the factory was supposed to be not functioning officially, and in such case the officer in charge cannot be blamed for anything that might have occurred, if at all there was clandestine production and clearance of cigarettes resulting in duty evasion and it is therefore clear that the so called physical control is a misnomer and to blame the officers incharge of the factory for everything that might happen behind their back is unjustified.

4. As regards the allegation that the entry into and the exit from the factory premises by any conveyance has necessarily to be routed through the

passage in front of the Central Excise office, the charged officer has furnished a rough drawing of the factory premises in his defence brief dated 08.10.2002 to prove the point that it is not imperative for a conveyance to pass through the passage lying in front of the Central Excise office to reach the factory gate. According to the enquiry officer there is no evidence whatsoever either documentary or oral has been adduced in the proceedings to substantiate the allegation that the charged officer has colluded with the assessee in respect of the alleged clandestine production and removal of cigarettes and loss of revenue caused thereby. It is further pointed out that the charged officer had requested for supply of the reconciliation register for the period as the same would have established beyond any shadow of doubt that every leaf of tobacco has been accounted for through all the stages it passes till it is converted into cigarettes packed, labelled and cleared from the store room on payment of duty due. Therefore, the enquiry officer held that the failure to supply this record by the department has undermined the defence of the charged officer.

5. Finally having gone through the entire material available on record, the enquiry officer found that the charge has not been proved inasmuch as the charged officer has been able to establish that he has complied with all the duties and responsibilities assigned to him satisfactorily in accordance with the provisions of law.

6. The Disciplinary Authority however disagreed with the enquiry officer, furnished a copy of the enquiry report together with the disagreement note to the applicant directing him to submit his representation against the conclusion that the

applicant will be liable for action under Rule 14 of CCS (CCA) Rules. The Disciplinary Authority took the view that M/s. NTC Ltd., Biccavolu were under physical control of the department, 'Cigarettes' is identified as an evasion-prone commodity, the departmental instructions on cigarettes prescribed various checks viz., supervision of operation at cut-tobacco store, manufacturing hall, finishing and packing department, etc. for strict adherence by the officers on duty to curb the activity of leakage of revenue, proper control on the manufacturing stream of cigarettes was most important point of the official duties of the Range Staff and therefore it is a case where the charged officer has failed to carry out the requisite checks on production and clearance of the goods and due to lack of surveillance over the activity of the unit which resulted in clandestine production and removal of cigarettes and ultimately loss of revenue to the exchequer.

7. The Disciplinary Authority was further of the view that even though for lack of direct evidence, the enquiry officer has not held the charges as established, yet the charged officer failed to perform his duties, which resulted in sustained evasion. Therefore he opined that serious view has to be taken and proposed to inflict major penalty under Rule 11 of CCS (CCA) Rules, 1965.

8. In consequence thereof the Disciplinary Authority vide order dated 08.06.2004 directed that the pay of the applicant be reduced by four stages from Rs.7,250/- to Rs.6,550/- in the time-scale of pay of Rs.5,500-175-9,000/- for a period of two years with effect from 08.06.2004. It is further directed that the applicant may not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing his

future increments of pay.

9. The Appellate Authority and the Revisionary Authority by their respective orders dated 14.11.2005 and 15.09.2011 confirmed the order passed by the Disciplinary Authority. The Appellate Authority held that the reasons furnished by the Disciplinary Authority to disagree with the findings of the enquiry officer were provided quite clearly to the applicant to enable him to make his representation, the appeal filed by the applicant is quite comprehensive and there is no need for personal hearing. He stated that the Disciplinary Authority is well within the powers to disagree with the enquiry officer's report if there are cogent reasons for doing so. The Appellate Authority further held that the Disciplinary Authority was justified to disagree with the findings of the enquiry officer and in his final order, he has given full justification for imposing the penalty on the applicant. He pointed out that the facts and reasons mentioned by the Disciplinary Authority leave no doubt in one's mind that the applicant had failed to perform his duties that led to huge tax evasion by the factory. The Appellate Authority further held that in the show cause notice the grounds for disagreeing with enquiry officer's report were clearly spelt out, the applicant has given full opportunity to present his case on the grounds which the Disciplinary Authority intended to reply on while disagreeing with enquiry officer's report and therefore non-supply of the copies of the CVC's advice has not placed the applicant to any disadvantage as it was clearly made known to him by the Disciplinary Authority on what it intended to base its conclusion.

10. The Revisionary Authority held that the Appellate Authority has

adequately addressed the various submissions made by the applicant in the appeal and it is inclined to agree with the findings of the Appellate Authority. It was further held that the revision petition raised no new submissions which have not been adequately addressed by the Disciplinary Authority and the Appellate Authority. The Revisionary Authority found that the conclusions of the Disciplinary Authority and the Appellate Authority have been arrived at after duly considering the submissions made by the applicant and therefore, it agreed with the findings of the Disciplinary Authority and the Appellate Authority.

11. It is under the above circumstances, the applicant had filed the OA to set aside the orders dated 08.06.2004 of the Disciplinary Authority, 14.11.2005 of the Appellate Authority and 15.09.2011 of the Revisionary Authority holding them as illegal, arbitrary, unjust and violative of Article 14 and 16 of the Constitution of India and consequently direct the respondents to release all the benefits including seniority and promotion.

12. The reply statement filed by the respondents mostly consists of sweeping and general statements in the form of denial to the allegations mentioned in the Original Application. The respondents contended as follows :

On 10.10.1995 the officials of Directorate General of Anti Evasion, Chennai visited the factory M/s. New Tobacco Company Ltd. (NTC) and detected massive duty evasion by the said factory which resulted in loss of revenue to the Government Exchequer on the accounted quantity of cigarettes. The applicant was found to have collectively failed to comply with the statutory instructions

contained in the Cigarette Manual and the Departmental instructions issued on the subject from time to time. The commodity "cigarettes" is defined by the department as "sensitive" in nature and therefore physical control system of assessment was prescribed. The applicant failed to carry out the requisite checks on production and clearances of the manufactured cigarettes. Owing to lack of surveillance of the activities of the unit and the consequential clandestine production and removal of cigarettes by the factory has ultimately resulted in loss of revenue to the Government Exchequer. Had the applicant performed his duties diligently, the massive duty evasion would not have taken place. The Superintendent posted at the Cigarette Factory Range is no doubt is supposed to have supervised the duties of the applicant during the time he was working in Biccavole Range, the applicant cannot throw the entire blame on the preventive and Vigilance wings. The penal action was also taken against the Range Superintendent for collective failure on the part of the Range staff. The documents exhibited in the course of the enquiry are self evident of the neglect of duty and in action on the part of the applicant.

13. The Disciplinary Authority is not obliged to accept the enquiry report and he can express his disagreement against the enquiry report submitted by the enquiry officer. The final order of the Disciplinary Authority, Appellate Authority and Revisionary Authority are well reasoned orders passed after observing the due procedure prescribed and with due regard to the principles of natural justice. The Disciplinary Authority was guided by the advice of the Central Vigilance Authority,. The Disciplinary Authority passed the well reasoned orders having considered the facts and circumstances of the case and also considering the submissions made by the applicant in defence. The Disciplinary Authority, the

Appellate Authority and also the Revisionary Authority have assigned cogent reasons for the conclusions reached by them and the orders passed by them do not call for any interference by the Tribunal.

14. Contending as above the respondents sought to dismiss the Original Application.

15. It is submitted by the learned counsel appearing for the applicant that this is a case of no evidence which has been properly understood by the enquiry officer who returned a finding that the applicant is not guilty of the sole charge levelled against him and however, the Disciplinary Authority who expressed disagreement with the finding recorded with the enquiry officer did not assign any appropriate reasons for taking a different view so also the Appellate and Revisionary Authorities failed to record any reasons for confirming the view expressed by the Disciplinary Authority. The learned counsel therefore urges the Tribunal to set aside the punishment imposed against the applicant by totally exonerating him of the charge.

16. On the other hand it is contended by the learned standing counsel appearing for the respondents that even though there is no oral evidence adduced by the department, the documents produced at the time of enquiry are sufficient to substantiate the charge and therefore the Disciplinary Authority as well as the Appellate and Revisionary Authorities are justified in arriving at the conclusion that the charge of misconduct is proved against the applicant.

17. A charge in a departmental enquiry need not be proved beyond doubt just in a case of criminal trial. However, the charge has required to be established by means of sufficient legally admissible evidence. Suspicion however grave do not take place of proof. Any finding arrived at basing on surmises and conjectures is liable to be set aside even in the departmental enquiry though the strict rules of evidence have no application to the disciplinary proceedings.

18. In the instant case the Presenting Officer produced some documents at the time of enquiry. No witness was examined by the department with reference to those documents. The enquiry officer therefore arrived at a proper conclusion that the applicant was not supposed to examine the private records which have not been maintained during the regular course of business of the factory and he cannot be blamed for anything which occurs during holidays and during night time when the factory was not functioning. The enquiry officer also took into consideration the fact that the applicant produced corroborative evidence by way of his survey book pertaining to the bonding section and is able to establish that he has carried out the prescribed checks satisfactorily. Ultimately the enquiry officer found that the applicant is not guilty of the charge finding no evidence whatsoever, either oral or documentary which has been adduced in the proceedings to substantiate the allegation that the charged officer has colluded with the assessee in respect of removal of cigarettes and thereby responsible for the loss of revenue to the Government.

19. The Disciplinary Authority is entitled to disagree with the enquiry officer. However in respect of his disagreement he has to assign cogent reasons. It

is not enough for him to just state that he does not agree with the enquiry officer and that the evidence on record establishes the charge levelled against the applicant. In the instant case the Disciplinary Authority merely stated that “Cigarettes” is identified as an evasion prone commodity, the applicant has to be more vigilant by exercising control over the manufacturing stream of the cigarettes, but failed to carryout requisite checks on clearance of goods and his lack of surveillance resulted in clandestine production and removal of cigarettes and ultimately loss of revenue to the exchequer.

20. In **(2002) 7 SCC 142 { Sher Bahadur Vs. Union of India and Others}**, the Hon'ble Supreme Court in similar circumstances held that __

“The expression “sufficiency of evidence” postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, “in view of oral, documentary and circumstantial evidence as adduced in the enquiry”, would not in principle satisfy the rule of sufficiency of evidence.

21. Similarly in **(2009) 2 SCC 570 { Roop Singh Negi Vs. Punjab National Bank and Others }** the Hon'ble Supreme Court having regard to the identical situation held as follows :

“As the orders passed by the Disciplinary Authority as also the Appellate Authority have severe civil consequences, appropriate reasons should have been assigned. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are.”

22. In the instant case the Presenting Officer produced some documents at the time of enquiry. The documents were not proved by any witness as not even a

single witness was examined on behalf of the department. The documents dumped at the time of enquiry cannot be said to be the evidence in the disciplinary proceedings. They must be proved in accordance with law by examining the requisite witnesses. By tendering documents the department cannot claim that the documents are proved. The charged officer must be in a position to impeach the credit of the documents and also their relevancy by his cross examination. If such an opportunity is not afforded to the charged officer, it cannot be said that the principles of natural justice have been followed.

23. The Appellate and Revisionary Authorities also did not assign any adequate reasons for confirming the penalty order passed by the Disciplinary Authority. They merely stated that the Disciplinary Authority gave enough reasons for disagreeing with the enquiry officer. None of the authorities pointed out as to what was the evidence by which the charge against the applicant was established. The penalty order was sought to be justified by all the three authorities on the sole ground that the “Cigarettes” is defined by the department as “Sensitive” commodity, for which physical control system of assessment was prescribed and therefore the applicant ought to have been more vigilant in exercising the checks. The general statements that the procedure in conducting the enquiry has been followed and that the evidence is enough to prove the charge against the applicant are not enough. The authorities have to specifically mention the pieces of legal evidence by which the charge against the applicant was established, but they failed to do so.

24. Another important contention raised on behalf of the applicant is that

by the official memorandum dated 26.03.2004 which is said to be confidential, the Central Vigilance Commission suggested the department to issue a suitable major penalty to the applicant which is borne out from the copy of the OM which is part of the record in the Original Application. The learned counsel appearing for the applicant therefore contends that the Disciplinary Authority as well as the Appellate and Revisionary Authorities were very much guided by the OM dated 26.03.2004 and therefore all of them in one voice agreed for the penalty order passed by the Disciplinary Authority by its disagreement with the enquiry officer.

25. In this context it would be necessary to refer to the judgement of the Hon'ble Supreme Court in *AIR 1991 SC 1507 { Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal and another }*. In the case before the Hon'ble Supreme Court also the Disciplinary Authority and the Appellate Authority of a Nationalized Bank imposed punishment of compulsory retirement because the vigilance commission has recommended that punishment, even though the authorities felt that the punishment advised by the Central Vigilance Commission was too harsh. The Hon'ble Supreme Court quashed the directive issued by the Finance Ministry, Department of Economic Affairs (Banking Division) by holding as under :

“They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters.”

26. Turning to the facts of the instant case, the official memorandum dated 26.03.2004 advised the respondents to impose suitable major penalty on the applicant and others. The enquiry officer has elaborately dealt with the charge against the applicant in the course of the enquiry and by recording adequate reasons returned a finding that this is a case of no evidence and consequently held that the applicant is not guilty of the sole charge levelled against him. In fact as discussed herein before, there is no evidence warranting punishment against the applicant, the Disciplinary Authority however for the sake of disagreement disagreed with the enquiry officer, reversed the finding of the enquiry officer, imposed major penalty by finding the applicant guilty of the charge. He did not assign any valid reasons as to why he disagreed with the enquiry officer. The Appellate as well as the Revisionary authorities also without assigning any valid reasons confirmed the penalty order passed by the Disciplinary Authority.

27. We, therefore, agree with the contention put forth on behalf of the applicant that the charge has not been proved against the applicant in the course of the disciplinary proceedings held against him. Consequently, we set aside the penalty order passed by the Disciplinary Authority which is confirmed by the Appellate and Revisionary Authorities. The service benefits which the applicant was deprive of on account of the penalty order passed against him shall stand restored.

28. The OA therefore succeeds and the same is allowed. There shall be no order as to costs.

(MINNIE MATHEW)
MEMBER (ADMN.)

(JUSTICE R.KANTHA RAO)
MEMBER (JUDL.)

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