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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, CALCUTTA BENCH, CALCUTTA

MA. No.

399

2017

O. A. No.

89

of 2017

In the matter of:

ANIL BHASHKAR, aged about 35 years, son of Shri Siyaram Pandit, presently residing at C-105, Mayfair Greens 1, Pathargatha Road, Matigara, Post Office- Matigara, Police Station-Siliguri, District- Darjeeling, Pin- 734010 and working to the post of Inspector of Central Excise under the Commissioner of Customs Central Excise & Service Tax, Siliguri Commissionerate, Pradhan Building, Rishi Aurobindo Road, Hakimpara, Siliguri, District Darjeeling, Pin-743001.

...Applicant

-Versus-

1. UNION OF INDIA service through the Secretary, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi-110001

2. THE COMMISSIONER OF CUSTOMS.

CENTRAL EXCISE AND SERVICE TAX

Siliguri Commissionerate, Central revenue Building, Haren Mukherjee Road Hakimpara, Siliguri, District- Darjeeling, Pin- 734001

(145)

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3. THE ASSISTANT COMMISSIONER OF
CUSTOMS (2012-13) who also hold
charge of Hq. P&I, SIU, Naxalbari Division
C.R. Building, 5th Floor, Haren Mukherjee
Road, Hakimpura, Siliguri-734001, District-
Darjeeling:

4. THE SUPERINTENDENT, West Bengal
State Warehousing Corporation, Babupara,
Siliguri, District- Darjeeling, Pin-734001:

5. THE SECRETARY, West Bengal State
Warehousing Corporation, 6A Raja
Subodh Mullick Square, 4th Floor, Kolkata-
700013.

6. THE DIRECTOR GENERAL OF
VIGILANCE, Central Board of Excise
Customs, 2nd & 3rd Floor, Samrat Hotel
Kautilya Marg, Chanakyapur, New Delhi-
110021

Respondents.

6/2

No. O.A. 350/00089/2017
M.A. 350/00399/2017

Date of order: 6.9.2017

Present: Hon'ble Mr. Vishnu Chandra Gupta, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

For the Applicant : Mr. P.C. Das, Counsel

For the Respondents : Mr. S. Paul, Counsel

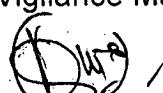
O R D E R (Oral)

Vishnu Chandra Gupta, Judicial Member:

The applicant has filed this Original Application challenging the different stage of the departmental enquiry initiated against him starting from serving the charges till the submission of the enquiry report and also at the final stage when disciplinary authority proceeded to conclude the enquiry in accordance with the CCS (CCA) Rules.

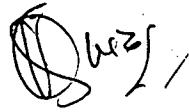
2. During pendency of this Original Application an interim application has been moved on the ground that the disciplinary authority was directed by the Central Vigilance Commission to award major penalty, hence this advice means to interference in the discretion of the disciplinary authority, which is a quasi judicial authority. It was also contended that it was the prerogative of the disciplinary authority either to accept or reject the enquiry report submitted to the disciplinary authority. No other agency can intervene and advise the disciplinary authority to act in a particular manner which is not in accordance with the provisions of law. As such, the letter dated 27.2.2017 advising the disciplinary authority to award major penalty against the applicant is bad in law and the operation of the same may be stayed and the same may also be set aside.

3. Reply has been filed by the respondents stating therein that the consultation of Central Vigilance Commission was mandatory in view of Para 3.6 (iii), chapter XI and para 8.6, Chapter XII of the Vigilance Manual,



Vol. I and the advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the concerned employee. However, in view of the judgement of the Hon'ble Apex Court in **State Bank of India v. D.C. Aggarwal & anr.** decided on 13.10.1992 (1993) 1 SCC 13 it was ordered that the advice given by the Central Vigilance Commission must have been furnished to the delinquent employee so that the delinquent employee may place the cause before the departmental authority about the recommendation made by the Central Vigilance Commission. A circular has been issued by the Central Vigilance Commission on 28.9.2000 wherein it was provided that the Central Vigilance Commission advice is required at the two stage of an enquiry. A first stage advice is obtained on the investigation report before issuance of charge-sheet and the second stage advice is obtained either on report of reply to the charge-sheet or on receipt of the enquiry report. It is the circular, which provided that advice of Central Vigilance Commission at the second stage is necessary to be communicated to the charged officer before taking a final decision by the disciplinary authority on the basis of enquiry report submitted by the enquiry officer. On the basis of that circular it was also contended that in view of the position emerged out on the basis of judgment of the Hon'ble Apex Court Para 3.6 (iii), chapter XI and para 8.6, Chapter XII of the Vigilance Manual, Vol. I and Para 2 of the Commission's letter dated 28.8.2013 stood deleted and in pursuance of that circular a copy of the advice of the CVC was furnished to the applicant, which has been acknowledged in his M.A. He also acknowledged that he filed the reply thereafter to the disciplinary authority, which is pending disposal but could not be disposed of due to interim order operating in this matter.

4. To appreciate the facts it will be appropriate that the letter, which has

A handwritten signature consisting of a stylized 'S' and 'W'.

been acknowledged by the applicant and is of date 27.2.2017 is virtually the advice of CVC, which has been communicated to the disciplinary authority and is extracted hereinbelow for ready reference:-

""C. No. 49/EZU(SSA)VIG/2016/149 Dated: 27.02.2017

To
 The Commissioner
 Customs, Central Excise & Service Tax
 Siliguri Commissionerate
 C.R. Building, Haren Mukherjee Road
 Hakimpura, Siliguri – 734001.

Madam,

**Sub: - 2nd Stage advice in the case of Shri Anil Bhaskar,
 Inspector – Reg**

Please refer to your office letter C. No. II (10) a/03/VIG/SLG/COMM/13/2745(c) dated 22.02.2016 and letter of even no. 1392 (c) dated 30.12.2016 on the above subject.

In this regard, this is to inform that the Competent Authority, in agreement with the recommendations of the Disciplinary Authority vide the letters mentioned above, has advised for imposition of major penalty against Shri Anil Bhaskar, Inspector. Accordingly, necessary action may be taken at your end and report of action taken may please be forwarded to this office at the earliest.

This issues with the approval of ADG (Vig), EZU, Kolkata.

Yours faithfully

(K RAMAMURTHY)
 Additional Commissioner (Vig)
 DGoV, EZU, Kolkata"

5. As a compliance of circular issued by CVC has been ensured by the disciplinary authority, therefore, we are also extracting the circular dated 28.9.2000, which reads as under:-

No.99/VGL/66
 Government of India
 Central Vigilance Commission

Satarka Bhavan, Block "A"
 GPO Complex, INA
 New Delhi-110023
 Dated the 28th September 2000

To

All Chief Vigilance Officers of Ministries / Departments of Government of India/Nationalised Banks /PSUs/
 Autonomous Bodies, Societies etc.

Subject :- Consultation with the CVC – Making available a cpy of the CVCs advice to the concerned employee

(N) H8

Sir,

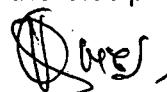
Para 3.6 (iii), chapter XI and para 8.6, Chapter XII of the Vigilance Manual, Vol. I, provide that the advice tendered by the Central Vigilance Commission is of a confidential nature meant to assist the disciplinary authority and should not be shown to the concerned employee. It also mentions that the Central Vigilance Commission tenders its advice in confidence and its advice is privileged communication and therefore, no reference to the advice tendered by the Commission should be made in any formal order.

2. The Commission has reviewed the above instructions in view of its policy that there should be transparency in all matters, as far as possible. The Commission has observed that the Hon'ble Supreme Court had held a view in the case – State Bank of India Vs. D.C Aggarwal and Another [Date of Judgment : 13.10.1992] – that non-supply of CVC's instructions, which was prepared behind the back of respondent without his participation, and one does not know on what material, which was not only sent to the disciplinary authority but was examined and relied, was certainly violative of procedural safeguard and contrary to fair and just inquiry. Further, the Hon'ble High Court of Karnataka at Bangalore, in writ Petition No. 6558/93, has also observed that if a copy of the report (CVC's advice) was furnished to the delinquent officer, he would have been in a position to demonstrate before the disciplinary authority either to drop the proceedings or to impose lesser punishment instead of following blindly the directions in the CVC's report.

3. The Commission, at present, is being consulted at two stages in disciplinary proceedings, i.e first stage advice is obtained on the investigation report before issue of the charge sheet, and second stage advice is obtained either on receipt of reply to the charge sheet or on receipt of inquiry report. It, however, does not seem necessary to call for the representation of the concerned employee on the first stage advice as the concerned employee, in any case, gets an opportunity to represent against the proposal for initiation of departmental proceedings against him. Therefore, a copy of the Commission's first stage advice may be made available to the concerned employee along with a copy of the charge sheet served upon him, for his information. However, when the CVC's second stage advice is obtained, a copy thereof may be made available to the concerned employee, along with the IO's report, to give him an opportunity to make representation against IO's findings and the CVC's advice, if he desires to do so.

4. In view of the position stated above, para 3.6 (iii), Chapter XI and para 8.6, Chapter XII of the Vigilance manual, Vol. I, and also para 2 of the Commission's letter No. 6/3/73-R dated 20.08.1973 may be treated as deleted.

5. Para 12.4.4 of Special Chapter on Vigilance Management in Public Sector Banks and para 22.6.4 of the Special Chapter Management in Public Sector Enterprise envisage that the inquiring authorities, including the CDIs borne on the strength of the Commission, would submit their reports to the disciplinary authority

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who would then forward the IO's reports, along with its own tentative views to the Commission for its second stage advice. The existing procedure in this regard may broadly continue. The disciplinary authority, may after examination of the inquiry report, communicate its tentative views to the Commission. The Commission would thereafter communicate its advice. This, alongwith the disciplinary authority's views, may be made available to the concerned employee. On receiving his representation, if any, the disciplinary authority may impose a penalty in accordance with the Commission's advice or if it feels that the employee's representation warrants consideration, forward the same, along with the records of the case, to the Commission for its reconsideration.

6. Thus, if on the receipt of the employee's representation, the concerned administrative authority proposed to accept the CVC's advice, it may issue the orders accordingly. But if the administrative authority comes to the conclusion that the representation of the concerned employee necessitates reconsideration of the Commission's advice, the matter would be referred to the Commission.

Yours faithfully,

(KL AHUJA)
Officer on Special Duty"

6. The reply, which the applicant has filed after receipt of the aforesaid letter is also filed by the applicant along with Miscellaneous Application is also extracted hereinbelow:-

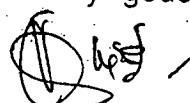
"To
The Commissioner & Disciplinary Authority
Customs, Central Excise & Service Tax
Siliguri Commissionerate

Respected Madam

Subject :- Disciplinary Proceedings under Rule 14 of the CCS (CCA) Rules, 1965, in respect of Memorandum of charge issued vide C.No II(10) a/07/VIG/SLG/COMM/2012/1207(C) dated 19.11.2014 against Shri Anil Bhaskar, Inspector communication of 2nd stage advice- reg.

Kindly refer to your letter C.No II(10) a/07/VIG/SLG/COMM/2012/1207/234(C) dated 14.03.2017 on the above mentioned subject.

In this regard, I like to submit that recommendation of Additional Commissioner (vig) DGoV, EZU, Kolkata for imposition of major penalty for loss of an LCD TV valued only Rupees 10,000/- only is illegal LCD TV was stolen during the period 10.02.2012 to 24.02.2012 when your officer was prevented from official duty in the godown and when working operation in my godown was



suspended by the secretary of West Bengal Warehousing Corporation, Kolkata.

Therefore, there is Nil (Zero) loss of Govt. Property in my godown during my entire duty period. In fact I prevented the loss of Govt. property.

Recommendations of Additional Commissioner (Vig) DGoV, EZU, KOLKATA for imposing major penalty for Nil, loss of Govt. property is illegal and challengeable in the Court.

At present, I have challenged the first stage advice of ADG(Vig), DGoV, EZU, Kolkata in the CAT, Eastern, Zonal Branch vide case no. 350 of 2017 in the matter Anil Bhaskar Vs Union of India.

Yours faithfully,

(Anil Bhaskar)
Inspector
Hdqrs. Computer Cell"

A copy of which has been filed today by the respondents.

7. The fact of giving reply has not been denied by the Ld. Counsel for the applicant. Rejoinder affidavit has also been filed against the objection filed by the respondents. The earlier stages of enquiry were challenged on the basis of materials placed on the rejoinder affidavit.

8. We have heard the Ld. Counsel for the parties and we are of the view that the interim application sans merit and is, accordingly, liable to be dismissed for the reasons assigned below:-

(i) It is not the CVC, who advised the disciplinary authority to impose major penalty but it was the opinion of the disciplinary authority, which has been concurred with by the CVC.

(ii) The enquiry initiated against the applicant was under Rule 14 of CCS (CCA) Rules which was initiated in anticipation of awarding a major penalty.

(iii) That the disciplinary authority after concurring with the opinion expressed by the enquiry officer decided to impose major penalty and

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for which the applicant was given an opportunity to show-cause before awarding any penalty in the matter.

9. As the matter is under consideration before the disciplinary authority and the disciplinary authority has to take a decision in accordance with law. The Tribunal cannot record its own findings in such a situation nor can give any direction to the disciplinary authority because the disciplinary authority is fully competent to act according to his own wisdom. At the same time it would be necessary to mention here that the disciplinary authority is not bound by the advice given by the CVC as held by the Hon'ble Apex Court in the case of *State Bank of India v. D.C. Aggarwal & anr. (supra)*.

10. As stated earlier the advice of CVC is only an advice to the disciplinary authority is not at all binding upon the disciplinary authority and it does not reflect from the present case that CVC has not issued any direction to the disciplinary authority to act in a particular manner, as is evident from the advice given by the CVC.

11. So far as the merit of the case is concerned, we are of the firm view that we cannot consider the case on merit at this stage and express any opinion on merit because the final decision has to be taken by the disciplinary authority.

12. Accordingly, the interim application is dismissed.

13. The interim order granted on 12.7.2017 is hereby vacated. The disciplinary authority is directed to proceed in accordance with law to conclude the enquiry expeditiously.

(Dr. Nandita Chatterjee)
Administrative Member

(Vishnu Chandra Gupta)
Judicial Member

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