

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No. 317/2013

Dated this Thursday the 12th day of December, 2016

CORAM: **HON'BLE SMT. CHAMELI MAJUMDAR, MEMBER (J)**
HON'BLE Dr. MRUTYUNJAY SARANGI, MEMBER (A)

Shri Harichandra Joma Mhatre,
 Indian Inhabitant,
 Residing at A/5
 Lane No.8, Sector-9,
 C.B.D. Belapur,
 Navi Mumbai - 400 614.
 Ex. Superintendent of Customs
 & Central Excise, Mumbai - II
 Commissionerate Lalbaug,
 Mumbai - 400 012.

... Applicant

(By Advocate Shri V.G. Rege)

Versus

1. Union of India,
 Through its Revenue Secretary,
 in the Ministry of Finance,
 Department of Revenue,
 North Block,
 New Delhi - 110 001.
2. Shri M. Suresh,
 Chief Commissioner of
 Central Excise, Mumbai
 Zone II, having office at
 9th Floor, Piramal Chamber,
 Jijibhai Lane,
 Lalbaug, Parel,
 Mumbai - 400 012.
3. Shri Premand Das,
 Commissioner of Central Excise
 and Customs, Belapur Commissionerate,
 having office at 1st Floor,
 C.G.O. Complex, C.B.D.
 Belapur,
 Navi Mumbai - 400 614. ***... Respondents***

(By Advocate Shri R.R. Shetty alongwith Shri P. Khosla)

O R D E R

Per: Smt Chameli Majumdar, Member (J)

The applicant filed this O.A. challenging the order dated 02.04.2012 passed by the Additional Commissioner on the appeal filed by the applicant dated 07.09.2011 against the order dated 22.07.2011 passed by the Chief Commissioner Central Excise Mumbai Zone II.

2. Heard Shri V.G. Rege, learned counsel for the applicant and Shri R.R. Shetty, learned counsel for the respondents at length and perused the pleadings and documents annexed therewith.

3. It appears that the appeal submitted by the applicant dated 07.09.2011 against the order dated 22.07.2011 was forwarded to the Board and the same was examined by the Board. The applicant was informed by the impugned order dated 02.04.2012 that there was no provision either under Rule 23 of CCS(CCA) Rules, 1965 or under CCS (Leave) Rules, 1972 for any appeal/revision against refusal to sanction leave and he was further informed that leave could not be claimed as a matter of right. Accordingly, the matter was treated as 'closed'. It

appears from paragraph 8 of the O.A. that the applicant has prayed for setting aside and quashing the said impugned order dated 02.04.2012 whereby he was informed that his appeal dated 07.09.2011 against the order dated 22.07.2011 was not maintainable. The applicant has prayed for a direction on the appropriate authority to consider his review/revision petition dated 07.09.2011 in terms of Rules 29/29A of CCS(CCA) Rules and to communicate its decision as expeditiously as possible to the applicant. The said relief paras are set out herein below:-

"8(a) That this Hon'ble Tribunal will be pleased by exercising the powers conferred on it under the provisions of Administrative Tribunals Act, 1985 to call for the papers and proceedings underlying the impugned letter dated 02.04.2012 and after examining its legality, regularity, validity and propriety thereof to be quash and set aside the same.

(b) That this Hon'ble Tribunal will be pleased to direct the 1st respondent by issuance of the appropriate writ order or direction to consider, examine and decide the applicants petition dated 07.09.2011 against the order dated 22.07.2011 of the 2nd respondent in terms of Rules 29/29A of CCS(CCA) Rules and to communicates its decision thereon to the applicant as expeditiously as possible and within a period about 3 months.

(c) Costs of this Application and orders to be made thereon be directed to be paid to the applicant.

(d) For such further reliefs and orders and directions as in the facts and circumstances of the case as deemed fit and proper by this Hon'ble Tribunal be granted in favour of the applicant."

4. The Commissioner of Central Excise, Belapur passed an order on 11.11.2005 on the application of the original applicant dated 08.04.2003 for grant of leave for the period from 01.02.1996 to 04.02.1999. The Commissioner held that the entire period of absence of the applicant being the Superintendent of Customs from 01.02.1996 to 04.02.1999 would be treated as unauthorised absence from duty and the officer would not be entitled to any kind of leave salary for the entire period and the said period would be treated as break in service. Hence, his leave application dated 08.04.2003 was rejected in toto.

5. Learned counsel for the applicant submits that challenging the said order of the Commissioner of Central Excise, Belapur dated 11.11.2005, the applicant submitted an appeal dated 28.12.2005 to the Chief Commissioner of Central Excise, (Cadre Controlling Authority), Mumbai I. The said appeal was disposed of by order dated 20.04.2006 by the same Commissioner of Central Excise, Belapur who passed the order dated 11.11.2005. It is relevant

to mention that appeal dated 28.12.2005 was filed by the applicant against the said order dated 11.11.2005 passed by the same Commissioner of Central Excise, Belapur. The Commissioner of Central Excise, Belapur informed him by the said order that the appeal was transferred by the Chief Commissioner, Central Excise, Mumbai Zone-I to the Chief Commissioner, Central Excise, Mumbai Zone-II and the same was further forwarded by the Chief Commissioner, Central Excise, Mumbai Zone-II vide letter dated 23.01.2006 to the Commissioner of Central Excise, Belapur for taking necessary action. In the said order, the Commissioner of Central Excise held that there was no provision in CCS(Leave) Rules, 1972 for filing an appeal against any order regarding leave matter passed by the Competent Authority. Therefore, the appeal filed by the applicant was treated as representation against the said order dated 11.11.2005. The said Commissioner of Central Excise held that the applicant failed to bring on record any new facts/evidence in support of his case. Therefore, his request for reconsideration of the issue could not be acceded to.

6. The applicant again submitted another appeal to the Chief Commissioner of Central Excise dated 21.01.2009 stating that the Commissioner of Central Excise, Belapur had no jurisdiction to consider the appeal as representation under the provisions of law. Therefore, any communication thereon was *nonest* in the eye of law. It was mandatory on the part of the Appellate Authority to pass appropriate order on the appeal. Therefore, the applicant requested the Chief Commissioner of Central Excise to go through the record of the case and the provisions of appeal and to pass necessary orders.

7. The applicant thereafter filed O.A. being OA No.241/2010 dated 19.10.2010. The said O.A. was disposed of on 19.10.2010 by directing the Chief Commissioner of Central Excise, Mumbai Zone-II to consider the appeal of the applicant dated 28.12.2005, after giving personal hearing to the applicant and to decide the same on merit by passing appropriate orders in the light of submissions made by the applicant in the said appeal within a period of two months from the date of receipt of a copy of the order. In compliance of the said order dated 19.10.2010, the Appellate Authority being the Chief Commissioner of Central

Excise, Mumbai Zone-II considered the appeal filed by the applicant dated 28.12.2005 against the order dated 11.11.2005 passed by the Commissioner, Central Excise, Belapur. The Appellate Authority found no merit in the contentions of the applicant and held that the order dated 11.11.2005 passed by the Commissioner Central Excise, Belapur was proper and legal.

8. Learned counsel for the applicant submits that in the order dated 22.07.2011, the Appellate Authority mentioned that an appeal against this order dated 22.07.2011 shall lie with the President of India which should be filed within 45 days from the date a copy of the order will be delivered to the applicant. A copy of the said appeal should be forwarded to the office and the appeal must be accompanied with the copy of the order appealed against. Accordingly, challenging the said order dated 22.07.2011, the applicant submitted appeal as advised in the Appellate order dated 22.07.2011 on 07.09.2011 within the prescribed period of limitation.

9. By the impugned order dated 02.04.2012, the said appeal dated 07.09.2011 was rejected and the matter was treated as closed holding that there was

no provision either under Rule 23 of CCS (CCA) Rules, 1965 or under CCS (Leave) Rules, 1972 for any appeal/revision against refusal to sanction leave.

10. We have carefully gone through the relevant provisions of CCS (CCA) rules. Learned counsel has relied on Rule 23(iv) (a) and has submitted that under this provision an appeal lies against the order passed by Commissioner of Central Excise, Belapur dated 11.11.2005. Therefore, the appeal submitted by the applicant was in terms of this provision of 23(iv) (a) of CCS (CCA) Rules. The relevant rule being Rule 23(iv) (a) is set out herein below:-

"23. Orders against which appeal lies

Subject to the provisions of Rule 22, a Government servant may prefer an appeal against all or any of the following orders, namely:-

- (i)
- (ii)
- (iii)

(iv) an order which -

(a) denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement; or"

11. Learned counsel for the applicant submits that a revision/review shall apply against the order passed by the Appellate Authority under Rule 23(iv) (a).

12. After carefully going through the Rule 29 of CCS(CCA) Rules, we find that any order made under CCS(CCA) rules can be revised under Rule 29 of CCS (CCA) Rules. The relevant extracts from the said Rule is set out herein below:-

"29. Revision

(1) Notwithstanding anything contained in these rules-

(i) the President; or

(ii) the Comptroller and Auditor-General, in the case of a Government servant serving in the Indian Audit and Accounts Department; or

(iii) the Member (Personnel) Postal Services Board in the case of a Government servant serving in or under the Postal Services Board and [Adviser (Human Resources Development), Department of Telecommunications] in the case of a Government servant serving in or under the Telecommunications Board]; or

(iv) the Head of a Department directly under the Central Government, in the case of a Government servant serving in a department or office (not being the Secretariat or the Posts and Telegraphs Board), under the control of such Head of a Department; or

(v) the Appellate Authority, within six months of the date of the order proposed to be (revised); or

(vi) any other authority specified in this behalf by the President by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on his or its own motion or otherwise call for the records of any inquiry and (revise) any

order made under these rules or under the rules repealed by Rule 34 from which an appeal is allowed, but from which no appeal has been preferred or from which no appeal is allowed, after consultation with the Commission where such consultation is necessary, and may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order to or any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit:

13. Learned counsel for the applicant submits that although his appeal dated 07.09.2011 was mentioned as appeal on the instructions given in the Appellate order by the Appellate Authority that an appeal shall lie against his order but the same was addressed to the Hon'ble President of India and the same was actually a review/revision in nature.

14. Shri Shetty, learned counsel for the respondents has submitted that a charge sheet was issued to the applicant with the charge of unauthorised absence for the period in question and finally the Disciplinary Authority passed an order of removal from service.

15. Learned counsel for the applicant submits that the applicant's appeal against the said punishment order of removal from service is still pending.

16. Be that what may. In this O.A., we are to adjudicate the legality, propriety or validity of the order dated 02.04.2012 passed by the Additional Commissioner on the appeal filed by the applicant to the Hon'ble President against the order dated 22.07.2011 passed by the Chief Commissioner, Central Excise, Mumbai Zone-II. By the impugned order in reference to the appeal of the applicant dated 07.09.2011, the applicant was informed that there was no provision either under Rule 23 of CCS (CCA) rules, 1965 or under CCS(Leave) Rules, 1972 for any appeal/revision against refusal to sanction leave.

17. The order dated 11.11.2005 passed by the Commissioner of Central Excise, Belapur is an administrative order. The applicant filed appeal to the Chief Commissioner of Central Excise being the Appellate Authority challenging the said administrative order passed by the Commissioner of Central Excise dated 28.12.2005. The relevant rule provides that in the event the appeal is dismissed,

the applicant may file revision/review against the said appellate order. The applicant preferred revision/review against the order of the Chief Commissioner of Central Excise and Customs under Rule 29 of CCS(CCA) Rules to the President of India, although the same was named as appeal, according to the wrong advice mentioned in the order of the Chief Commissioner of Central Excise and Customs. The said revision/review was rejected by the impugned order dated 02.04.2012 on a ground unwarranted in law. The impugned order dated 02.04.2012 passed by the Additional Commissioner holding that there was no provision either under Rule 23 of CCS(CCA) Rules, 1965 or under CCS(Leave) Rules, 1972 for any appeal/revision against refusal to sanction leave is bad in law. The same cannot be sustained in the eye of law.

18. The impugned order dated 02.04.2012 is accordingly set aside. The appeal which has been preferred to the Hon'ble president of India by the applicant dated 07.09.2011 shall be treated as a revision/review. The Competent Authority is directed to consider the said revision/review petition dated 07.09.2011 in accordance with law and pass an order within a period of four weeks

from the date of receipt of a copy of the order.

19. We make it clear that we have not gone into the merit of the revision/review. All questions of fact and law are kept open.

20. The Original Application is accordingly disposed of with the above directions. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

(Smt Chameli Majumdar)
Member (J)

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