

(RESERVED ON 28.05.2019)

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD**

This is the 10th day of *July*, 2019.

ORIGINAL APPLICATION NO. 330/00465/2019

HON'BLE MS AJANTA DAYALAN, MEMBER (A)
HON'BLE MR RAKESH SAGAR JAIN, MEMBER (J)

Prem Singh Dhakre, Son of Late Devi Singh, Resident of HIG D-860, Kalandi Vihar, District – Agra
Presently posted as Superintendent CGST & Central Excise, Commissionerate, District - Agra.Applicant

VERSUS

1. Union of India through the Chairman, Central Board of Customs and Central Excise, Ministry of Finance Department of Revenue, North Block, New Delhi – 110001.
2. Principal Chief Commissioner, CSGT & Central Excise Zone, Lucknow.
3. Chief Commissioner, Central GST and Central Excise Commissionerate, 7-A, Ashok Marg, Lucknow.
4. Commissioner, Central GST and Central Excise, 113/4, Sanjay Palace Commissionerate, Agra.
5. Joint Commissioner (Vigilance) Central GST and Central Excise Commissionerate, Agra.
6. Shri R.C. Sankhla, Commissioner, CGST & Central Excise, Agra.
7. Shri Piyush Katiyar, Enquiry Officer / Deputy Commissioner, CGST & Central Excise, Firozabad Division, Firozabad.
8. Shri Rudra Pratap Singh, Joint Commissioner (Vigilance), Central GST and Central Excise Commissionerate, Agra.Respondents

Advocate for the Applicant : Shri Vinod Kumar

Advocate for the Respondents : Shri Vinod Mishra

ORDER

Delivered by Hon'ble Ms. Ajanta Dayalan, Member-A

Present original application has been filed by the applicant Prem Singh Dhakre seeking quashing of chargesheet dated 28.11.2018 (Annexure A-1) and order dated 11.03.2019 (Annexure A-21) issued by the respondent no. 6 for initiating departmental proceedings against the applicant. He has also sought directions to the respondents' department to change the Inquiry Officer who is respondent no. 7 as well as the disciplinary authority that is respondent no. 6. Further, he has sought

directions to start inquiry de-novo and to release payments including pay, medical TA etc to the applicant.

2. As per the OA, the case of the applicant who is posted as Superintendent, CGST and Central Excise Commissionerate, Agra, is that in May 2017, respondent no. 6 was appointed Commissioner, CGST & Central Excise, Agra and respondent 7 was Deputy Commissioner, CGST & Central Excise, Firozabad Division, Firozabad. The applicant's allegation is that as he did not succumb to the illegal demands, the officers had a grudge against him and they started creating documents in order to implicate him. As a proof, the applicant relies upon orders of June 2017 to September 2017 (Annexure A-3) changing his charge frequently. The applicant made representation dated 20.09.2017 (Annexure A-4). The applicant alleges that he was served memos dated 09.10.2017 and 25.10.2017 for unauthorized absence. The vigilance department sought a report regarding his unauthorized absence and the same was submitted on 28.02.2018 (Annexure A-7). He was put under suspension on 22.03.2018 on the ground that disciplinary proceeding was contemplated against him. The suspension was extended for another 90 days and was revoked vide order dated 13.09.2018 (Annexure A-18).

3. The case of the applicant is that only due to malafide and prejudice, a memo was served upon him. Moreover, it was served after a delay of eight months in violation of DOPT OM dated 29.11.2012. Further, the chargesheet was issued by respondent no. 6 and the Inquiry Officer, that is respondent no. 7, is lower in rank to him and as such, he cannot go against the dictates of his superior officer. He has also alleged that the respondent no. 6 and 7 came to his house in official vehicle with criminals and harassed the ladies (para 4.29 of the OA). He has also stated that his

pay has been stopped and hence, his family is suffering. Further, of the four charges, the first charge relates to his unauthorized absence of 208 days from January 2017 to February 2018. It is stated that the applicant was not absent but the Biometric attendance was not working properly and there was problem of electricity and network. The biometric system was deliberately cut off at the time when the applicant was about to login. The second charge is relating to movable and immovable property being disproportionate to his known sources of income. According to him, this charge is vague and the applicant has given a reply. The third charge is regarding tampering with official documents in the year 2015 which, according to him, is baseless and is based on statements of Sushil Kumar and Satish Kumar which have been obtained under pressure. The fourth charge is that the applicant did not co-operate in the departmental inquiry which is also baseless and preliminary inquiry can be conducted behind the back of the applicant.

4. In view of above submissions in the OA and the judgments of Hon'ble Apex court in A.P. Vs. N. Radhakrishnan – 1998 (4) 154 and in State of Uttar Pradesh & Others Vs. Saroj Kumar Sinha – 2010 (2) SCC 772 as well as the judgment of High Court of Madhya Pradesh in Union of India & Ors Vs. Mohd. Siddiqui, the applicant has concluded that the chargesheet is biased and needs to be quashed and relief sought by him needs to be granted to him.

5. On the other hand, respondents' counsel has contested the claim of the applicant. They have stated that the allegation of malafide and prejudice against the respondent nos. 6, 7 and 8 is totally baseless and bogus. Memos have been served upon the applicant after verification from the Biometric Attendance Monitoring System. All the facts regarding the

case have been narrated in the charge memo dated 28.11.2018. Matter regarding movable and immovable property has been initiated on the basis of information available in the office record. Again, the entire facts have been narrated in the charge memo. Further, the applicant was informed about his suspension vide office order dated 26.06.2018, but the same was returned undelivered from his residential address with remark 'लेने से मना किया'. The suspension was extended for next 90 days. After completion of investigation, the suspension was revoked. This fact was also narrated in the charge memo. The respondents' department has stated that the charge memo has been issued as per provisions of DOPT OM dated 29.11.2012. They have also stated that there is no evidence to prove that the inquiry being conducted against the applicant is biased. Charge of bias and prejudice are baseless and bogus. His allegation that the officers visited his house in official vehicle is also baseless and bogus and the official vehicle was sent to serve the official letters to him. The respondents have further stated that the applicant was unauthorizedly absent and he was absconding from office without proper leave. He has been absenting himself since November 2018 and hence, his salary was stopped from 16.01.2019. The chargesheet has been served on three grounds under Rule 14 of CCS (CCA) Rules, 1964: -

- (a). Unauthorized absence;
- (b). Non intimation of annual IPRs and suppression of sale and purchase of immovable and movable properties; and
- (c). Tampering of official records

6. The respondents have also stated that despite order dated 11.03.2019 passed by the Principal Chief Commissioner, CGST & Central Excise, Zone Lucknow to conduct inquiry proceedings expeditiously, the

inquiry could not be concluded so far due to non-cooperation on the part of the applicant. They have also stated that the Inquiry Officer has given ample opportunities to the applicant to represent against the chargesheet. As such, they have concluded that the applicant is not entitled to any relief as he has failed to come up with any cogent ground for filing the present OA. They have also stated that the claim of the applicant deserves to be dismissed on the ground of concealment of material evidence.

7. We have heard Shri Vinod Kumar, learned counsel for the applicant and Shri Vinod Mishra, learned counsel for the respondents and have also gone through the pleadings of the case including written arguments given by the two sides.

8. We find that the case basically relates to the disciplinary proceedings in which charge memo has been issued to the applicant on 28.11.2018 (Annexure A-1) on four charges. Article –I is regarding unauthorized absence of 208 days. Article –II is regarding movable and immovable property held by him being disproportionate to his known sources of income. Article –III is for tampering with official records. Article –IV is regarding failing to comply with lawful orders duly communicated to him, thereby not maintaining discipline in discharge of his duties.

9. The applicant is seeking quashing of chargesheet as well as order dated 11.03.2019 for continuance of disciplinary proceedings against him. He has also sought other reliefs like change of inquiry officer, disciplinary authority as well as payment of pay, medical claim etc. which have been stopped.

10. The grounds on which the above reliefs have been sought are alleged malafide and bias. However, after going through the pleadings in the OA,

we could not find any ground to prove such malafide or bias except general allegation made by the applicant about illegal demands made by the respondents nos. 6, 7 and 8. The applicant has not provided a single letter or any specific order – verbal or written - passed by these officers that can be called illegal. He has also not produced any specific complaint made by him in this regard or any other specific case prior to initiation of disciplinary proceedings against him. There is no effective rebuttal about his unauthorized absence. This is despite the fact that he is stated to be unauthorizedly absent right from January 2017 to February 2018 for as many as 208 days in different spells. In addition to these absences, as per the Biometric Attendance Monitoring System, he went out of office without signing attendance register on 31 days and he did not complete minimum official time for 8-1/2 hours on another 18 days. Thus, effectively, as per the chargesheet, he has attended the office for a very few days during this period of about one year. The main issue of substantive unauthorized absence of the applicant has not been contested by the applicant himself in the OA.

11. We also find that the applicant has also not himself contested the allegation of the respondents' department that the applicant did not cooperate in the preliminary inquiry. The sole submission made in this regard by the applicant in the OA is '.....as preliminary inquiry can also be conducted behind the back of the applicant'. Hence, if the chargesheet does not take into account his part of the story, the blame is not attributable to any one other than the applicant himself. Still, the applicant has opportunity to defend himself by cooperating in the inquiry now ordered. No ground has been shown by him to make us believe that the inquiry will be vitiated and biased. In any case, if it is so, he will always have opportunity to move this Tribunal after conclusion of the

inquiry and after passing of the orders by the disciplinary and appellate authorities. Hence, we do not find that adequate ground has been made out by the applicant to justify our intervention in this case at this stage at all.

12. We also find that very serious allegations have been made against the applicant. These include charge of integrity as he is allegedly holding moveable and immovable assets beyond his known sources of income. The applicant has only stated that he informed the department about the sale and purchase of these assets. If the applicant did inform the department in time and took requisite permissions, he has the opportunity to make his defence before the department during the inquiry itself. His approaching this Tribunal at this stage itself is considered premature. Besides, though the applicant has taken the ground in the OA that he informed the respondents' department, there is no submission by him regarding the main issue of assets held by him to be disproportionate to his known sources of income.

13. We also do not accept the ground taken by the applicant that the Inquiry Officer being under control of the disciplinary authority cannot hold an independent inquiry. In many disciplinary cases, the Inquiry Officer is subordinate to the disciplinary authority. Still, the inquiry is held independently and in fair manner. In this case, there is no credible evidence to believe that the disciplinary authority and the Inquiry Officer are prejudiced against the applicant. Only vague and general allegations have been made by the applicant. Hence, we do not find this ground convincing at all.

14. We note that the respondents have also stated in the written arguments that on 06.05.2015, an FIR was lodged against the applicant by

his daughter-in-law that on 12.04.2015, the applicant attempted to rape her. Therefore, the applicant tampered with the official records in the department to prove that on that date, he attended the Kanpur office. This is one of the charges in the charge memo.

15. We have also gone through the charge sheet dated 28.11.2018 and find that the same is quite detailed giving specific instances and details of misconduct on part of the applicant. We also find that the charges against the applicant are grave in nature. Besides, we find that allegation of prejudice and malafide by the applicant are not substantiated.

16. In view of all above, we do not find any merit in the OA and the same is dismissed. No order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(AJANTA DAYALAN)
MEMBER-A

Anand...