



CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
KOLKATA

OA No.350/01315/2014

Dated of order: 18.02.2015

Present:

The Hon'ble Mr. Justice V.C.Gupta, Judicial Member

The Hon'ble Ms. Jaya Das Gupta, Administrative Member

Sri Gokul Barman, (Retired) Superintendent, Vill. Lalpur
Nutanpally, PO. Chakdaha (741222) Distt. Nadia, West
Bengal.

.....Applicant

For the Applicant: In person.

-Versus-

1. Commissioner of Service Tax, New Central Excise Building,
3rd floor, 180, Santipally, Rajdanga Main Road, Kolkata-
700107.

Respondent (1)

2. Chief Commissioner of Central Excise, New Central Excise
Building, 2nd floor, 180, Santipally, Rajdanga Main Road,
Kolkata-700107.

Respondent (2)

3. Union of India (through Under Secretary to the
Government of India) Ministry of Finance, Department of
Revenue Central Board of Excise and Customs (Office of the
Chief Vigilance Officer) 6th floor, C-Wing, Hudco Vishala
Building, Bhokaji Cama Place, New Delhi.

Respondents (3)

For the Respondents: Mr.C.R.Bag, Counsel

Mr.U.P.Bhattacharyya, Counsel

ORDER

MS.JAYA DAS GUPTA, AM:

The Sri Gokul Barman, a retired Superintendent of
Central Excise, representing in person, has preferred this Original

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Application under section 19 of the Administrative Tribunals Act, 1985 praying, *inter alia*, as under:

“8. Reliefs Sought:

8.1 Quash and set aside the Charge Memo dated 06.06.01 and orders dated 28.03.05, 25.08.11, 13.12.11 and 01.10.13.

8.2. Direct the respondents to open the sealed cover pertaining to the recommendation of the DPC held in May, 2001 for the grant of arrears of ACP from 13.03.01 to 27.03.07 and MACP from 13.03.09.

8.3. Direct the respondents to grant all consequential monetary benefits;

8.4. Allow the cost of this application to the applicant;

8.5. Pass such other orders or reliefs as deemed fit and proper in the facts and circumstances of the case in favour of the applicant and against the respondent.”

2. The facts of this case, in nut shell are as under.

The applicant while working as Inspector of Central Excise, Range IV, a cigarette manufacturing unit, namely M/s. New Tobacco Company Ltd. (NTC), was under his control for the period from October, 1994 to 24.10.1996, but he failed to make use of the said company's own records to verify the entries made in their statutory documents which facilitated the company to go for clandestine production and clearance of unaccounted cigarettes without payment of duty and the statutory instructions contained in the Cigarette Manual, Central Excise Rules, 1944 and the instructions issued from time to time on physical control of Cigarettes. Thus on the allegation that the applicant failed to

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maintain absolutely integrity, devotion to duty and acted in a manner unbecoming on the part of a Government Servant a major penalty charge sheet was issued to him.

(i) On denial of the charges, the Disciplinary Authority vide order dated 22.11.2002 appointed the IO and PO to enquire into the matter. The IO enquired into the matter and submitted its report in which it has been held by the IO that the charges are not proved but the survey book of factory officer was not maintained by the applicant, as per the prescribed guidelines and non maintenance of such document was not directly related to the evasion of excise duty.

(ii) The Disciplinary Authority disagreed with the report of the IO and consequently issued letter dated 25.8.2004 and thereupon, considering the entire matter, vide order dated 28.03.2005 imposed the punishment of reducing the pay of the applicant to two stages from Rs. 7,900/- to Rs. 7,500/- in the time scale of pay of Rs. 6,500-200-10,500/- for a period of two years with further direction that he will earn increments of pay during the period of such reduction and on expiry of such period, the reduction will not have effect of postponing the future increments of his pay.

(iii) Against the said order of the Disciplinary Authority dated 28.03.2005, the applicant preferred appeal and the Appellate

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Authority, for the reasons recorded in the order dated 15.01.2008, remitted the matter back to the DA for de novo enquiry from the stage of issuing the s-how cause notice regarding the disagreement with the IO's report as per Rule 15 (2) of the CCS (CCA) Rules, 1965.

(iv) Where after, the DA after complying with the provision of Rule 15 (2) of the CCS (CCA) Rules, 1965 by way of giving disagreement notice to the applicant, dated 28.04.2011 imposed the punishment of reduction of pay by two stages from Rs. 19180/- to Rs. 17,800/- in the time scale of pay for a period of one year from the date of issuance of the order with further direction that in view of the retirement of superannuation of the applicant on 30.09.2011 no further direction on the status of increments during the period of the said reduction is required.

(v) The Applicant again preferred appeal dated 10.10.2011, against the order of the Disciplinary Authority which vide order dated 13.12.2011 upheld the order of the DA.

(vi) Against the order of the Appellate Authority, the applicant preferred revision in terms of Rule 29 of CCS (CCA) Rules, 1965 which was also turned down and intimated to the applicant vide letter dated 24/25.10.2013. The remaining portion of

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the order of the Revisional Authority is quoted hereunder for ready reference:

“And whereas, the CO filed a revision petition under Rule 29 of CCS (CCA) Rules, 1965 with the President of India, being a Revisionary Authority against O-1-A dated 13.12.2011.

And, whereas, the revision petition of Shri Gokul Barman, Inspector (now Retd. Supdt.) was placed before the competent authority and the competent authority has noticed that the petitioner has in his revision petition reiterated the same ground which he had earlier raised in his appeal before the Chief Commissioner of Central Excise and Service Tax, Kolkata Zone which have been dealt in details in the Order in Appeal No. 10/2011 dated 13.12.2011. Now, therefore, the President after careful consideration of the grounds given by the petitioner in his revision petition and the Order in original and the Order in Appeal, has come to the conclusion that there is no merit in the revision petition and the same is liable for rejection. It is ordered accordingly.”

(vii) Thereafter, the applicant filed this Original Application with the aforesaid prayers.

3. The Respondent Authorities filed their reply and for the reasons stated therein, they have prayed that this OA being devoid of any merit is liable to be dismissed. The applicant has also filed rejoinder more or less reiterating the stand taken in the OA.

4. The arguments advanced by the applicant who is appearing in this case in person having retired on 30.09.2011 and the learned counsel appearing for the Respondents were heard and records were perused.

5. There are catena of decisions in which the Hon'ble Apex Court has decided that in the matter of judicial review, CAT's

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jurisdiction is limited inasmuch as, to the extent to see as to whether the proceedings were conducted according to the Rules and CAT also cannot interfere with the penalty order unless it seems that penalty imposed has been disproportionate which shocks the judicial conscience.

6. In the instant case, it is observed that the proceedings have been held as per Rules and with the passing of the order by the Revisional Authority it has reached its finality. The penalty order of the Disciplinary Authority dated 25.08.2011 which was upheld by the Appellate and Revisional Authorities, is extracted hereunder, takes into account the fact of superannuation of the applicant also. The penalty order reads as under:

“ORDER

In view of the foregoing facts and evidences available on record, I being the appropriate Disciplinary Authority in the instant disciplinary proceedings against Shri Gokul Barman, Superintendent, hereby order imposition of the following major penalty.

I order that the Pay of the officer, Shri Gokul Barman, Superintendent be reduced to a lower stage by 2 (two) stages from Rs. 19180/- to Rs. 17,800/- in the time scale of pay for a period of 1 (one) year from the date of issuance of this order. In view of the retirement on superannuation of the CO on 30.09.2011 no further direction on the status of increments during the period of the said reduction is required.”

7. Hence, we are not inclined to quash the Charge Memo dated 06.06.01 and orders dated 28.03.05, 25.08.11, 13.12.11 and 01.10.13 as prayed for by the Applicant.

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8. In so far as the second part of the relief for a direction to the respondent authorities to open the sealed cover concerning the recommendation of the DPC held in May, 2001 for the grant of arrears of ACP from 13.03.01 to 27.03.07 and MACP from 13.03.09 is concerned, nothing is on record to show that such a prayer has ever been made by the applicant before the respondent authorities though it was submitted at the bar that financial up gradation under ACP was extended to the Applicant on 28.03.2007 when the major penalty order was in vogue. As such, this Tribunal cannot adjudicate on this point at this stage.

9. In view of the discussions made above, we find no merit in this OA which is accordingly dismissed by leaving the parties to bear their own costs.

(Jaya Das Gupta)
Member (Admn.)

(Justice V.C.Gupta)
Member (Judicial)