

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00635/15

Reserved on: 21.05.2019
Date of Order: 23.05.2019

C O R A M
HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER

Om Prakash, Son of Late Kapil Deo Narayan, Inspector Central Excise & Service Tax, Mirganj Range, Siwan, District- Siwan presently on transfer to Central Excise & Service Tax Division, Bhagalpur (Bihar).

.... Applicant.

By Advocate: - Mr. M.P. Dixit

-Versus-

1. The Union of India through the Secretary (Revenue), Government of India, Ministry of Finance, Department of Revenue, New Delhi.
2. The Chairman, Central Board of Excise & Customs, Ministry of Finance, Government of India, North Block, New Delhi.
3. The Chief Commissioner, Central Excise & Service Tax, Revenue Building, Birchand Patel Path, Patna- 800001(Bihar).
4. The Chief Commissioner, Central Excise & Service Tax (Ranchi Zone), Revenue Building, Birchand Patel Path, Patna- 800001(Bihar).
5. The Commissioner, Central Excise & Service Tax, Revenue Building, Birchand Patel Path, Patna- 800001 (Bihar).
6. The Additional Commissioner (P&V), Central Excise & Service Tax, Revenue Building, Birchand Patel Path, Patna- 800001 (Bihar).

.... Respondents.

By Advocate: - Mr. H.P. Singh

O R D E R

Per Dinesh Sharma, A.M:- The instant OA has been filed against the order dated 31.03.2012 whereby punishment of reduction by one stage in the time scale of pay for a period of one year has been imposed, with cumulative effect, and his appeal against this order has been rejected by an order dated 10.01.2014, communicated to him through letter dated

05/06.03.2014. Main reasons for praying for quashing this action are as follows:-

- (i) The order of punishment itself, in paragraph no. (VIII), states that the charged officer worked under the direction of the Assistant Commissioner and therefore he cannot be blamed entirely for the same.
- (ii) Though the chargesheet was issued on 29.03.2004, the punitive action in this matter was taken very late, in the year 2012, after the vigilance authority had sent a letter dated 29.11.2011 advising directing respondent no. 5 to impose major penalty. Such an action on the advice of the Vigilance authorities is illegal and therefore should be quashed.

2. The respondents have filed their written statement in which they have denied the claims of the applicant. According to them, the OA is barred by period of limitation and has no strength on merits. The charges made against the applicant were found proved by the Inquiry Officer and the Disciplinary Authority (DA). The report of the enquiry officer is voluminous and is a well-considered report. So is the position with respect to the orders of the Disciplinary Authority and the Appellate Authority. They have also stated that the advice of the DG, Vigilance had been sought as per the provisions of the Vigilance Manual and a copy of the enquiry report along with the copy of the advice received from the Director, Vigilance was also forwarded to the applicant before issue of final orders. The applicant has quoted only that portion of the finding of the DA which is in favour of the applicant. But the next very para, i.e. para IX where the DA has categorically observed that the Charged Officer was solely responsible, has

not been mentioned. Since both the orders, by the DA and the Appellate Authority, have been passed after following all the formalities and with due application of mind and since only a relatively lenient punishment has been awarded, the OA deserves to be dismissed.

3. We have gone through the pleadings and heard the arguments of both the parties. At the time of arguments, the learned counsel for the applicant again stressed the point about the illegality involved in the direction of the Vigilance Department advice major penalty action. The decision of the Guwahati Bench of this Tribunal in **B.C. Tiwari Vs. UOI & Ors.** and that of the Hon'ble Apex court in **Nagraj Shivrao Karjagi Vs. Syndicate Bank and Anr.** were cited in support of his argument. After going through the pleadings and hearing the arguments, it is very clear that the disciplinary action taken against the applicant has been taken after following all the formalities and after giving him ample opportunity to defend himself. Both the orders of the disciplinary authority and the order in appeal are very detailed and have given very cogent reasons for arriving at those findings. As pointed out by the respondents in their written statement, a mention in one paragraph about the applicant not being entirely responsible does not exonerate him of all responsibility for the impugned action. We have gone through the decisions cited by learned counsel for the applicant. In both these decisions, it is pointed out that the advice of the Vigilance Department is not mandatory and any punitive action taken on such advice, without application of mind, is wrong. We find that there is sufficient application of mind by both the disciplinary authority and the appellate authority and thus

the action taken against the applicant cannot be quashed on this ground. The applicant has participated in the disciplinary action against him and had himself sought a copy of the advice given by the Vigilance Department in this case and has not been prejudiced in any manner by this advice. We also do not find the punishment to be disproportionate when viewed in comparison with the seriousness of the charge. The OA is, therefore, dismissed. No order as to costs.

[Dinesh Sharma]
Administrative Member
Srk.

[Jayesh V. Bhairavia]
Judicial Member