


**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA No.1504/2003

New Delhi this the 9th day of November, 2004.

**HON'BLE MR. V.K. MAJOTRA, VICE-CHAIRMAN (A)
HON'BLE MR. SHANKER RAJU, MEMBER (J)**

Hari Ram Malik,
R/o C-915, Sushant Lok-I,
Gurgaon (Haryana). -Applicant

(By Advocate Shri S.K. Gupta)

-Versus-

1. The Union of India,
The Revenue Secretary,
Ministry of Finance,
Government of India,
New Delhi.
2. The Chief Commissioner (Revision Authority),
Central Excise, Delhi Zone,
C.R. Building, I.P. Estate,
New Delhi-110 002.
3. The Commissioner, Central Excise,
Delhi-I (Appellant Authority),
C.R. Building, I.P. Estate,
New Delhi.-110002.
4. Additional Commissioner, P&V
(Disciplinary Authority),
C.R. Building, I.P. Estate,
New Delhi-110 002.
5. Central Bureau of Investigations (through
its Director), C.G.O. Complex,
Lodhi Road,
New Delhi-110003. -Respondents

(By Advocates S/Shri Madhav Panikar, R.R. Bharti and R.N. Singh)

ORDER

Mr. Shanker Raju, Member (J):

Applicant impugns respondents' order dated 8.2.2002,
imposing upon him a major penalty of reduction by three stages in

the time scale with cumulative effect. He has also assailed the order dated 31.10.2002 passed in appeal, whereby the punishment has been reduced to two stages. Order of revision petition dated 23.5.2003 is also impugned, affirming the appellate order.

2. Applicant, an Inspector of Customs and Central Excise, on a search by CBI, a case was registered for disproportionate assets, which is pending trial.

3. A memorandum dated 6.6.96 was issued to him under Rule 14 of the CCS (CCA) Rules, 1965, initiating a disciplinary proceeding on the charges of violation of Rule 18 (2) of the CCS (Conduct) Rules, 1964 for not informing about the transactions of purchase of shop, house and agricultural plot in the name of wife. An enquiry was proceeded against and in its report, the enquiry officer (EO) exonerated applicant of all the charges.

4. The disciplinary authority (DA) taking a final view of the matter issued a show cause notice for disagreement after recording its finding on Articles I and II and agreeing with the findings in respect of Article III.

5. The aforesaid was responded to, which culminated into a major penalty, which was reduced in appeal and was affirmed in the revision, giving rise to the present OA.

6. A catena of legal submissions have been made on behalf of applicant, including a reference to the decision by ITAT where on joint assessment the action of the Income Tax Department was not

adhered to and pertaining to the period from 1985 till 1991 the individual assessment was upheld. Learned counsel relying upon the instructions dated 11.9.78 by the DoPT under Rule 18 contended that when the transaction is entered by the spouse from her own funds as 'stridhan', gifts and inheritance etc., there is no requirement of intimation to the prescribed authority. In this backdrop it is stated that though the requisite document, showing the transaction from personal account and earned money of the wife has been highlighted to the disciplinary authority but the same had not been taken into consideration. In the aforesaid conspectus it is stated that the case is of 'no misconduct' and 'no evidence'.

7. Learned counsel further stated that in the disagreement note the disciplinary authority instead of tentatively recording reasons rather pre-determined the issue and after conclusively establishing the charge as a formality afforded an opportunity, which is not in accordance with rules.

8. Learned counsel further stated that there has been a violation of Rule 14 (18) of the CCS (CCA) Rules, 1965 and relied upon the decision of this Court in OA-1826/1998 **Chiranjit Singh Khurana v. Union of India**, which was confirmed by the High Court of Delhi in CWP No.69/2002 as well as laid at rest by the Apex Court in SLP No.9816/2002. Learned counsel stated that though the original records have been submitted to the disciplinary authority but the same had not been taken note of and the orders passed by the disciplinary authority as well as the appellate authority where the charges have not been proved, yet

maintaining punishment on the charge in question of source of income is a deemed finding to the effect that the charge could not be established, as such the punishment cannot be sustained in law.

9. On the other hand, respondents' counsel S/Shri Madhav Panikar, R.R. Bharti as well as R.N. Singh vehemently opposed the contentions. According to them by the reading of the order of the disciplinary authority the charges have been proved on the basis of the evidence and there is no explanation to the transaction entered in the name of wife and applicant would not establish the source of money and by stitching embroidery one cannot earn lakhs of rupees. In nut shell what has been stated is that the CBI has confiscated disproportionate assets, which on the face of it, is not expected from an Inspector with a meager salary to have acquisition of it. However, on the question of pre-determined disagreement it is clearly stated that the matter be remanded back from the stage where the illegality has been committed.

10. We have carefully considered the rival contentions of the parties and perused the material on record.

11. As it is not disputed by the respondents that the disciplinary authority while disagreeing with the findings of the EO, with a pre-determined mind took final stock of the matter and instead of recording tentative conclusion took a final decision and the opportunity is only an empty formality and post decisional hearing, we find the procedure in contravention of the decision of the Apex Court in **Yoginath D. Bagde v. State of Maharashtra**, JT 1999 (7)

SC 62, which has deprived applicant a reasonable opportunity and on that account alone the order of disagreement and other orders are liable to be set aside.

12. As regards orders passed by the disciplinary authority, we find that though applicant had produced in the enquiry the original documents showing the transaction from the money acquired by the wife of applicant as her own money and also in the light of the notice issued to applicant on 22.11.2001 in pursuance of this Court order dated 6.9.2000 in OA-2338/2001 the documents had been furnished to the department, yet the disciplinary authority while examining the issue had observed that copies submitted are only photocopies and has not applied its mind and rather decided the issue without considering these documents which are relevant for the defence and in such an event in a quasi-judicial action when fairness in action is a sine qua non, non-consideration of the original documents certainly prejudiced case of applicant and deprived him a reasonable opportunity. This has vitiated the orders passed by the disciplinary authority.

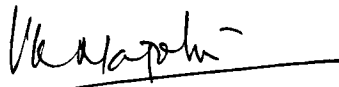
13. As the appellate authority has also took into consideration the extraneous ground and the charge which had not been put to applicant, instead of quashing the punishment had reduced it, certainly indicates non-application of mind by the appellate authority.

14. In the result, for the foregoing reasons, OA is partly allowed. Impugned orders are set aside. Matter is remanded back to the disciplinary authority to pass a fresh order to resume the

proceedings from the stage of considering original documents tendered by applicant and thereafter took a view whether to disagree or not and to pass an order to that effect within a period of two months from the date of receipt of a copy of this order. In case of disagreement the disciplinary authority shall take stock of the decision in **Yogi Nath D. Bagde** (supra).

15. Consequential benefits shall be regulated as per rules and instructions and would be subject to the final order to be passed by the authorities. No costs.

S. Raju
(Shanker Raju)
Member (J)


(V.K. Majotra)
Vice-Chairman(A)

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