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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1537/2003

New Delhi, this the 29th day of October, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri S.A. Singh, Member(A)

Duli Chand
D-4/4080, Vasant Kunj
New Delhi

.. Applicant

(Shri Hari Shankar, Advocate)

versus

Union of India, through

1. Secretary
Department of Revenue
Ministry of Finance & Company Affairs
North Block
New Delhi-110 001.

2. Chairman
Central Board of Excise & Customs
North Block, New Delhi

3. Commissioner
Directorate of Preventive Operations
4th Floor, Lok Nayak Bhavan
Khan Market,
New Delhi-110 003.

.. Respondents

(Shri R.N. Singh, Advocate
for Shri R.V. Sinha, Advocate)

ORDER

Justice V.S. Aggarwal:-

By virtue of the present application, the applicant seeks to assail the order passed against him in the disciplinary proceedings. A penalty of withholding of increments of pay for period of two years with cumulative effect was imposed upon the applicant Duli Chand.

2. Duli Chand was functioning as Assistant Collector Incharge of Central Excise, Division-I, Ghaziabad. It was alleged that between 1.2.1989 to 10.11.1989, he sanctioned three inadmissible refund claims to M/s Radha

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Industries Private Limited amounting to Rs.7,76,380.50/- Rs.3,12,065.25/- and Rs.1,20,130.50/-. The applicant was chargesheeted vide the memo dated 10.4.1995.

3. An enquiry officer had been appointed. He opined that though the refund may be erroneously sanctioned, the applicant cannot be accused of culpable or even gross carelessness. The three articles of charge served read:

Article I

That the said Shri Duli Chand, Dy. Director of Inspection, Customs and Central Excise, New Delhi, while functioning as the Assistant Collector, incharge of Central Excise Division-I Ghaziabad, during the period from 1.2.1989 to 10.11.1989, is alleged to have failed to maintain absolute integrity, devotion to duty and acted in such a manner, which is unbecoming of a Govt. servant inasmuch as he consciously and intentionally sanctioned a refund claim amounting to Rs.7,76,380.50 to M/s. Radhu (P) Ltd., Ghaziabad, vide his Order-in-Original dated 10.11.1989, though the said refund claim was inadmissible under the provisions of the Central Excise Law, thus deliberately securing a wrongful gain of Rs.7,76,380.50 for the aforementioned party, and putting the same amount of govt. interest in jeopardy, and, thereby contravened Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964.

Article 2

That the said Shri Duli Chand, Dy. Director of Inspection, Customs & Central Excise, New Delhi, while functioning as the Assistant Collector in-charge of the Central Excise Division-I, Ghaziabad, during the period from 1.2.89 to 10.11.89 is alleged to have failed to maintain absolute integrity, devotion to duty and acted in such a manner, which is unbecoming of a Govt. servant inasmuch as he consciously and intentionally sanctioned a refund claim, amounting to Rs.3,12,065.25 to M/s. Radhu (P) Ltd., Ghaziabad, vide his Order-in-Original, dated 18.10.89, though the said refund claim was inadmissible under the provisions of the Central Excise Law, thus deliberately securing a wrongful gain of Rs.3,12,065.25 for the aforementioned party, and, causing a loss of the same amount of Govt. revenue and, thereby

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contravened Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.

Article 3

That the said Shri Duli Chand, Deputy Director of Inspection, Customs & Central Excise, New Delhi, while functioning as the Assistant Collector, in-charge of the Central Excise Division-I, Ghaziabad, during the period from 1.2.89 to 10.11.89, is alleged to have failed to maintain devotion to duty and acted in such a manner, which is unbecoming of a Govt. Servant inasmuch as he showing gross negligence, sanctioned twice to M/s. Radhu (P) Ltd., Ghaziabad an amount of Rs.1,20,130.50, during the course of sanctioning refund claim to the said party amounting to Rs.7,76,380.50 on 10.11.89, being oblivious of the fact that the said amount of Rs.1,20,130.50 had already been included and sanctioned in the earlier refund claim order for Rs.3,12,065.25 sanctioned by him to the said party on 18.10.89 and, thereby, contravened Rules 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964."

As regards article no.1, the Investigating Officer had observed as mentioned above that the applicant is not held responsible for the lapse. The charge of lack of devotion to duty has to be maintained against all who had processed the claim. He held the charge (article 1) not to have been proved. As regards article 2, the Investigating Officer recorded that no evidence could be brought on record to any positive action on the part of the applicant that he acted with clear intent and purpose to benefit a party or any mala fide on his part in sanctioning the claim. He recorded that the charge stood partly proved on the ground that the applicant had not acted with care and precautions required in exercise of quasi-judicial function. Pertaining to article of charge No.3, the findings were that there was some negligence on the part of the applicant in not exercising proper care. He added in the report that the applicant alone could not

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be held responsible for the entire episode when others concerned contributed mainly in the wrong sanctioning of refund.

4. In this regard, even the Union Public Service Commission also was consulted. From the impugned order, we know the findings of the Union Public Service Commission which read:

"12. The Commission has observed with regard to Art.1 that as per the existing proviso to Sub-Section 2 of Section 11-C of Central Excise & Salt Act, the firm was required to make a specific declaration and the C.O., as Assistant Collector was required to satisfy himself that the burden of such duty had not been passed on any other person/consumer. The firm neither made any specific declaration to the above effect nor did the C.O. satisfied himself on this count before sanctioning the refund claim on the date of his transfer. Though there is no evidence of ulterior motive or corrupt intent on the part of C.O., this was definitely an act of gross negligence on his part, irrespective of the fact whether the Department has supported his action before the audit. Coming to Article II, the Commission observed that the C.O. definitely needed to be more circumspect because, on the face of it, the situation was somewhat anomalous. It is true that he acted upon whatever advice he might have received on file, but as senior Revenue Officer, he needed to be cautious, and indeed he was required to supervise the actions of his subordinates and identify their omission rather than merely endorse them. Therefore, the CO is definitely guilty of negligence in the discharge of his duties, which may not be necessarily prompted by ulterior motive. Regarding Art.III, the Commission observed that the flaws were in the detailed itemised scrutiny of the refund claims. While acknowledging that there is no evidence of ulterior motive and the actions may well have been bonafide actions, the C.O. was grossly negligent and careless in processing these cases. It is the nature of the duty of senior revenue officers that they must scrutinize refund claims with great care and caution, and strictly apply the rules and

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regulations pertaining to the applicability and realisation of duties. They are not expected to be gullible, nor to causally grant refund of lakhs of rupees to the assesseees. It is true that the Assistant Collectors need not be expected to discharge all these functions single-handedly, and the detailed scrutiny of claims is primarily the responsibility of his subordinate staff. Still, an Assistant Collector is and must be expected to ensure that his subordinates take the trouble of examining claims in great details. They must supervise and check their subordinate staff to this end, and if they failed to do this effectively, at the end of the day they must pay the price for such failure. So, the C.O. is guilty of the above extent (emphasise added)"

5. By virtue of the present application, the applicant assails the penalty order referred to above.

6. The application has been contested. The basic facts which we have already narrated above were not disputed. The respondents pleaded that the act and omission on the part of the applicant resulted in loss of the Government revenue and undue enrichment of the private party. The acts of the applicant appear to be unbecoming of a Government servant and failure to maintain absolute integrity and devotion to duty. The disciplinary authority after considering all the aspects of the case decided to initiate departmental proceedings against the applicant. A charge-sheet accordingly had been issued to him. Keeping in view the report of the enquiry officer and the findings of the Union Public Service Commission, the disciplinary authority had decided to disagree with the findings of the Investigating Officer and a show cause notice was issued to the applicant. After considering the submissions of

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the applicant, it was decided to impose a major penalty. It was thereafter that in accordance with law the said penalty had been imposed.

7. During the course of submissions, the learned counsel for the applicant had raised only one pertinent argument. He contended that the applicant had passed the orders in his quasi-judicial capacity. The department did not prefer any appeal. The refund claim of the private party had been put to the Superintendent Central Excise, Range 3. There was no culpability and, therefore, according to the learned counsel, in such a situation, departmental proceedings against the applicant could not be justified. He relied upon a decision of the Supreme Court in the case of Zunjarrao Bhikaji Nagarkar v. Union of India and others, JT 1999 (5) SC 366. On the contrary, the respondents' learned counsel urged that there was gross negligence on the part of the applicant and, therefore, the departmental proceedings could be initiated which was rightly so done. The respondents' learned counsel relied upon a decision of the Supreme Court in the case of Union of India and others, v. Shri K.K. Dhawan, JT 1993 (1) S.C. 236. He further urged that in the case of Zunjarrao Bhikaji Nagarkar (supra), it was a decision by two Judges Bench of the apex court while the decision in the case of K.K. Dhawan (supra) was of three Judges Bench and, therefore, it is the decision in the case of K.K. Dhawan which should prevail. This question as to under what circumstance

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the departmental action can be initiated has been agitating the minds of the courts more often than once. In the case of Govinda Menon v. Union of India, AIR 1967 SC 1274, the Supreme Court held that disciplinary proceedings could be initiated against the government servants in cases even where they have exercised quasi-judicial powers. The findings ultimately were said to be in the following words:

"(i) The act or omission is such as to reflect on the reputation of the government servant for his integrity or good faith or devotion to duty, or

(ii) there is prima facie material manifesting recklessness or misconduct in the discharge of the official duty, or

(iii) the officer had failed to act honestly or in good faith or had omitted to observe the prescribed conditions which are essential for the exercise of statutory power."

The decision was referred to with approval in the case of K.K. Dhawan (supra). Therein the Supreme Court held that if the officer exercises judicial or quasi-judicial powers negligently or recklessly or in order to confer undue favour on a person, he is not acting as a Judge. The conduct in discharge of his duties cannot be ignored. The Supreme Court ultimately laid down the following guide-lines.

"i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

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iii) if he had acted in a manner which is unbecoming of a government servant;

iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

v) if he had acted in order to unduly favour a party;

vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "through the bribe may be small, yet the fault is great".

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8. In the case of Zunjarrao Bhikaji Nagarkar (supra), the said person was posted as Collector of Central Excise, Nagpur. He had been served with a memorandum dated 2.9.1997 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 informing him that the inquiry is proposed against on the allegation that he favoured a private party by not imposing a penalty on it. He filed an application in the Central Administrative Tribunal at Mumbai. The application was dismissed and the Bombay High Court had refused to interfere. The plea that is being agitated before us had also been raised before the Supreme Court. The Supreme Court had considered the different precedents which need not be repeated all over again. Even the case of K.K.Dhawan (supra) had been taken note of. It was held that in the case of K.K.Dhawan, the allegation was of conferring undue favour upon the assessee, but that it was not a case of negligence. In fact, the Supreme Court held that when we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness in-advertance

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or omission but as culpable negligence. The different precedents by the Supreme Court in this regard were considered and it was held distinguishing the judicial precedents as under:-

"40. When we talk of negligence in a quasi judicial adjudication, it is not negligence perceived as carelessness in advertance or omission but as culpable negligence. This is how this court in State of Punjab & Ors. V. Ram Singh Ex-Constable JT 1992(4) 253 interpreted 'misconduct' not coming within the purview of mere error in judgement, carelessness or negligence in performance of the duty. In the case of K.K.Dhawan JT 1993(1) SC 236, the allegation was of conferring undue favour upon the assessee. It was not a case of negligence as such. In Upendra Singh's case JT 1994(1) SC 658, the charge was that he gave illegal and improper directions to the assessing Officer in order to unduly favour the assessee. Case of K.S.Swaminathan JT 1996(10)SC 40, was not where the respondent was acting in any quasi judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the court to see whether they support the charge of the alleged misconduct. In M.S.Bindra's case JT 1998(6) SC 34 where the appellant was compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Choudhary JT 1999(1) SC 459, which was also a case of compulsory retirement this Court said that there should exist material on record to reasonably form an opinion that compulsory retirement of the officer was in public interest. In K.N. Ramamurthy's case JT 1997(7) SC 401 it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard Government revenue. In Hindustan Steel Ltd. s case (AIR 1970 SC 253) where proceedings are quasi judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious

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disregard of its obligation."

Thereupon, the Supreme Court further held:-

"41. When penalty is not levied, the assessee certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assessee or shown undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed favour to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi judicial authority. It must be kept in mind that being a quasi judicial authority, he is always subject to judicial supervision in appeal."

9. It is true that the law laid down by the Supreme Court binds this Tribunal, but when a Bench of the Supreme Court interprets the earlier decision as in the case of K.K.Dhawan (supra), the interpretation given by the latter Bench would bind this Tribunal. Necessarily, therefore, we have to see whether as held by the Supreme Court that when there was a quasi judicial adjudication, there was a culpable negligence or not. Mere negligence may not be enough.

10. It is on the touch-stone of the aforesaid, that the facts of the present case have to be re-appreciated.

11. It is not in dispute that the applicant had

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exercised quasi judicial function in this regard. After the sanction of the refund claim, the department did not deem it appropriate even to file an appeal against the said order.


12. The refund claimed by the private party had been put to the Superintendent of Central Excise, Range-III. He examined the said claim and recommended the sanction of the entire amount thereto vide the letter of 9.11.1989. Even on 5.3.1992, Shri Somvanshi, Deputy Collector had replied to the audit objection endorsing the applicant's granting the refund to the private party. In this process, not only the Superintendent had examined the same but the Deputy Collector also said the same to be in order. We are conscious of the fact that where oblique motive/malafides or culpability in administration or quasi judicial creep in, the departmental action would be fully in order. But in the present case, the respondents admitted that there is no ulterior motive that may have existed. However, the refund has been granted on gross negligence and carelessness in processing the matter. It is true that it is the duty of the senior officers to scrutinise the refund claims with due care and caution. In the absence of culpability as noticed in the case of Zunjarrao Bhikaji Nagarkar (supra), mere negligence cannot be made the subject matter of departmental proceedings in the facts of the present case. Therefore, the impugned order, keeping in view the aforesaid, cannot

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be sustained.

13. For these reasons, we allow the present application and quash the impugned order. The applicant would be entitled to the monetary consequential benefits.

No costs.


(S.A. Singh)
Member (A)

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(V.S. Aggarwal)
Chairman