

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No.20/1134/2013

Date of C.A.V.: 25.10.2019

Date of Order 31.10.2019

Between:

A. Ananda Reddy

S/o A. Bhujanga Reddy

Aged 45 years

Occ: Supdt., Customs, Central Excise & Service Tax

Kadapa Division, Kadapa.

..... Applicant

AND

1. The Government of India,
Ministry of Finance, Department of Revenue
North Block, New Delhi
Represented by its Deputy Secretary
/Under Secretary.
2. Chief Commissioner of Customs, Central Excise & Service Tax
Hyderabad Zone Basheerbagh at Hyderabad.
3. Commissioner of Customs and Central Excise
Hyderabad-IV Commissionerate,
Posnett Bhavan, Hyderabad. ... Respondents

Counsel for the Applicant ... Mr. N. Vijay

Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC

CORAM:

Hon'ble Mr. B.V. Sudhakar, Member (Admn.)

ORDER

2. The OA has been filed against the penalty of censure imposed by the respondents vide letter dated 19.07.2012.

3. Brief facts of the case are that the applicant while working as Inspector in the respondents organization, was issued a charge memorandum under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965, containing two Articles of Charge. The statement of imputation of misconduct, in regard to Charge No.1, states that the applicant while working as Inspector in the Service Tax Section of the respondents organization, a local TV news channel, namely, M/s Rachana Television Private Limited had telecast a video clipping on 07.05.2008 showing the applicant as taking bribe from Shri Pankaj Garg, who has applied for service tax registration. Respondents obtained the CD from the TV Channel and based on the video footage, it was seen that the applicant received some currency and kept it in his pocket. The 2nd Article of Charge is about the applicant speaking to the media, without any authorization. Inquiry Officer has submitted his report on 23.01.2012 holding that both the charges as not proved. Disciplinary Authority, while disagreeing with the findings of the inquiry report has issued a show cause notice to the applicant on 11.05.2012. On receipt of the reply, Disciplinary Authority imposed the punishment of

Censure on 19.07.2012. On an appeal preferred by the applicant, the same was rejected by the Appellate Authority. Aggrieved, OA has been filed.

4. The contentions of the applicant are that the penalty of censure was imposed on the charge of misdemeanour, which is not the Article of Charge. Respondents have not strictly disagreed with the findings of the Inquiry Officer and yet, imposed the penalty. The CD containing the video footage about the incident was fabricated, since the Superintendent was shown as being in office on 01.05.2008, though he was actually on leave. Applicant was charged to have demanded a bribe from Shri Pankaj Garg, who was not examined in the inquiry. Applicant claims that when the department made discrete enquiries, Mr. Panjak Garg denied to have paid any bribe to the applicant. As per CCS (CCA) Rules, 1965, the Inquiry Officer is empowered in regard to admission of evidence, and once such a power is exercised by the Inquiry Officer, Disciplinary Authority should not interfere with the same. SW-1, Shri B. Subbarayudu, has stated that the application for service tax registration of Shri Pankaj Garg was received on 02.05.2008 and the certificate was issued on the same day, by processing it online. Applicant has neither processed the registration application nor issued the certificate. The alleged voice of the applicant in the CD was not

recognized by SW-1, and yet, the respondents going ahead with and imposing the penalty is arbitrary. A cursory look of the video footage would show that the image of the person, who is said to have given the money is blurred, and also the person keeping the money in the pocket is not the applicant.

5. Respondents, in their reply, have opposed the contentions of the applicant by submitting that Respondent No.3 held that the Inquiry Officer in his findings has observed that the applicant received some money given by one person, who was standing opposite to him and his face was not clear in the CD. Therefore, Respondent No.3 was of the considered opinion that the CD has a necessary evidence value to decide the charges framed against the applicant. The 1st Article of Charge, framed against the applicant, avers that the applicant exhibited lack of integrity, failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant. Therefore, the punishment of censure awarded to the applicant is appropriate. The disagreement note of the Disciplinary Authority, was duly communicated to the applicant. Applicant has admitted his identity in the video as per his statement dated 04.02.2009. The fact that applicant has accepted the money in office premises cannot be denied. Superintendent (SW-1), in reply to Question No.2 of his statement dated 14.05.2008, has stated

that he could not make out from the clipping about the total amount received by the applicant. The Disciplinary Authority has relied on the video footage and not on the voice.

6. Heard Shri N. Vijay, the counsel for the applicant and Shri Laxman, proxy of Mrs. K. Rajitha, the learned Senior Central Government Standing Counsel for the respondents, and perused the pleadings on record.

7. (I) The issue is about the allegation that the applicant has demanded and accepted bribe in the office premises from an outside person, which was telecasted by a TV Channel. After obtaining the CD from the concerned TV Channel, respondents have issued a charge memo bearing the following Articles of Charge:

“Article I

That the said Shri A. Anand Reddy, while functioning as Inspector in the service Tax Section of Hyderabad-III Commissionerate, Hyderabad (during the period from 11.06.2007 to 14.05.2008), demanded and received certain amount as bribe in connection with Service Tax Registration issued to Shri Pankaj Garg of M/s Geo Safe Carriers vide No.AJTPG5209KST001 dated 02.05.2008.

By the aforesaid act, Shri A. Anand Reddy exhibited lack of integrity, failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant thereby contravened Rule 3(1)(i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

Article II

That the said Shri A. Anand Reddy, Inspector, spoke to the media about the procedures of Registration unauthorisedly.

By the aforesaid act, Shri A. Anand Reddy violated Rule 11 of CCS (Conduct) Rules, 1964.”

Article 1 states that the applicant demanded and received certain amount of bribe in connection with service tax registration issued to Shri Pankaj Garg of M/s. Geo Safe Carriers. The charge is in regard to bribe whereas the entire arguments of the respondents was that the applicant has received some money in the office premises, which unequivocally is unbecoming of a Government Servant and, therefore, the penalty of censure. It needs to be noted, at this juncture, that the Inquiry Officer has held that both the charges as not proved. However, Disciplinary Authority, while agreeing with the findings of the Inquiry Officer in regard to 2nd Article of Charge, differed in respect of the 1st Article of Charge. The Disciplinary Authority, by following the prescribed procedure, has forwarded his disagreement note to the applicant and on receiving the reply from him, imposed the penalty of censure. According to the Disciplinary Authority, the basis to impose the penalty is that the applicant admitted his identity in the video and that there was some money exchange visible. The Superintendent, i.e. SW-1 has also stated, in his statement, that he saw some money exchange but could not specify the amount. Based on the above, the Disciplinary Authority went ahead in imposing the penalty and the same was confirmed by the appellate authority. The defence of the applicant is that the CD was not identified, during the inquiry, by the author of the CD. The CD is a

crucial documentary evidence which as per law has to be identified in the inquiry. The learned counsel for the applicant has submitted that it was a fabricated one to obtain favourable TV ratings. May not necessary be so. However, the application submitted for service tax registration was received and necessary certificate issued on the same date, i.e., 02.05.2008, by processing it online. Applicant states that he has nothing to do with the same. Nevertheless, it is seen from the record that the applicant is dealing with subject of processing service tax applications, therefore, feigning ignorance about dealing with this issue, is not in the realm of reason.

(II) Further, while issuing charge-sheet to employees, there is a prescribed procedure which has to be followed as per CCS (CCA) Rules, 1965. The charges have to be specific and clear. In the instant case, the 1st Article of Charge was about bribe whereas the order of the Disciplinary Authority, only speaks of the receipt of money in the office premises. It is not known as to what purpose the applicant has received the money. The Disciplinary Authority has failed to establish that it was demanded and accepted as bribe. More so, in the context of not citing of any material witness, during the inquiry, claiming that he has paid money to the applicant as bribe. Therefore, it is explicit that the applicant has been penalized for accepting money in the office premises, which is not

the Article of Charge. Therefore, the charge levied does not hold good as per the following observations of the Hon'ble Supreme Court and High Courts in a catena of Judgements:

A) The Supreme Court in **Surath Chandra Chakravorthy vs. The State Of West Bengal**, {(1971) 1 LLJ 293 SC} speaking about the requirement of a valid charge memo held that if a delinquent is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him. The Supreme Court in Para - 4 has observed:

"4. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders as also to be stated.

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Now in the present case each charge was so bare that it was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself. It is precisely for this reason, the Fundamental Rule 55 provides, as stated before, that the

charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defence. The appellant repeatedly and at every stage brought it to the notice of the authorities concerned that he had not been supplied the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this no one cared to inform him of the facts, circumstances and particulars relevant to the charges."

B) Jagdish Kumar vs. The State of Punjab , wherein

the Punjab and Haryana High Court held as under:

"10. It is clear from the above noted cases that an employee cannot be punished for a charge which is not levelled against him. Employer's action of punishing an employee in respect of the charge which is not levelled against him results in breach of the principles of natural justice and it has the effect of rendering the order passed by the employer is nullity. It is an elementary rule of natural justice that a man whose civil rights are going to be affected by an action of a public authority he must know the basis on which the action is being taken against him and must have an opportunity of defending himself. Unless specific charge of misconduct is levelled, the employee cannot be penalised. He cannot be punished for a charge which is not made subject matter of enquiry.

C) Sher Bahadur vs. Union of India , wherein the

Hon'ble Apex Court held as under:

"7. It may be observed that the expression "sufficiency of evidence" postulates existence of some evidence which links the charged officer with the misconduct alleged against him. Evidence, however, voluminous it may be, which is neither relevant in a broad sense nor establishes any nexus between the alleged misconduct and the charged officer, is no evidence in law. The mere fact that the enquiry officer has noted in his report, "in view of oral, documentary and circumstantial evidence as adduced in the enquiry", would not in principle satisfy the rule of sufficiency of evidence....."

D) **M.V.Bijlani vs. Union of India**, wherein the Hon'ble apex Court held as under:

“23. Evidently, the evidences recorded by the Enquiry Officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the Appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges.”

E) **Chairman-cum-Managing Director, Coal India Limited vs. Ananta Saha** , wherein the Hon'ble apex Court held as under:

“32. It is a settled legal proposition that if initial action is not in consonance with law, subsequent proceedings would not sanctify the same. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" is applicable, meaning thereby, in case a foundation is removed, the superstructure falls.

F) In **G. Satyanarayana v. Eastern Power Distribution Company, Visakhapatnam and Another**, 2016(5) ALD 497, the Hon'ble High Court observed as under:

“20 The material placed before the Court clinchingly establishes that the disciplinary authority framed the charge as if the petitioner got employment by producing a fake Degree certificate. The finding of the enquiry officer is that the petitioner got the promotion by producing a fake Degree certificate. The finding recorded by the enquiry officer is not in consonance with the charge. If the finding recorded by the enquiry officer has no nexus to the charge, the same is not sustainable. Securing employment is altogether different from getting promotion as the qualification for both is not one and the same. Having regard to the facts and circumstances of the case and also the principle enunciated in cases 7 to 15 cited supra, the enquiry report is not sustainable either on facts or in law, consequently the

proceedings issued by the first respondent dated 31.08.2004 are liable to be set aside.

(III) Based on the above observations of the Hon'ble Supreme Court and High Court, the penalty of censure imposed by the respondents is not in accordance with the law. However, it has also to be stated that the applicant was found in the video accepting some money, which requires proper inquiry and necessary action deemed fit by following the rules and law on the subject, in framing an apt chargesheet.

(IV) Therefore, keeping the above in view, the penalty of censure imposed is against the law and the same is set aside. However, it is left open to the respondents for reframing the charges appropriately and take action as per rules and in accordance with law.

With the above observations, the OA is allowed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 31st day of October, 2019

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