

**CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI**

ORIGINAL APPLICATION No.183/2018

Date of decision: 06.11.2019

**CORAM:- R. VIJAYKUMAR, MEMBER (A) .
R.N. SINGH, MEMBER (J) .**

Shri Aashit Satchidanand Patil,
Age 59 years, son of
Sachitanand Patil, .
Superintendent of Central Excise (Retd.)
Residing at A-102, Madhuban,
Mahant Road, Vile Parle (East),
Mumbai-400 057.

... Applicant.

(By Advocate Shri S. V. Marne)

VERSUS.

1. Union of India,
Though the Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Excise &
Customs, North Block,
New Delhi-110 001.
2. The Chief Commissioner,
Central GST & Customs,
Pune Zone, Pune, GST Bhavan,
41-A, Sasoon Road,
Opp. Wadia College,
Pune-400 001.
3. The Commissioner of Customs,
Central Excise, Goa,
ICE Building,
EDC Complex, Plot No.6,
Potto, Panjim, Goa-403 001.

... Respondents.

(By Advocates Shri R. R. Shetty & Shri N. K. Rajpurohit)

O R D E RPer: R. N. SINGH, MEMBER (J)

1. When the case is called out, Shri S. V. Marne, learned counsel appeared for the applicant.
2. Shri R. R. Shetty alongwith Shri N. K. Rajpurohit, learned counsels appeared for the respondents.
3. This OA has been filed on 26.02.2018 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs: .

"a. This Hon'ble Tribunal may graciously be pleased to call for the records of the case from the Respondents and after examining the same quash and set aside the order dated Nil January 2018 served on the Applicant on 31.01.20118 with all consequential benefits.

b. This Hon'ble Tribunal may graciously be pleased to hold and declare that the order dated 01.08.2018 passed by the Respondent No.3 is legal and valid and that the Applicant has validly retired from service w.e.f. 01.08.2017.

c. This Hon'ble Tribunal may graciously be pleased to direct the Respondents to pay the Applicant all the due pension and pensionary benefits along with interest @ 12% per annum from 01.08.2017; in the alternative the Applicant be paid full salary and wages w.e.f. 01.08.2017 onwards along with interest @12% pa.

d. costs of the application be provided for.

e. Any other and further order as this

Hon'ble Tribunal deems fit in the nature and circumstance of the case be passed."

4. The applicant has challenged the order no.01/2018/Chief Commr., Pune Zone dated Nil January, 2018 which is stated to have been received by the applicant on 31.01.2018. In such order it has been observed that on the basis on scrutiny of the orders of the Disciplinary Authority passed on 01.08.2017, it transpires that the Disciplinary Authority has passed the order under Rule 19(1) of the CCS (CCA) Rules 1965 and had not considered Rule 11 of the CCS (CCA) Rules and further that the penalty imposed by the Disciplinary Authority is not commensurate to the act of demand and acceptance of illegal gratification by the delinquent officer.

5. The learned counsel for the applicant has urged two main grounds. The first is that the Revision Authority had issued a show cause notice on 09.01.2018 (Annexure A-9) alongwith a notice for personal hearing of even date (Annexure A-9) and after hearing the applicant on 17.01.2018, he has passed the impugned order remitting the matter to the Disciplinary Authority under the provisions of Rule 29 (1)(c) of CCS (CCA) Rules as noted above. However, in regard to an order passed under Section 19 of CCS (CCA) Rules, 1965 as no inquiry is held, the Rules do

not provide for any revision. Therefore, a revision order could not have been passed.

6. This becomes the basis for the second ground raised by the learned counsel for the applicant by which he argues that the Disciplinary Authority had actually considered both i.e. results of Disciplinary inquiry and the decision of the Learned Trial CBI Court and it was on the basis of both aspects of the disciplinary inquiry and the criminal court verdict that the Disciplinary Authority passed orders under Section 19(1) of the CCS (CCA) Rules. Therefore, the Revisionary Authority, in his view, could not have remitted the matter and thus there is a mistake of law in the order of Revisionary Authority in as much as the Disciplinary Authority has taken full consideration of both the proceedings i.e. Criminal and Disciplinary while passing the disciplinary orders.

7. Per contra, the learned counsel for the respondents argues that if the submissions made on behalf of the applicant are taken as to be true, in view of the provisions of Section 19 of the CCS (CCA) Rules 1965 and read with sub rule 11 (VIII) (IX), it was incumbent upon the Disciplinary Authority to impose the penalty of removal or dismissal from service and he was not having any jurisdiction to

take a lenient view in spite of holding that the charges of taking bribe had been proved against the applicant. Moreover, no harm has been caused to the applicant since the Revisionary Authority has only remitted the matter to the Disciplinary Authority to re-examine the facts and circumstances of the case alongwith legal provisions and submissions made by the applicant and to take a decision within three months.

8. After hearing both the learned counsels for the parties and after examination of the pleadings carefully, we note that in the order passed by the Disciplinary Authority there is an initial discussion of the brief facts of the case and the charges levelled against the delinquent official and the details of the inquiry and the manner in which the Articles of Charge essentially relate to demand and acceptance of illegal gratification have been proved in the course of the Disciplinary inquiry. These are recorded in paras from 1 to 3 of the Discussion and Findings of the Disciplinary Authority but only to conclude that the disciplinary proceedings need not be kept in abeyance since the charged officer had already been convicted. From para 4 onward, however, the Disciplinary Authority abruptly commences a study of the submissions of the charged officer with regard

to the proceedings of the WP, the details of the orders of the Learned Session Court in the criminal case in which the criminal court has held unambiguously that the delinquent official had demanded and accepted illegal gratification. Instead, he referred to a DOP&T OM F.No. 105/52/77-Disc-II dated 03.08.21977 on the need to consider such conviction of a Government servant and in cases involving moral turpitude alone, could removal/dismissal be considered. On this basis the Disciplinary Authority has also agreed that the applicant had committed the offences under Section 13 (1) (d) read with 13 (2) of the Prevention of Corruption Act on 31.05.2010 by pressurizing the complainant by demanding and accepting bribe which was an act of grave misconduct unbecoming of Government servant which would attract a major penalty, and retention in Government service had become undesirable. Having made these observations, he has also noted that the charged officer had not given any substantive reasons during personal hearing as to why major penalty should not be imposed. Yet, despite having noted even at the outset the fact of the proceedings under Rule 14 of the CCS (CCA) Rules, 1965. He has then specified Rules 19 of the CCS (CCA) Rules without giving any reasons for avoiding

consideration of Rule 14 and without consideration of his initial discussions of the nature and conclusion in the disciplinary proceedings. He has, thereafter proceeded to consider some of the observations /analysis of the Trial Court and after taking the charged officers personal situation, as submitted and concluded that there was no moral turpitude and leniency was called for in the case as observed in his final para of the order (page no.162-163) para 18 and essentially by referring to DOPT OM mentioned supra, passed orders as below.

"O R D E R

In exercise of the powers vested under the C.C.S. (C.C.A.) Rules, 1965, I hereby impose the penalty of "Compulsory Retirement from service" immediate effect i.e. w.e.f.01.08.2017 on Shri A. S. Patil, Superintendent of Central Excise, Goa under Rule 19(1) of Central Civil Services (CCA) Rules, 1965.

I also order to reduce the pension admissible to Shri A. S. Patil Superintendent of Central Excise, Goa Central Excise Commissioner, by 33% (Thirty Three Percent), as per provisions of Rule 40 of Central Civil Services (Pension) Rules, 1972.

(K.ANPAZHAKAN)
COMMISSIONER
CENTRAL EXCISE, GOA

F. No.8/5/2010-vig

Date: 01.08.2017

To

Shri A. S. Patil,

Superintendent of Central Excise,

Goa Commensurate."

9. As can be observed from the contents of the discussions, the concluding para of the order of the Disciplinary Authority is in contradiction to both the disciplinary proceedings and also of the Criminal Proceedings. There is no explanation as to how the Disciplinary Authority has arrived at a conclusion that the the offences under the PC Act, of the delinquent official do not involve moral turpitude nor for his choice for abandoning proceedings under Rule 14 of the CCS (CCA) Rules and instead, proceedings under S.19(1) of the Rules.

10. The Revisionary Authority considered the orders of the Disciplinary Authority in the impugned orders dated January, 2018 and after referring to Rule 19(1) which requires the Disciplinary Authority to consider the circumstances of the case in which a criminal court has dealt with the Government servant before passing the orders. The Revisionary Authority noted as follows:

"23. From Rule 19 of CCS (CCA) Rules, 1965, it is clear that it applies only to special and exceptional circumstances. In the instant case, I find that Rule-14, Rule-15 and Rule-17 of the CCS (CCA) Rules have been followed. It only means that charge sheet was issued, IO/PO were appointed, IO submitted his report and charged officer gave his version on the IO's report. The D.A. Having taken all these

things into consideration ought to have decided the chargesheet. However, he issued notice under Rule 9(10), which in my opinion was not necessary, in the given facts and circumstance of the case. Even if the notice was issued under Rule 19, while deciding the case, this notice under Rule 19 ought to have merged into the chargesheet for which all the procedures incorporated in the law were followed. The decision on chargesheet should then have resulted into imposition of penalty under Rule-11. Now the issue arises whether issuance of show cause notice under Rule 19, in addition to chargesheet already issued under Rule-14, was necessary on the given facts and circumstances of the case. The disciplinary authority has decided the notice issued under Rule 19 by imposing penalty under Rule-19. I do not find any order deciding the chargesheet issued under Rule-14. Now the Disciplinary Authority needs to decide whether penalty under Rule-19, when notice under Rule-19 itself was not necessary, is correct, or he has to give his findings on the chargesheet issued under Rule 14 by imposing penalty under Rule 11 of CCS (CCA) Rule 1965."

11. In view of the aforesaid facts and discussion, we do not find any illegality or infirmity in the impugned revisionary order. The OA is devoid of merit. Accordingly, the OA is dismissed. No order as to costs.

(R. N. Singh)
Member (J)

(R. Vijaykumar)
Member (A)

V.

AD 11.7

