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Court : Central Administrative Tribunal CAT Delhi

Decided On : Apr-18-2012

Judge : The Honourable Mr. M.L. Chauhan, Member (J) & the Honourable Dr. Veena Chhotray, Member (a)

Appeal No. : O.A.No.3260 of 2011

Appellant : Virendra Kumar Garg

Respondent : Commissioner Central Excise, Meerut li Opposite Shaheed Park, Delhi Road Meerut, Up and Another

Advocate for Pet/Ap. : For the Applicant: Nilansh Gaur, Advocate. For the Respondents: Rajeev Kumar, Advocate.

Judgement :

ORAL:

M.L. Chauhan:

1. The applicant has filed this OA, thereby praying for quashing the impugned orders from Annexures A-1 to A-5, i.e., the inquiry report dated 20.5.2005, disagreement note dated 19.1.2006, a second disagreement note dated 23.1.2007, disciplinary authority's order dated 7.10.2010 and appellate authority's

order dated 14.6.2011, with a further prayer that the respondents may be directed to refund the reduced pay and allowances with arrears and also to grant him promotion to the higher post when his juniors were granted promotion in the year 2008-2009.

2. In order to decide the controversy, few facts may be noticed. The applicant was initially appointed as Data Entry Operator (DEO) in Customs and Excise Department on 10.5.1993, which post was subsequently re-designated as Tax Assistant. The applicant was issued memorandum of charge sheet dated 30.6.2004, thereby proposing to hold the inquiry against him under Rule 14 of CCS (CCA) Rules, 1965. The gravamen of the charges against the applicant was that while posted in Division Moradabad, he had in an unauthorized manner associated himself in an act of unauthorized detention of one Shri Rajesh Kumar Agarwal, R/o 236 Lajpat Nagar, Moradabad at Moradabad along with one Shri Sanjay Chaudhary, Inspector and Shri Rajesh Kumar, Sepoy detained Shri Rajesh Kumar Agarwal in an unauthorized manner in the evening of 7.12.1999 and kept him in their personal custody for about 2 hours. It was further alleged that the applicant was posted as DEO in Central Excise Division Moradabad and it was neither part of his duty nor were any express directions/orders given to him in this regard by his supervisory officer or the Divisional in-charge. Further, the applicant had not informed either to his supervisory officer or to the Divisional In-charge about the incident or his act of association in this incident of detention. The inquiry officer was appointed in the matter and he, in his inquiry report dated 20.5.2005 (Annexure A-1), held the article of charges proved against the applicant to the extent of exceeding his jurisdiction without any express directions/orders of the competent authority. However, it was further recorded that there are no evidences suggestive that the applicant was having any dishonest or malafide intentions with any ulterior motives while acting in such a manner and ultimately the recommendations were made to take the lenient view against the applicant. The disciplinary authority on receipt of the inquiry report disagreed with the findings by the inquiry officer vide memo dated 19.1.2006 (Annexure A-2) on the ground that the applicant did not inform his controlling officer and as the checking by Inspector was illegal, the applicant was asked to represent against the disagreement note.

3. It is further averred by the applicant that he represented against the said disagreement note vide his representation at Annexure A-11 but instead of taking any final action on his representation, the disciplinary authority issued another disagreement note dated 23.1.2007 (Annexure A-3) improving upon the ground of disagreement, which was mentioned in the earlier disagreement note at Annexure A-2. The applicant filed representation against the said disagreement note but ultimately the disciplinary authority vide its order dated 7.10.2010 passed reasoned and detailed order thereby imposed penalty of reducing his pay by four stages from Rs.11200/- to Rs.9660/- in the pay band of Rs.5200-20200 with grade pay of Rs.2400/- for a period of four years with effect from the date of issue of the order. The appeal preferred by the applicant against the order of disagreement note was also dismissed by the appellate authority vide order dated 14.6.2011. It is these orders, which are under challenge before this Tribunal.

4. The challenge has been made by the applicant on the ground that there is a delay in issuing the charge sheet and also that the complainant and other witnesses have not been cited as witnesses in the inquiry and they were not examined. The applicant has further stated that the appellate authority had not recorded any finding on the proportionality of punishment.

5. Notice of this application was given to the respondents, who have filed their reply affidavit, thereby justifying their action.

6. The applicant has filed rejoinder affidavit, thereby reiterating the submissions made in the OA.

7. We have heard the learned counsel for the parties and perused the material placed on record.

8. So far as the contentions raised by the applicant that there is a delay in issuing the charge sheet, suffice it to say that the applicant has not shown any material as to how the prejudice has been caused to him on account of the delay in issuing the charge sheet. From the material placed on record, it is evident that the factum of incident has not been denied by the applicant. He has also annexed a copy of the statement made by him during the course of inquiry as Annexure A-6 whereby the

applicant has admitted his indulgence in the alleged event after office hours at the instance of Shri Sanjay Chaudhary, Inspector. He has specifically stated that while passing by the railway station, Moradabad, he was stopped by Shri Sanjay Chaudhary, Inspector and asked for his help as Shri Chaudhary was accompanied by Shri Rajesh Kumar, the lone sepoy. Since Shri Chaudhary had earlier worked in the Divisional Preventive branch, therefore, he thought that some activity related to preventive work would have been entrusted to Shri Sanjay Chaudhary by the Assistant Commissioner. Accordingly, he was inclined to help Shri Chaudhary. Like-wise, he stated that earlier on 30.11.1999 Shri Sanjay Chaudhary had brought a Tata Sumo to division office. At that point of time the Assistant Commissioner, four Inspectors of Preventive Branch, some Inspectors of Ranges, some Havaldars / sepoys were present in the office. The Assistant Commissioner on that occasion had inquired about the occupants of Tata Sumo. Accordingly, in view of this, he could not decline for help when Shri Sanjay Chaudhary, Inspector asked for the same. Thus, in view of this specific admission made by the applicant and the fact that the inquiry officer has also given a finding that the applicant had operated beyond his jurisdiction and he had no explicit permission to do so, it conclusively proves that the charges against the applicant stand proved.

9. The contention raised by the applicant that no witnesses were called and examined is of no consequence in view of the admission made by him in the aforesaid terms and findings recorded by the inquiry officer. The fact remains that the applicant has not contacted his controlling officers for directions before associating in the act of interception and detention of Shri Agarwal. Thus, we see no infirmity in the action of the respondents whereby the punishment was imposed by the disciplinary authority and upheld by the appellate authority, as the charges against the applicant stood proved.

10. The further question, which requires our consideration, is whether the penalty imposed upon the applicant is harsh and it was incumbent upon the appellate authority to give reasons whether the penalty so imposed is adequate, inadequate or severe, especially in the light of the admission made by the applicant as well as findings recorded by the inquiry officer that there was no dishonest or malafide intentions on his behalf and he participated in the proceeding bonafidely believing

the version of Shri Chaudhary, Inspector. We have perused the order passed by the appellate authority. Though the appellate authority has passed a detailed and speaking order based on the material on record and uphold the findings given by the disciplinary authority, which order is also a detailed order, but no specific finding has been given whether the penalty so imposed is adequate, inadequate or severe in the light of the misconduct committed by the applicant, vis--vis, defence taken by the applicant. According to us, it was incumbent upon the appellate authority while disposing of the appeal to apply his mind with regard to the factor enumerated in Rule 27 (2) (c) of CCS (CCA) Rules, 1964, which inter alia stipulates that the appellate authority should be satisfied whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

11. Accordingly, we are of the view that the applicant has made out a case only qua this aspect, as the appellate authority has not applied his mind to the requirement of Rule 27 (2) (c) of the Rules *ibid*, viz. whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe.

12. In the facts and circumstances of the present case, since there being no compliance of clause (c) of Rule 27 (2) of the Rules *ibid*, the impugned order passed by the appellate authority dated 14.6.2011 is liable to be quashed, which is accordingly quashed and set aside. The OA is accordingly disposed of and the matter is remitted back to the appropriate authority to pass fresh order keeping in view the mandate of clause (c) of Rule 27 (2) of CCS (CCA) Rules, 1964 and the contentions raised by the applicant in his appeal restricted to the quantum of punishment, and pass a speaking and reasoned order within a period of three months from the date of receipt of a copy of this order. No costs.

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