IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8920 of 2013

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Md. Quasim Ansari, son of Late Md. FAkhruddin Ahmad, resident of C-86, Idrapuri Colony, P.O.-B.V. College, P.S.-Shashtri Nagar, District-Patna.

.... Petitioner.

Versus

1. The Union of India through Secretary (Revenue), Ministry of Finance, Government of India, New Delhi.
2. The Chairman, Central Board of Excise and Customs, New Delhi.
3. The Commissioner of Central Excise, Central Revenue Building, Birchand Patel Path Marg, Patna, Bihar.
4. The Joint Commissioner of Central Excise (P& V), Central Revenue Building, Birchand Patel Path Marg, Patna, Bihar. .... Respondents.

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Appearance :

For the Petitioner : Mr.Raju Giri, Adv.

For the Respondents : Mrs. Nivedita Nirvikar, Adv.

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CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH
And
HONOURABLE MR. JUSTICE JITENDRA MOHAN SHARMA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 17-03-2015

By this writ petition, the petitioner challenges the order dated 07.01.2013 passed by the Patna Bench of the Central Administrative Tribunal in O.A. No.511 of 2013 whereby petitioner's challenge to the continuance of the disciplinary proceedings was negated. Petitioner contends that in fact the disciplinary proceedings had culminated in exonerating him but on change of jurisdiction, the new disciplinary authority reviewed the matter and reopened the proceeding, which is not permissible.

2. We have heard Mr. Raju Giri, learned counsel for the petitioner, Mrs. Nivedita Nirvikar for the Department of Central Excise and with their consent, this writ petition is being disposed of at this stage itself. Counter affidavit, supplementary counter affidavits and rejoinders are on record.

3. The petitioner was, at the material time, Superintendent of Central Excise. Upon a report having been received, a disciplinary proceeding was initiated against him for allegedly conniving with an assessee helping him to evade central excise duty.

4. At the very beginning, we may note that it is not in dispute that proceedings were also taken up against the said assessee and, ultimately, there is a concluded finding that there had been neither any evasion of central excise duty nor any financial loss to the Central Government. Petitioner submitted his explanations and charges were drawn up. An Inquiry Officer was appointed. The Commissioner of Central Excise, Patna was the disciplinary authority inasmuch as the petitioner was, at the material time, posted at Patna. In course of the enquiry proceedings, various persons were examined and evidence was recorded. The Inquiry Officer submitted his report on 05.12.2007 to the disciplinary authority (Annexure-11). The disciplinary authority perused the enquiry report and held thus:-

> "….The Inquiry Officer, after conducting and completing the inquiry, submitted the Inquiry Report under letter

C.No.Con-26/Inquiry/BGP/07/4547dated 7.12. 2007.

I am in agreement with the findings of the Inquiry Officer because the inquiry report is based on evidence produced before him and conclusion drawn by the Inquiry Officer is just, legal and acceptable as such…."

5. Thus, recording his finding, he then sent the copy of the enquiry report along with his comments, as noted above, to the Central Vigilance Commission through the Central Vigilance Officer for second stage advice. The entire records were also sent along with this. This happened in February, 2008.

6. It appears that thereafter, on 16th of April, 2008, the petitioner was transferred to Dhanbad. Upon transfer, his disciplinary and controlling authority now became the Commissioner of Central Excise, Ranchi. In that view of the matter, all files including the files relating to the disciplinary proceedings were then transferred to the Commissioner of Central Excise, Ranchi by the letter of Commissioner of Central Excise, Patna dated 24.06.2008. On 21.08.2009, the Commissioner of Central Excise, Ranchi wrote to the office of the Director General, Vigilance informing that they have been awaiting the response to the request for second stage advice in respect of the petitioner. This was responded from the office of the Director General of Vigilance by communication dated 29.11.2010 in which the Commissioner of Central Excise and Customs informed both the Commissioner at Patna and at Ranchi in the following terms:-

> "…..The report of Inquiry Officers have been forwarded to this office by different disciplinary authorities seeking 2nd stage advice. These proposals are incomplete in as much as the disciplinary authorities (DA) of the Charged Officers have either not provided any comments on the report of the IO or not recommended any specific action against the Charged Officer. All the cases are required to be sent to CVC for seeking 2nd stage advice and the comments on the report of the IO and specific recommendation from DA are essential requirements.…."

7. We will presently show that the statement from the office of the Director General of Vigilance is not correct inasmuch as we have already reproduced the letter of Commissioner of Central Excise which, in clear terms, had stated that he had examined the report of the Inquiry Officer and finding it to be legal and proper, had accepted it which exonerates the petitioner. Again, from the office of the Director General of Vigilance, a reminder was sent both to Commissioner at Patna and Commissioner at Ranchi. Again on 12.05.2011, another reminder was similarly sent. This again stated that they had not received the recommendation of the Commissioner upon the enquiry report though the enquiry report itself was sent along with the recommendation, as noted above. Upon receipt of this, the Commissioner of Central Excise, Ranchi, who was allegedly holding the additional charge and was not a regular Commissioner, on 02.08.2011 (Annexure-H to the supplementary counter affidavit filed today), wrote to the office of the Director General of Vigilance that in view of the letters issued from the office of the Director General of Vigilance he, now being the disciplinary authority of the petitioner (petitioner having been transferred from Patna to Dhanbad), had reviewed the matter and upon review he found reasons to disagree with the enquiry report and with reasons of disagreement, he was seeking second stage advice from the Vigilance in respect of extreme punishment that would be required to be given. In fact, it would be useful to quote the material lines which is in paragraph-3 of the aforesaid communication and is quoted hereunder:-

> "….As the undersigned is now

> Disciplinary Authority for the above mentioned officer, the case has been examined afresh as mentioned below:-……"

8. Upon receipt of this fresh examination of the enquiry report, the Vigilance approved the same and directed for punitive action notwithstanding the fact that no evasion or loss of revenue could be established.

9. Mr. Raju Giri, learned counsel for the petitioner submits that if one refers to Rule-15 (2) of the Central Civil Services (Classification, Control and Appeal) Rules (hereinafter in short CCS Rules), it predicates two courses of action upon submission of enquiry report. If the disciplinary authority is different from the Inquiry Officer then upon Inquiry Officer submitting a report, the disciplinary authority may either agree with the enquiry report or disagree. If the enquiry report exonerates the delinquent officer and the disciplinary authority accepts the enquiry report, the result would be termination of proceedings and discharge of the delinquent officer. If the Inquiry Officer holds him guilty and the disciplinary authority agrees with the report then a notice has to be issued to the delinquent officer with regard to punishment enclosing copy of the enquiry report and disagreement by the disciplinary authority. In case, the disciplinary authority disagrees with the report of the Inquiry Officer which holds the delinquent officer to be not guilty then the disciplinary authority is required to communicate the reasons for not agreeing with the Inquiry Officer to the delinquent and asking to file show cause why he should not be punished. These are the options available. He would submit that once the disciplinary authority, upon receiving the enquiry report which had fully exonerated the petitioner, decided to accept the same and communicate that to the Vigilance the matter ended. Vigilance, on its own, in a given set of facts, could have disagreed with the views of the disciplinary authority and directed the disciplinary authority to proceed in a manner different but certainly the disciplinary authority or his successor could not have reviewed the decision of the predecessor in this regard and changed his views. That is impermissible.

10. On the other hand, for the Department of Central Excise and Customs, Mrs. Nivedita Nirvikar submits that once the jurisdiction of the disciplinary authority changed, the new disciplinary authority had full jurisdiction to disagree with the earlier disciplinary authority even without the advice of the Vigilance Department. It could have changed its view. It is these rival submissions we have to consider.

11. Having considered the matter, in our view, we have to accept the view as submitted by Mr. Giri. The reason is simple. There has to be finality to the proceeding. Merely because the disciplinary authority changed does not vest the disciplinary authority who exercises statutory power to review matters which were otherwise closed at his level. As noticed above, the disciplinary authority i.e. the Commissioner of Central Excise, Patna was well within the jurisdiction to pass a final order when he formed an opinion and given reasons for it and communicated the same to the Vigilance Department for a second stage advice. In that letter itself he stated that having gone through the report of the Inquiry Officer, which was based on evidence, he had no reason to disagree. There was nothing more to write. Upon this, the Vigilance repeatedly is saying that no reasons have been given which is not understandable at all. What more reasons were required to be given. The disciplinary authority had clearly stated that he had agreed with the reasons and the findings of the Inquiry Officer and sent the Inquiry Officer's report to the Vigilance. Both these were to the Vigilance still the Vigilance kept pursuing the parties that the views of the disciplinary authorities were not with them. At this stage, petitioner was transferred to the jurisdiction of Commissioner Central Excise, Ranchi. Can the Commissioner

Excise, Ranchi now review the matter and change the view? In our opinion, he cannot. He is bound by what has happened earlier. There was no direction from the Vigilance to reopen the case or reassess or review the matter. Once the Commissioner had taken a decision in the matter accepting the enquiry report which effectually exonerated the petitioner then the incumbent in the office or the changed disciplinary authority cannot recheck the decision of the earlier disciplinary authority and take a different view of the matter. There has to be finality. The finality comes from Rule-15 (2) of CCS Rules. It gives discretion to the disciplinary authority to differ or, upon differing, issue a show cause and proceeds to punish but that itself is when the Inquiry report is submitted.

12. Here the facts are clear. The enquiry report exonerating the petitioner having been submitted, the disciplinary authority, the Commissioner accepted the same and communicated it to the Vigilance. In our opinion, that was the end of the matter. So far as the disciplinary authority is concerned, the matter would have been different. If the Vigilance in the second stage advice required the disciplinary authority to reconsider the matter but that was never advice of the Vigilance. Thus, merely because petitioner was transferred from Patna jurisdiction to Ranchi jurisdiction does not give the new disciplinary authority jurisdiction to review and reopen the matter which had been closed by the earlier Commissioner. As we have noted above, there has to be finality. If what has been done is permitted then it would be unending because let us assume that thereafter the petitioner would be transferred to a third jurisdiction, can the disciplinary authority there, reopen the matter and exonerate the petitioner. Certainly that can never be intended. Thus, in absence of any directive from the Vigilance to reconsider the matter, the Commissioner, Central Excise, Ranchi could not have reconsider the matter and taken a different view. That being the position in law, we are unable to sustain the order of the Central Administrative Tribunal of Patna Bench passed in O.A. No.511 of 2013 nor can we sustain the second show cause for imposition of penalty holding petitioner guilty upon review of the decision of the earlier Commissioner. They are all accordingly set aside.

13. Accordingly, this writ petition is allowed.

(Navaniti Prasad Singh, J.)

(Jitendra Mohan Sharma, J.)

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