THE HON'BLE SRI JUSTICE RAMESH RANGANATHAN
And
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION No.6042 of 2015

ORDER: (per Hon'ble Sri Justice Ramesh Ranganathan)

This Writ Petition is filed against the order passed by the Central Administrative Tribunal, Hyderabad in O.A.No.1312 of 2011 dated 17.02.2015. The petitioner herein is the applicant in the O.A. He was convicted in C.C.No.21 of 2003, instituted against him for carrying on money lending business, by the XIV Additional Chief Metropolitan Magistrate, Hyderabad by judgment dated 30.12.2006. He was sentenced to payment of fine of Rs.5000/-, and in default to suffer simple imprisonment of sixty days. Thereafter a show cause notice dated 11.07.2007 was issued under
Rule 19 of the Central Civil Services (Classification Control and Appeal) Rules (for brevity, 'the Rules') by the Joint Commissioner, (P&V), Central Excise, Hyderabad calling upon the petitioner to submit his reply thereto within fifteen days. The notice was received by the petitioner on 20.07.2007. The Criminal Appeal filed by him, against the judgment of the XIV Additional Chief Metropolitan Magistrate, was dismissed by the IV Additional Metropolitan Sessions Judge, Nampally, Hyderabad by order dated 29.09.2008 confirming the conviction. In the meanwhile, the Commissioner issued corrigendum dated 13.10.2010, to the earlier show cause notice issued by the Joint Commissioner dated 11.07.2007. The corrigendum notes that a show cause notice dated 11.07.2007 was issued to the petitioner by the Joint Commissioner proposing to award the appropriate penalty under Rule 19 of the Rules; receipt of the show cause notice was acknowledged by the petitioner by his letter dated 20.07.2007; a reminder, in this regard, was sent on 16.03.2009; in view of the CBEC order dated 22.12.2009, communicating the President's approval designating the 'Commissioner' as the appointing authority for the

cadre of Inspectors, the Commissioner of Customs, Central Excise & Service Tax was the disciplinary authority; and he, as the Commissioner, proposed to decide the case based on the show cause notice and the reply to be furnished by the charged officer as detailed in paragraph Nos.1 and 2 of the corrigendum. The petitioner was informed that, wherever the word "Joint Commissioner (P&V)" figured in the show cause notice, it must be read as "Commissioner of Customs, Central Excise & Service Tax".

Questioning the said show cause notice, the petitioner invoked the jurisdiction of the Central Administrative Tribunal. By the order under challenge in this Writ Petition, the Tribunal held that, consequent on the amendment of the Rules made under Article 309 of the Constitution of India, the Commissioner was designated as the 'Appointing and Disciplinary Authority' for the cadre of Inspectors; and, as the Commissioner is the disciplinary authority, he was empowered to issue the show cause notice. Aggrieved by the dismissal of the O.A., the petitioner has now invoked the jurisdiction of this Court.

Sri N.Vijay, learned counsel for the petitioner, would submit that Rule 19 of the Rules requires the Commissioner to independently apply his mind and take a decision whether or not proceedings under Rule 19 of the Rules should be initiated; in the present case the Commissioner has not examined the matter independently, and has merely directed the petitioner to show cause to a notice issued earlier by the Joint Commissioner; and, as the Commissioner has failed to exercise the discretion vested in him in terms of Rule 19 of the Rules, the impugned corrigendum necessitates being set aside.

Rule 19 of the Rules prescribes a special procedure in certain cases. Notwithstanding anything contained in Rule 14 to Rule 18, where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, the disciplinary authority is empowered to consider the circumstances of the case and make such order thereon as he deems fit. The proviso thereto requires the Government servant to be given an opportunity of making representation, on the penalty proposed to be imposed, before any order is made in terms of Rule 19 (i) of the Rules. Under the second proviso, the Commission shall be consulted, where such consultation is necessary, before any orders are made in any case under the rule.

Rule 19 (i) of the Rules enables penalty to be imposed on the ground of conduct which has led to the conviction of the Government servant on a criminal charge. The petitioner herein was convicted of a criminal charge, and was imposed a penalty of Rs.5000/- as fine. The requirement of the Rule is for the disciplinary authority to consider the circumstances of the case and make such orders thereon as he deems fit. In view of the proviso, the order, which the disciplinary authority is empowered to pass under Rule 19 (i) of the Rules, is only after the Government servant is given an opportunity to make a representation on the penalty proposed. After the show cause notice was issued by the Joint Commissioner, power was conferred on the Commissioner to take disciplinary action against officers in the cadre of Inspectors to which cadre the petitioner belongs. It is evident from the corrigendum that the Commissioner was satisfied that proceedings under Rule 19 (i) of the Rules should be initiated; and he concurred with the views expressed by the Joint Commissioner earlier.

Accepting the submission of Sri N.Vijay, learned counsel for the petitioner, would only mean that the Commissioner would be required to comply with the ritual of issuing a notice afresh instead of the corrigendum. It is not as if the petitioner has suffered substantial injustice as a result, for the proceedings impugned before the Tribunal is merely a notice to show cause, and to which the petitioner has been permitted to submit his reply. It is only on the basis of the reply submitted by the petitioner is the Commissioner required to take a decision as to whether penalty should be imposed or not; and, if so, the nature of the penalty. As a writ is not issued for the mere asking, and the jurisdiction exercised under Article 226 of the Constitution of India is discretionary, we see no reason to interfere with the order of the Tribunal. The Writ Petition fails and is, accordingly, dismissed. In case the petitioner submits his reply to the show cause notice within two weeks from today, the Commissioner shall consider the same and, thereafter, take action in accordance with law. Miscellaneous petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

RAMESH RANGANATHAN, J

M.SATYANARAYANA MURTHY, J

11th March, 2015.
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