

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.9442 of 2014

=====

Ram Suresh Ram, son of late Ram Chandra Ram, Resident of village-
Lakshmanpur, P.O.- Daulatpur, P.S.- Ara Mufassil in the district of Bhojpur, At
present House No. 4h/7, Bahadurpur Housing Colony, Bhutnath Road, Bahadurpur,
District- Patna

.... Petitioner

Versus

1. The Union of India through the Chief Commissioner, Customs and Central
Excise, Patna Pin- 800001
2. Secretary, Ministry of Finance, Department of Revenue, null Central Board of
Excise and Customs, Government of India, New Delhi- 110066
3. Under Secretary to the Government of India, Ministry of Finance, New Delhi
4. Chairman, Central Board of Excise and Customs, Ministry of Finance,
Department of Revenue, North Block, New Delhi, Pin- 110001
5. Commissioner, Customs and Central Excise, Patna- 800001
6. The Director General (Vigilance) 1st and 2nd Floor, Samrat Hotel, Kautilya
Marg, Chanakyapuri, New Delhi- 110021
7. Union Public Service Commission through its Secretary (Sangh Lok Seva
Ayog), Dhaulpur House, Shahjahan Road, New Delhi, Pin- 110069
8. Deputy Secretary (S-1), Union Public Service Commission, Dhaulpur House,
Shahjahan Road, New Delhi, Pin- 110069
9. The State of Bihar through the Chief Secretary, Government of Bihar, Patna

.... Respondents

=====

Appearance :

For the Petitioner	:	Mr. Dinu Kumar, Advocate Mr. Rajesh Kumar Singh, Advocate Mr. Arvind Kumar Sharma, Advocate Mr. Santosh Kumar, Advocate Mr. Manoj Kumar, Advocate Mr. Ritu Raj, Advocate Mrs. Ritika Rani, Advocate
For the Union of India	:	Mr. Sanjay Kumar (ASG)

=====

CORAM: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE NAVANITI PRASAD SINGH)

Date: 31-03-2016

This writ petition has been filed, being aggrieved

by the order of the Central Administrative Tribunal, Patna Bench,

Patna dated 13.03.2014, passed in O.A. No. 695/2012 filed by the applicant before it.

Heard Sri Dinu Kumar for the petitioner and Sri Sanjay Kumar, learned Assistant Solicitor General for the Union of India and with their consent, we are disposing of this writ petition at this stage itself.

The writ petitioner was Range Officer in the Central Excise Department. A departmental proceeding was initiated against him for major penalty in respect of his role in assessing and granting wrong refunds and then not seeking its repayment and/or not recovering refunds. In the departmental proceeding, the Enquiry Officer noted the facts in detail and came to a finding that none of the charges could be proved or established. The Enquiry Officer clearly found that the excise duty deposited by the manufacturer was in excess of the liability and thus was liable to be refunded as such. Having refunded, the audit objection was that it was wrongly refunded and a demand ought to have been raised in terms of Section 11-A of the Central Excise Act (for short the Act). The Enquiry Officer found that the audit objection itself was much after the six months limitation as prescribed in Section 11-A of the Act. The Enquiry Officer thus concluded that the petitioner was helpless in the matter and could not have sought to recover the alleged wrong refund. The Department



then sought advice and opinion from the U.P.S.C. as is mandatory. U.P.S.C. also concurred with the Enquiry Officer's report and was clearly of the opinion that the charges could not be established. However, while doing so, it observed that the officer-petitioner should have been more careful in the matter and the refund ought not to have been given to the manufacturer but to the person who had paid it or from whom the manufacturer had realized it. U.P.S.C., thus, found negligence on part of the petitioner. Having received the said advice, Department served the Enquiry Officer's report with a note of dissent to the petitioner and part of the report of U.P.S.C. Petitioner protested. He sought that the report of the Enquiry Officer exonerating him be accepted in full and no action could be taken at all but the Disciplinary Authority rejected his explanation and imposed a penalty of withholding 30% pension for a period of 5 years for negligence in granting refund not to the buyer but to the seller/manufacturer. The Tribunal dismissed the application and hence this writ petition.

Before us, learned counsel for the writ petitioner submits :

- (i) That the acts of the petitioner were acts in quasi-judicial capacity and as such disciplinary proceedings could not be taken up as it was not a matter of discipline. A wrongful exercise of judicial discretion is not punishable as it is not

misconduct in matters of discipline.

(ii) The disciplinary authority erred in holding that the petitioner was negligent in not pursuing the matter of recovery in spite of audit objection.

(iii) Negligence, as noticed by U.P.S.C., cannot be subject matter because there was no charge in this regard at all nor was any explanation in this regard called for with the intent to punish.

We have heard learned counsels and considered the matter. In our view, the contentions raised are correct.

An officer, who has been conferred with statutory jurisdiction to adjudicate matters, acts in a quasi-judicial capacity. Unless it can be shown that the decision was taken malafide or with ulterior motive, for a wrong decision taken there cannot be disciplinary proceedings as it is not a misconduct. Here, there is no allegation of malafide, ulterior motive or such like. It is not in dispute that excess duty had been deposited and refund was due. The Department has not raised the plea that no refund at all was due and the duty was rightly deposited. It is not the case of Department that refunds were ordered when refund were not due and that too with ulterior motive. That being so, for orders passed in quasi-judicial functions by statutory authorities, disciplinary proceeding for misconduct cannot be initiated, much less officer penalized.



So far as the second submission is concerned, the petitioner is again correct. We have the chart before us which clearly shows that the assessments were in between 19.05.1993 to 22.09.1993. The last date within which demands for recovery of excess refund could be made, in terms of Section 11-A of the Act being 18.11.1992 to 21.03.1994, the audit objection having been made only on 05.05.1994 was clearly after the six months statutory period prescribed. Thus, to say that petitioner ought to have taken proper steps for recovery is a far cry, for Section 11-A of the Act prohibits any action after six months. Petitioner cannot be alleged to have been negligent in that respect.

Lastly, U.P.S.C. observed that the petitioner should not have allowed refund to the seller/ manufacturer. Refund if at all due was legally due to the buyer who had paid the duty to the manufacturer for depositing to the Department. The view of the U.P.S.C. was correct but we cannot take note of this because there was no such charge against the petitioner in the departmental proceedings. If this was the opinion of the U.P.S.C. after the enquiry had concluded, this cannot form basis of any action, thus.

In view of the aforesaid, we have no option but to set aside the order of the disciplinary authority as also the order of the Tribunal not interfering with the order of punishment, 30% reduction

of pension for 5 years, and allow this writ petition. Consequently, any deduction that has already been made on this count has to be refunded to the petitioner forthwith without delay.

(Navaniti Prasad Singh, J.)

(Nilu Agrawal, J.)

Arjun/Rajesh/AFR

U			
---	--	--	--