

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.02.2017

Delivered on: 28.03.2017

Coram

The Honourable Mr. Justice K.K. SASIDHARAN
and

The Honourable Mr. Justice V. PARTHIBAN

W.P.No.10588 & 10589 of 2009

1. Union of India, rep. by
the Commissioner of Central Excise (P&V),
Central Revenue Buildings,
Bibikulam,
Madurai-625 002.
 2. The Additional Commissioner (P&V),
Office of the Commissioner of Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai-625 002.
 3. The Joint Commissioner of Central Excise (P&V),
Office of the Commissioner of Central Excise,
Central Revenue Buildings,
Bibikulam,
Madurai-625 002.
- .. Petitioners in
both the Writ Petitions
versus

1. D.Jeyachandrapandi
 2. The Central Administrative Tribunal,
Madras Bench, represented by the Registrar,
City Civil Court Buildings,
High Court Complex,
Chennai-600 104.
- .. Respondents in
both the Writ Petitions

Prayer: These Writ Petitions are filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, to call for the records relating to the common order dated 7.5.2009 passed by the 2nd respondent in M.A.No.59 of 2009 and O.A.No.229 of 2009 respectively and quash the same.

For Petitioners: Dr.S.Seethalakshmi
Sr.Standing counsel

For Respondents: Mr.R.S.Anandan for
M/s.Anand & Suryas for R1
R2-Tribunal

COMMON ORDER

V.PARTHIBAN, J.

These Writ Petitions have been filed against the order dtd 7.5.2009 passed by the Central Administrative Tribunal in M.A.No.59 of 2009 and O.A.No.229 of 2009, allowing both the applications filed by the first respondent herein.

2. For the sake of clarity, the parties are referred to as the applicant and respondents as arrayed before the learned Tribunal.

3. The applicant approached the Tribunal, seeking to quash the punishment order passed by the 3rd respondent reducing the pay by two stages lower in time scale of pay for a period of one year without cumulative effect with a consequential direction for confirmation of promotion to the post of Superintendent of Central Excise on par with his juniors.

4. While the applicant was working as Inspector of Central Excise, was charge sheeted along with four other officials, viz., two Superintendents of Central Excise and two other Inspectors of Central Excise, by the second respondent vide charge memorandum dated 14.2.2002. Six articles of charges were framed against the applicant. On inquiry into the charges, it was found that the charges 3 and 4 were proved while the other charges, viz., charges 1, 2, 5 and 6 were not proved. the third respondent who was the Disciplinary Authority, forwarded the inquiry report disagreeing the findings of the Inquiry Officer in respect of charges not proved and directed the applicant to submit his representation. The applicant also submitted his representation on 31.1.2005, but no final order was passed on the disciplinary action.

5. While matters stood thus, the applicant was dismissed from service on 12.4.2005 in pursuance of his conviction in a criminal Court and on appeal, the conviction was set aside by this Court on 25.1.2008 and ultimately, the petitioner came to be reinstated in duty vide order dated 2.12.2008. Thereafter, the disciplinary action which was kept pending, was revived and on consideration of his representation, the 3rd respondent passed impugned order of penalty with effect from 5.3.2009. The applicant without filing any statutory appeal against the said penalty, directly approached the Tribunal, assailing the order of penalty. The applicant filed a miscellaneous petition in

M.A.No.59 of 2009 seeking permission of the Tribunal to waive the appellate remedy available to him as according to the applicant, the third respondent being not a competent authority to pass orders of punishment in view of involvement of two Superintendents of Central Excise and as common Inquiry was conducted into the charges, it became necessary for the applicant to directly approach the Tribunal as the question involved was for want of jurisdiction.

6. Although several grounds were raised in the application, assailing the order of the penalty by the 3rd respondent, the learned counsel without addressing the grounds, confined his argument only to the ground raised in respect of jurisdictional issue as to whether the 3rd respondent was competent to issue the impugned penalty order.

7. The Tribunal concurred with the contention of the applicant, stating that the 3rd respondent was not competent in imposing the penalty order in the circumstances of the case and therefore, allowed the Original Application by setting aside the impugned punishment order. The consequential prayer sought for by the applicant was allowed and the respondents were directed to grant all the attendant benefits to the applicant within a period of 12 weeks from the date of receipt of a copy of the order.

8. As against the common order passed by the Tribunal, the present Writ Petitions have been filed.

9. Mr.R.S.Anandan, learned counsel appearing for the applicant, the first respondent herein, strenuously contended that the order passed by the Tribunal does not call for interference on the issue of jurisdiction since the 3rd respondent or the second respondent are not competent to issue punishment order in view of the involvement of two other Officers in the rank of Superintendent of Central Excise.

10. However, per contra, it was contended on behalf of the respondents that as far as the applicant was concerned, he, being the Inspector of Central Excise, the competent authority was both 3rd and 2nd respondents and merely involvement of higher official in the common inquiry, cannot take away the jurisdiction of the authority to impose the penalty on the applicant. This was clarified quite elaborately in the reply statement filed on behalf of the respondents before the learned Tribunal. However, the learned Tribunal without giving proper or legal finding on the issue, has simply allowed the Original Application on the issue of jurisdiction, which, in our opinion, may not be correct. However, be that as it may, the learned counsel appearing for the applicant, has taken us through the disagreement of the 3rd respondent on the finding of the Inquiry Officer, stating that there were no reasons spelt out in support of the disagreement, except merely stating that 'not correct'.

11. From the analysis of the inquiry Report, it could be seen that the disciplinary authority has merely added this comment at the end of each article of charge, stating that 'the report is not acceptable'. Such action on the part of the Disciplinary Authority is contrary to the Rule position, i.e. Rule 15(2) of the CCS (CCA) Rules, 1965 and the same cannot be sustained at all.

12. It is needless to mention that when disagreement is recorded on a finding, which is in favour of the delinquent employee, it is imperative on the part of the competent authority to record reasons legally acceptable in support of the disagreement from the materials and evidence available on record. In the instant case, the record would show that no such reasons had been recorded by the Disciplinary Authority nor any attempt was made even remotely for substituting his own valid reasons from differing with the findings of the Inquiry Officer. In such view of the matter, eventual punishment imposed by the Disciplinary Authority, cannot be sustained because the same has not been initiated by adherence to the mandatory Rule as contemplated under Rule 15(2) of the CCS (CCA) Rules, 1965. Although the Original Application and Miscellaneous Application have been allowed on the issue of jurisdiction and consequential orders were also passed by the Tribunal, we are unable to agree with the legal findings of the Tribunal on the issue of jurisdiction as the respondents have not properly explained that as far as the applicant is concerned, 2nd and 3rd respondent alone were competent to impose the order of penalty. Therefore, we set aside the order passed by the Tribunal, dated 7.5.2009 in M.A.No.59 of 2009 and O.A. While setting aside the order passed by the learned Tribunal, we further add for our own reason that the disagreement note was not in terms of the Rule position and we set aside the order of penalty imposed on the applicant who was the applicant vide order dated 5.3.2009 and remit the matter back to the Disciplinary Authority for fresh consideration from that stage and the Disciplinary Authority shall communicate his valid disagreement note to the applicant/first respondent herein and on completion of the same, the authority is directed to proceed further with the disciplinary proceedings.

With the above terms, the Writ Petitions are disposed of. No costs.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

suk

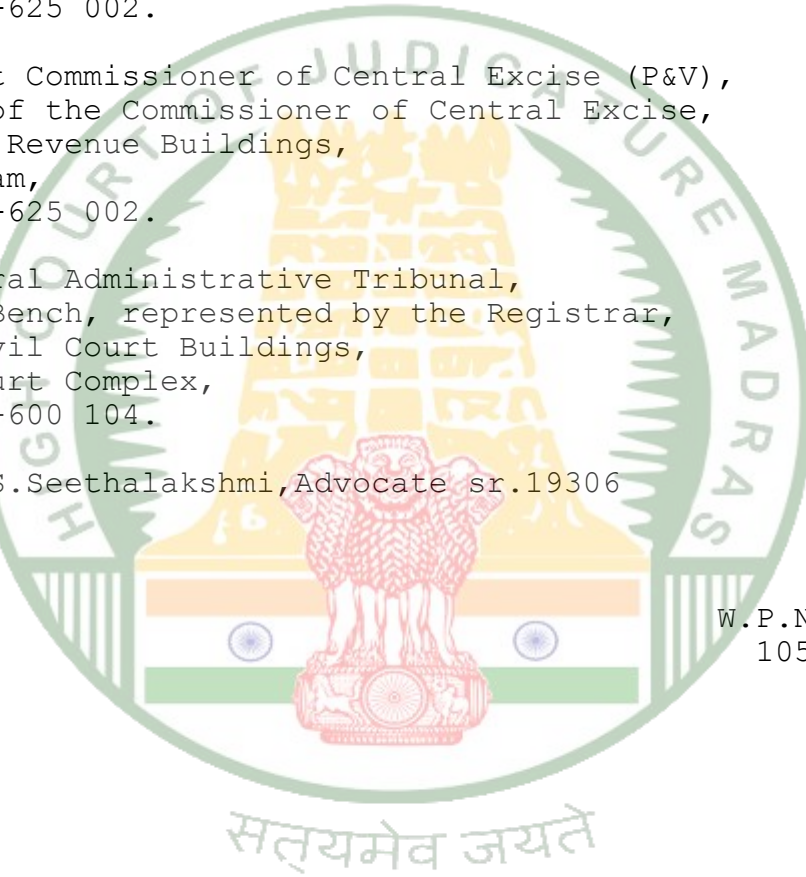
To

1. The Commissioner of Central Excise (P&V),
Union of India,
Central Revenue Buildings,
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2. The Additional Commissioner (P&V),
Office of the Commissioner of Central Excise,
Central Revenue Buildings,
Bibikulam,
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3. The Joint Commissioner of Central Excise (P&V),
Office of the Commissioner of Central Excise,
Central Revenue Buildings,
Bibikulam,
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4. The Central Administrative Tribunal,
Madras Bench, represented by the Registrar,
City Civil Court Buildings,
High Court Complex,
Chennai-600 104.

+1cc to Dr.S.Seethalakshmi, Advocate sr.19306

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gj (co)
ss(4/5/2017)



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