THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.15085 OF 2010

ORDER: (ORAL)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

This writ petition is filed assailing order, dated 29.04.2010, in O.A. No.250 of 2010 passed by the Central Administrative Tribunal, whereby the Tribunal while disposing of the O.A. recorded that it cannot be interfered at the interlocutory stage of disciplinary proceedings. It is further recorded that since the petitioner has been considered by the DPC, it is just and proper to dispose of the application by directing the disciplinary authority to complete the departmental proceedings within a period of one month from the date of receipt of a copy of the order.

2. The brief facts of the case are that the petitioner was selected in the year 1989 by the Union Public Service Commission and appointed to Indian Customs and Central Excise Service Grade A and he joined service on 21.08.1989. While he was working in the post of Additional Commissioner, Office of the Commissioner of Customs, Central Excise & Service Tax, Hyderabd-IV Commissionerate, Hyderabad, he was transferred to Coimbatore in the month of April 2010 and he reported at Coimbatore in May, 2010. He has spotless career of 20 years, and worked as Deputy Director, Directorate of Revenue Intelligence, Bangalore, for three years and received several financial rewards close to Rs.5,00,000/- for detention of duty evasion and anti smuggling cases. During his tenure, he was posted as Additional Commissioner, Guntur Commissionerate from 11.09.2003 to 15.06.2006, the said Commissionerate had one post of Commissioner, two posts of Additional Commissioner and one post of Joint Commissioner. From 11.06.2005 to

15.06.2006 he was holding Additional Charge of the other post of Additional Commissioner and the post of Joint Commissioner as these posts were lying vacant. During his tenure at the Commissionerate, Guntur, it has come to the light that a case was registered by the Central Bureau of Investigation, Visakhapatnam Zone (CBI) against four officers of Central Excise, Guntur in connection with destruction of machinery leading to loss of revenue to the State. On being intimated about investigation, the Chief Commissioner of Customs & Central Excise, Visakhapatnam Zone, issued instructions to the Commissioner of Customs & Central Excise, Guntur Commissionerate, to transfer the four officers, who are accused in that crime, to non-sensitive posts. Out of the four officers, three were working under the Guntur Commissionerate, while the fourth officer *viz.,* V.Bhaskara Rao was on deputation to Hyderabad-II Commisisonerate under the control of the Chief Commissioner of Customs & Central Excise, Hyderabad Zone and he was working at Rajiv Gandhi International Airport at Hyderabad, which is a sensitive post. Out of the three officers working under the Guntur Commissionerate, two were working incharge of non-sensitive posts while the third officer, by name T. Subramanyam, Superintendent, was working in the field posting (Sensitive Post) i.e. Ongole Range, Ongole.

3. The Chief Commissioner, Vishakapatnam, vide letter, dated 10.10.2005, issued directions to post the said officers to non-sensitive posts. Accordingly, the two officers were retained in the non-sensitive post and T. Subramanyam, who was in a sensitive post at Ongole, was transferred to Head Quarters Office, Guntur, as there was no non sensitive post at Ongole. Insofar as the officer working on deputation at the Airport, *viz.,* V. Bhaskar Rao, is concerned, a letter was addressed to

the Chief Commissioner of Customs & Central Excise, Hyderabad Zone to consider shifting him from sensitive charge. On receipt of the letter, the Chief Commissioner, ordered immediate repatriation of V. Bhaskar Rao to Guntur Commissionerate. Questioning the transfer from Ongole to Guntur, T. Subramanyam, Superintendent, filed O.A. No.946 of 2005 before the Central Administrative Tribunal, Hyderabad on the sole ground that even before he could complete the term of two years at Ongole, he was shifted from Ongole to Guntur and the O.A. was dismissed at the admission stage. Thereafter, questioning the dismissal order, he preferred W.P. No.26463 of 2005 before this Court arraying the Commissioner of Customs & Central Excise, Guntur, as the sole respondent and his main contention was that even before he could complete the term of two years at Ongole, he was shifted from Ongole to Guntur. The affidavit in support of the writ petition was prepared filed by T.Subramanyam was forwarded by the Standing Counsel of the Department (Assistant Solicitor General) to the Commissionerate, Guntur. Accordingly, the Superintendent (Legal) opened a file which is nomenclated as "Legal File". As per the procedure in vogue, the counter was put up to the Assistant Commissioner for his vetting. Thereafter, it was put up to the petitioner for his vetting on 28.12.2005. On his vetting, the same was finally vetted by the Commissioner, Guntur, who was the sole respondent in writ petition. In the process, the legal file along with the draft counter was cleared by the Commissioner, Guntur, on 29.12.2005 and it was dispatched on 30.12.2005 to the Standing Counsel for the Department for his vetting. Thereafter, a fair counter was prepared and signed by the Assistant Commissioner as a deponent, as he was authorized by the Commissioner, Guntur, to do so, and it was attested by the Superintendent (Legal) and dispatched to the Standing Counsel on 12.01.2006.

4. It is further stated that draft counter affidavit to W.P. No.26463 of 2005 was prepared, that too, based on the facts existing then and which were within knowledge of the officers, who have vetted it, including the petitioner and there was no mis-representation of facts. After vetting of the legal file on 28.12.2005 by the petitioner, the petitioner neither saw it nor it was put to him and all the subsequent proceedings with respect to the case were dealt with by the Superintendent (Legal) and the Assistant Commissioner (Legal), till disposal of the writ petition. Meanwhile, on 29.12.2005, proceedings dated 22.12.2005 of the Chief Commissioner, Hydeabad, zone were received by the Commissionerate, Guntur, and the same was acknowledged by the Assistant Commissioner, Guntur. By the said proceedings, the Chief Commissioner, Hyderabad Zone cancelled his previous order dated 08.12.2005 repatriating V. Bhaskara Rao, Superintendent to Guntur Commissionerate and a specific direction was issued to post him to a non-sensitive place. Based on the proceedings, a file was opened nomenclating the same as "Establishment File" and on 06.01.2006, the file along with a note, was put up to the petitioner for his approval. The note in the Establishment File was to the effect that since repatriation of V.Bhaskara Rao, Superintendent, was cancelled and he was directed to be posted to a non-sensitive post, no further action was proposed on the proceedings dated 22.12.2005 of the Chief Commissioner, Hyderabad Zone and upon the approval of that note by the petitioner, the same was put up to the Commissioner on 10.01.2006, who, in turn, approved the same.

5. On 14.03.2006, when the writ petition came up for hearing, the counsel appearing for T.Subramanyam, submitted contrary to the averment in the counter affidavit that V.Bhaskara Rao was repatriated to Guntur Commissionerate, whereas the said officer was continued at the Airport. Though it was not the case of T.Subramanyam in the writ petition that he was being discriminated by transferring him from Ongole (sensitive post) to Guntur (non sensitive post) while retaining V.Bhaskara Rao at the Airport. However, on 22.03.2006, this Court was informed that though V.Bhaskara Rao was retained at the Airport, he was posted to a non-sensitive post at the Airport. This Court took exception to the fact of non-mentioning of cancellation of repatriation and continuing him at the Airport in the counter affidavit and also took exception to the way the affidavit was attested and verified, accordingly this Court, directed initiation of contempt proceedings against the deponent and the sole respondent and it also gave a finding that the Attestor, being the Superintendent (legal) was unfit for the post and directed the copy of the order to be forwarded to the Chairman, Central Board of Excise and Customs.

6. Learned counsel for the petitioner submits that this Court dismissed the writ petition filed by T.Subramanyam on the plea that since CBI investigation was going on, no relief was warranted in the matter of his transfer to Head Quarters, Guntur.

7. Upon said order, the respondent therein preferred petition for review of order, dated 22.03.2006, and during the course of arguments in the review petition, the learned Additional Solicitor General of India made a suggestion that he would request a member of Central Board of Excise and Customs, to investigate into the whole matter so that appropriate action would be initiated against those who are responsible

for the situation. Upon the suggestion, the orders dated 22.03.2006, whereby suo moto contempt proceedings were sought to be initiated, was kept in abeyance. Consequent on the suggestion of the Additional Solicitor General of India, an enquiry was conducted and a report was submitted. The fact of submission of the report was brought to the notice of this Court and on the assurance that suitable action would be taken against the officers involved, this Court recalled the order, dated 22.03.2006 to the extent of initiation of the contempt proceedings.

8. Learned counsel for the petitioner further submits that in consequence thereof, apart from the petitioner, disciplinary proceedings were initiated against the following Officers:

(a) The Assistant Commissioner (Legal), who was the Deponent of the Counter Affidavit,

(b) The Superintendent Legal, who prepared the Counter Affidavit,

(c) The Superintendent (Legal), who attested the Counter affidavit.

(d) The Superintendent Legal Coordinator Cell, Hyderabad.

9. Learned counsel further submits that no disciplinary action was initiated against the sole respondent in that writ petition on whose behalf and authorization, the counter affidavit was filed and only an administrative warning was given to him vide proceedings dated 12.06.2006. Minor penalty proceedings were initiated against the petitioner and major penalty proceedings were initiated against the Assistant commissioner (Legal) and three Superintendents. With respect to Superintendent (Legal), R.Narasimha Murthy, disciplinary proceedings were initiated on 14.12.2006 and dropped on 21.05.2009 and with respect to Superintendent Legal, S.Yadagiri, disciplinary proceedings were initiated on 12.12.2006 and dropped on 07.05.2009.

10. We note, in the counter affidavit filed by the respondents, the aforesaid fact has been neither admitted nor denied, however, it is specifically stated in paragraph-14 that the above contents, being a matter of record, need no comments. Moreover, in para-26 of the affidavit of the writ petition, it is submitted that the impugned action of the respondents in initiating and continuing minor penalty disciplinary proceedings against the petitioner is arbitrary and discriminating for the reason that the major penalty disciplinary proceedings against three Superintendents have ended in exoneration. But, in para-20 of the counter affidavit it is denied that three Superintendents were exonerated and the charges against Yadgiri were dropped on merit, as such, only Yadgiri can be said to have been exonerated. Two other Superintendents were issued the administrative warning whereas the then Assistant Commissioner (legal) was shown 'Government displeasure.' Although the culmination of the disciplinary proceedings in the above manner does not cause any material loss to the Charged Officers, it does not amount to their exoneration either. It is further stated that the petitioner would have waited for the conclusion of the disciplinary proceedings in his case too would be concluded on merit and in accordance with the principles of natural justice.

11. The fact remains that the departmental proceedings were not completed against the petitioner due to the interim order passed by this Court. It is also the fact that the counter affidavit filed in the above mentioned writ petition was signed by the Commissioner, Guntur Commissionerate, who has been let off, vide proceedings, dated 12.12.2006. The petitioner joined at Guntur Commissionerate on 11.09.2003 and continued till 15.06.2006 and the counter affidavit was

sent to him for vetting on 28.12.2005 and the transfer order of V. Bhaskar Rao was put up on 06.01.2006.

12. In view of the facts recorded above, the officers, who are having graver charges than the petitioner, were let off and others were given administrative warning. The respondents have admitted that the minor penalty proceedings were initiated against the petitioner and the major penalty proceedings were initiated against the above said officers. At this stage, we have two options, which are as below:

1) We may direct the respondents to complete the departmental proceedings; 2) Keeping in view the above facts, the petitioner may also be let off from all the charges leveled against him

13. Since the incident is of the year 2005 and the present petition is of the year 2010 and at that point of time, the petitioner was working as Additional Commissioner, Guntur Commisisonerate and presently he is working as Additional Director General, National Academy of Customs, Indirect Taxes & Narcotics, Hyderabad.

14. After hearing the learned counsel for the petitioner and the learned Government Pleader appearing on behalf of the respondents, we are of the considered view that since the disciplinary proceedings against the other charged officers, who were directly involved, were dropped, the charges against the petitioner are of minor penalty which could not be proved in view of the fact that the other officers having graver charges have been let off by the department. Therefore, we are of the considered opinion that there is no purpose to direct the respondents to complete the departmental proceedings against the petitioner.

15. It is not in dispute that the Commissioner, who is the deponent of the counter affidavit filed in the above mentioned writ petition, was

let off vide proceedings dated 12.12.2006 who was a higher officer than the petitioner and the other officers as mentioned above were also let off by issuing administrative warning. Hence, we are of the considered view that the petitioner is not liable to be issued even warning in the present case since he received the order of transfer of V. Bhaskar Rao on 06.01.2006 whereas the counter affidavit came before him for vetting on 28.12.2005 much before issuance of the transfer order of the aforesaid officer.

16. In view of the above, the writ petition is allowed setting aside the order, dated 29.04.2010 in O.A. No.250 of 2010 passed by the Central Administrative Tribunal, Hyderabad Bench and also Memo No.31/2007 dated 13.03.2008 issued from the file F.No.14011/83/2006-Ad.V-A, dated 13.03.2008, by the respondents. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

February 05, 2018
KTL