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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 20.07.2017

% **Judgment delivered on: 20.02.2018**

+ **W.P. (C) 947/2015**

UNION OF INDIA ...Petitioner

Through: Mr. Arun Bhardwaj, Advocate

Versus

MAN SINGH ...Respondent

Through: Mr. Pramod Gupta and Ms. Kreeti Joshi, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI

J U D G M E N T

VIPIN SANGHI, J.

1. The petitioner has preferred the petition to assail the order dated 25.03.2014 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (the Tribunal) in OA No. 3366/2012. The Tribunal vide its order dated 25.03.2014 allowed the O.A. preferred by the respondent and set aside the disciplinary proceedings against the respondent, as well as the order

dated 16.08.2012 of the Disciplinary Authority imposing penalty upon the respondent.

2. Before the Tribunal, the Respondent had challenged the departmental inquiry proceedings undertaken against him, which culminated in the passing of the penalty order dated 16.08.2012, imposing the penalty of reduction to the next lower post in the scale of pay of Rs.9300-34800 grade pay of Rs. 4800 till his retirement. The challenge to the Disciplinary Proceedings was primarily premised on the submission that, even though 14 documents had been relied upon by the Respondent in support of the charges, not a single witness had appeared in the enquiry to prove them.

3. The Tribunal allowed the OA, since the Tribunal found that no evidence had been led against the respondent. The Tribunal also held that the inquiry officer had acted in complete violation of sub-rule (3) (14) (16) & (17) of Rule 14 of the CCS (CCA) Rules, 1965 (hereinafter referred to as "Rules"). The Tribunal held that the department had relied upon 14 documents in the Articles of Charge. However, not a single departmental witness had been named to prove the said documents, and none was produced in the inquiry proceedings to prove the said documents. The Tribunal placed reliance on the decision of the Supreme Court in **Roop Singh Negi Vs. Punjab National Bank and Others**, (2009) 2 SCC 570, wherein it was held that mere production of documents is not enough, and their contents have to be proved by examining the concerned witnesses.

4. The Tribunal also relied upon **State of U.P. & Ors. Vs. Saroj Kumar Sinha**, (2010) 2 SCC 772, wherein it was, inter alia, held that the function of

the Inquiry Officer is to examine the evidence produced before him by the department. It was also held that since no oral evidence had been led, the documents could not have been held to have been proved. Further, it was held in *Saroj Kumar Sinha* (supra), that the departmental enquiry cannot be treated as a casual exercise.

5. We may now take note of a few relevant facts. The respondent was working as Assistant Commissioner of Central Excise, Division-1, Indore during the year 2002-03. He was charge-sheeted under Rule 14 of the Rules vide charge memo dated 09.03.2005 for misconduct allegedly committed by him during the year 2002-03. The substance of the first article of charge against him was that he had given a false certificate in relation to existence of a single pipeline from the Railway siding to the Customs Private Bonded Tank of the assessee, even though investigation revealed that there were more than one pipelines in existence. The accessibility of a single pipeline was essential to prevent possible pilferage and diversion of imported oil. It was also alleged that the respondent had not properly and correctly verified the facts, including in respect of the capacity and size of the storage tank. It was also alleged that the respondent had dishonestly accommodated the vested interest of the assessee, thereby endangering Govt. Revenue, by accepting the warehousing bond and bank guarantee from the assessee of a lesser amount, ignoring the higher capacity of the storage tank of the assessee.

6. The second article of charge against him was that he had, without any direction/authority, posted one Shri G.K. Bhatnagar, Inspector (Tech) and Shri Tejram Mourya, Sepoy - both of Division office, Indore on cost

recovery basis to attend the work relating to warehousing of Imported goods without payment of duty and clearance thereof in the private bonded warehouse of the assessee, instead of allowing the concerned Range Staff to do so. It was also alleged that the respondent had entrusted the day to day correspondence job in this regard to the aforesaid Shri Bhatnagar of the Division Office, and directed him not to route files through the Superintendent (Tech). It was alleged that by his acts of commission and omission, the respondent craftily brought an arrangement into existence to facilitate improper financial accommodation to the assessee and other concerned parties, without possibility of exposure of such attempts to the detriment of the interests of the revenue.

7. The third article of charge against respondent was that during the period from August, 2002 to April, 2003 the warehoused goods involving customs duty of Rs.2.61 crores were allowed clearance for home consumption in the name of a party other than the assessee. The said goods were, in fact, not sold on highsea sale basis, but were shown to have been sold on highsea sale basis by resort to manipulation. It was alleged that the respondent entertained improper release advice and helped them evade commercial tax also. He did not take action for recovery of customs duty for shortages found during physical verification of warehoused palm oil. It was alleged that this was done by the respondent so as to enable the party to avoid payment of government dues amounting to Rs.2.66 crores. It was, inter alia, alleged that the respondent, by applying the aforesaid modus operandi; allowing clearances on the basis of improper Release Advices; by

not charging duty on shortage, and; by not receiving interest on delayed clearances, provided financial accommodation to the parties.

8. The submission of learned counsel for the petitioner, firstly, is that the respondent had waived the requirement of a witness being produced to tender and prove the documents relied in the inquiry against him. In this regard, reference is made to some of the correspondence exchanged by the respondent with the inquiry officer. Thus, learned counsel submitted that the decisions in *S.I. Rooplal* (supra) and *Saroj Kumar Sinha* (supra) were not attracted in the case. Alternatively, learned counsel submits that the charges against the respondent were very serious. The Tribunal, while allowing the O.A., on account of finding lacuna in the departmental inquiry proceedings, could not have returned a finding that there was no evidence against the respondent. The submission of the petitioner is that even if the inquiry proceedings were held to be in breach of Rule 14 of the Rules, in a case like the present, the Tribunal should have directed reopening of the departmental proceedings from the stage that they were found to be vitiated on account of the breach of the Rules and the principles of natural justice.

9. On the other hand, the submission of learned counsel for the respondent is that there was no question of waiving any of his rights by the respondent in the departmental inquiry. He submits that in the charge sheet itself, no witness was named. This was a stage much prior to the respondent undertaking any correspondence with the petitioner. Moreover, the respondent had specifically raised the illegality in the procedure adopted by the inquiry officer repeatedly. Learned counsel further submit that since the charges relate to the year 2002-03 and nearly 14-15 years have elapsed, it

would not be just and fair to subject the respondent to the departmental inquiry at such a belated stage. Learned counsel further submits that the respondent would be handicapped in defending himself after such a long hiatus.

10. Learned counsels have drawn our attention to several documents/ correspondence placed on record relating to the inquiry proceedings. We have considered the same, and also examined the impugned order passed by the Tribunal. The record shows that the 14 documents relied upon, in support of the Articles of Charge, were provided to the respondent on 06.11.2006 during the preliminary hearing stage. Vide letter dated 24.11.2006, the respondent sought production of 15 documents and 4 witnesses in his defence. He also provided the justification for demanding the said 15 documents and for producing the said defence witnesses vide his communication of 24.11.2006. He also stated that he would defend his case himself, and would not engage any defence assistance.

11. The inquiry officer rejected the request of the respondent to supply certain documents by his communication dated 26.12.2006, and also provided the reasons for the said rejection in respect of 5 documents. In respect of the remaining documents, it was stated that the requisition for the same is being sent to Commissioner of Central Excise, Indore. The request of the respondent to produce one of the witnesses was also rejected on the ground that he was not connected with the performance of any functions in Range Office or Division Office with regard to their irregularities noticed in the case of the assessee concerned.

12. The contention of the petitioner was that the respondent waived his objection regarding the production of witness to tender and prove the 14 documents relied upon by the department. In this respect, the communication dated 19.02.2007 of the respondent was relied upon, wherein the respondent stated that “*the presenting officer may be asked to present his case and close the prosecution side pending receipt of requisitioned documents*”. Similarly, in the communication dated 07.03.2007, the respondent stated “*Since there is no witness in the Annexure IV therefore it is desired that the inquiry may be concluded on merit and on the basis of the aforesaid reply and evidences*”.

13. We do not find any merit in this submission of the petitioner, since it was the obligation of the petitioner department to establish the charge against the respondent by leading its own evidence. The aforesaid communications cannot be construed as a concession by the respondent to the effect that the department may not produce its witnesses to prove the documents relied upon by it in the inquiry against the respondent. There is nothing placed on the record to show that the respondent admitted any of the 14 documents sought to be relied upon by the department against the respondent. In fact, the respondent specifically raised the aforesaid aspect before the inquiry officer in his submission, which is found at page 116 of our record. Similarly, in the defence of the Charged Officer found at page 194 of the record, the respondent had specifically raised the aspect that the charges were “*not supported by any documentary evidence or witness and Charged Officer is not required to disprove the said charge*”.

14. From the documents placed on record, including the correspondence exchanged between the respondent and the petitioner, it is abundantly clear that the department did not prove the charges against the respondent by producing any witness to tender and prove the documents relied upon against him. It is also evident that the respondent repeatedly raised the said aspect in the inquiry proceedings, and there is nothing on the record to suggest that the respondent agreed to forego his right to seek adherence to the procedure prescribed in Rule 14 of the Rules, or to the principles of natural justice. Production of a witness was essential to tender and prove the documentary evidence of the department. The witness could then have been subjected to cross examination. That essential right of the respondent has been denied due to the procedure adopted in the inquiry proceedings.

15. In W.P.(C.) No.6959/2016 titled **Anil Kumar Dhyani Vs. Union of India & Ors.**, this bench had dealt with a similar situation wherein the documents filed by the management were relied upon by the inquiry officer even though no witness had been examined to exhibit those documents. Since the present petition involves an identical issue, we deem it appropriate to reproduce paragraphs 17 and 18 of our decision in the aforesaid case as under:

“17. Though it is well settled that in a domestic inquiry, strict rules of evidence do not apply and the inquiry officer is not expected to write a judgment like a Judge of a Court but it is also equally a well settled proposition, that the domestic inquiry is a quasi judicial proceeding and the inquiry officer, while performing this quasi judicial function, has a duty to carefully examine the evidence led before him and he cannot merely rely on the documents filed by the Presenting Officer to

hold the delinquent employee guilty. Inference on facts by an inquiry officer must be based on some evidence, which is led before the inquiry officer in compliance of the principles of natural justice and he is expected to ensure that at least the evidence presented by the management, is sufficient to hold that the charge is proved.

18. Coming to the facts of the present case, we find that the Petitioner had specifically denied the documents on which reliance had been placed by the Respondents, and he had repeatedly requested for production of original documents, so as to enable him to carry out admission/denial of the documents relied upon. It is evident that the documentary evidence relied upon in the chargesheet, was not admitted by the Petitioner employee. In such a situation, in our considered view, it was imperative for the Respondents management to, at least, examine some witness to exhibit those documents before the inquiry officer, and only when the documents were exhibited through a witness, before the inquiry officer, and sufficient opportunity granted to the charged officer to cross-examine the witness, that reliance could have been placed on the same to hold the Petitioner guilty.”

16. Thus, we are of the view that the finding returned by the Tribunal that the inquiry proceedings were vitiated on account of non-adherence to Rule 14, as well as on account of the same being in breach of the law laid down by the Supreme Court in **Roop Singh Negi** (supra) and **Saroj Kumar Sinha** (supra) is unimpeachable, and we affirm the same.

17. At the same time, we find that the charges against the respondent are rather grave and serious. They relate to gross irregularity and to evasion of very large amounts of duties by the assessee, who was allegedly favoured by the respondent. The charges against the respondents are premised upon documents. The charge sheet itself was issued without any delay, since the

charges relate to the period 2002-03, and the charge sheet was issued in 2005 sometime after the alleged misconduct was discovered.

18. The Tribunal, in the impugned order, is silent on the aspect of reopening of the inquiry proceedings. It has neither held that the inquiry may be re-opened and re-started, nor has it held that no further inquiry be held against the respondent. The findings returned by the Tribunal - that there was no evidence led to prove the charges against the respondent, has to be understood in the context that in the vitiated and irregular inquiry, since the procedure was not followed, there was no evidence led by the department. The said observation cannot mean that, in fact, there may be no evidence to prove the charges against the respondent if duly led.

19. In these circumstances, we are of the view that the respondent would not be handicapped and would suffer no prejudice if the inquiry were to be permitted to be held from the stage that the same got vitiated. If the petitioner wishes to produce any documentary evidence, it should provide the list of witnesses to the respondent, and produce its witnesses to tender and prove the same in the inquiry proceedings.

20. In these circumstances, while upholding the order passed by the Tribunal, we permit the petitioner to re-open the inquiry. The petitioner shall now furnish to the respondent the list of the witnesses that the petitioner wishes to produce, if any, to prove the charges; tender its documentary evidence and prove the same. The petitioner shall lead its evidence in accordance with law before the inquiry officer. The inquiry officer shall conduct the inquiry proceedings in adherence to the discipline

rules and submit his report to the Disciplinary Authority, whereafter the Disciplinary Authority may proceed in accordance with law. Since the case relates to a charge sheet issued in the year 2005, we direct that the inquiry proceedings should be conducted within the next six months. The respondent shall fully cooperate and shall not delay the proceedings.

21. The petition stands disposed of in the aforesaid terms.

(VIPIN SANGHI)
JUDGE

(REKHA PALLI)
JUDGE

FEBRUARY 20, 2018

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