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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 8540/2017 and C.M. APPL. 35127/2017 (stay)**

UNION OF INDIA AND ANR. Petitioners

Through: Mr. Arun Bhardwaj, CGSC with
Mr. Rakesh Mudgal and Mr. Ashish
Rai, Advocates.

versus

MEENU S. KUMAR Respondent
Through: Mr. Rohan Jaitley with Mr. Akshay
Sharma, Advocates.

CORAM:
JUSTICE S. MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
% **10.12.2019**

1. The Union of India through the Ministry of Finance (Department of Revenue) and the Central Board of Excise and Customs ('CBEC'), Petitioner Nos. 1 and 2 respectively, have in the present petition challenged an order dated 14th February, 2017 passed by the Central Administrative Tribunal ('CAT'), Principal Bench allowing O.A. No.4222/2014 filed by the Respondent, quashing the impugned charge memorandum dated 26th July, 2010, the inquiry proceedings pursuant thereto, and the consequential order of the Disciplinary Authority ('DA') imposing the punishment of "reduction to a lower stage in the time scale of pay by two stages for a period of 5 (five) years, with a direction that the Respondent could earn increments of

pay during the period of reduction”.

2. The Respondent is a 1989 batch officer of the Indian Revenue Service. At the time of the filing of the application before the CAT, she was posted as Additional Commissioner, DG (HRD), Customs, Central Excise and Service Tax, New Delhi. A charge-sheet dated 26th July, 2010 was issued to the Respondent with the sole charge which reads as under:

“ARTICLE-I

Smt. Meenu S. Kumar, Additional Commissioner while functioning as Additional Commissioner (P&V), Central Excise, Meerut-II during the period from June’ 2003 to July’ 2007 issued a false Identity Card under her signatures and official stamp showing, a person, in her/her husband's private employment, as an employee of Customs & Central Excise Commissionerate, Meerut-II..

Smt. Meenu S. Kumar, Additional Commissioner has thus failed to maintain absolute Integrity and devotion to duty, acted in a manner which is unbecoming of a Govt. Servant and has contravened the provisions of Rule 3 (1) (I) (ii) & (iii) and 3 (2) (i) & (ii) of CCS (Conduct) Rules, 1964.”

3. By a reply dated 18th August, 2010 the Respondent denied the charges. A regular departmental inquiry ensued. The Inquiry Officer (‘IO’) submitted his report dated 9th January, 2012 holding the charge proved. A copy of the report was furnished to the Respondent on 6th/7th August, 2012, who represented against it on 3rd September, 2012. The DA thereafter by the impugned order dated 26th September,

2014 imposed the aforementioned punishment on the Respondent. She then challenged the orders before the CAT.

4. In the impugned order the CAT came to the following conclusions:

(i) Neither the IO nor the DA had even seen the original identity card before holding the charge against the Respondent as being proved. This was despite repeated requests of the Respondent.

(ii) The request of the Respondent to proceed with the inquiry on the basis of authenticated documents did not absolve the prosecution from marking the original identity card, which was the only document on which the entire charge was dependent. It was not the case of the Petitioners herein that they could not produce the original identity card due to any valid reason.

(iii) Even though the handwriting expert was examined in the inquiry to prove the signature of the Respondent on the disputed identity card, the original identity card was not even shown to the handwriting expert. In other words, it was not shown that he had examined the original card to render his opinion. Therefore, his opinion had no value.

(iv) The circular dated 23rd February, 2011 issued by the Government of India as regards use of Xerox copies in departmental inquiries clearly stated that if the original documents were not in the custody of

a Court/CBI/Investigating Agency, and could still not be located, the DA “should not proceed to conduct the enquiry till all out efforts have made to locate the original documents.”

(v) Referring to the decision of the High Court of Andhra Pradesh in ***Bheri Nageswara Rao v. Mavuri Veerabhadra Rao AIR 2006 AP 314***, the decision dated 8th December, 2015 of this Court in FAO(OS) 660/2015 (***Anil Gupta v. Kewal Sehgal***), and the decision of the Supreme Court in ***Roop Singh Negi v. Punjab Bank and Ors. (2009) 2 SCC 570***, the CAT held that the findings of the IO and DA were based on no evidence, a clear perversity, and in violation of principles of natural justice.

5. The CAT also held that in the Respondent’s case, since there was neither any allegation nor proof that the alleged identity card had been used or misused in any manner by any person, nor that any financial loss or damage to the Government had been caused, no case was made out for the remand of the matter for a fresh inquiry. Reliance was placed on the decision of the Supreme Court in ***Allahabad Bank v. Krishna Narayan Tewari (2017) SCC OnLine SC 2*** in this regard.

6. This Court has heard the submissions of Mr. Arun Bhardwaj, learned counsel appearing for the Petitioners and Mr. Rohan Jaitley, learned counsel appearing for the Respondent.

7. The fact of the matter is that the only charge against the

Respondent was that she had issued a false identity card under her signature and official stamp. However, the original identity card was never produced in the inquiry. No attempt was made by the Petitioners to explain in the inquiry proceedings why they could not produce the original identity card.

8. Now in the present petition, it is sought to be suggested that departmental inquiries may be proceeded with in the absence of original documents on the grounds that “sometimes, the original documents could be deposited in the trial court which may also be released only after the conclusion of the trial proceedings.” It is stated that in the present case the CBI had obtained specimen signatures of the Respondent in the presence of independent witnesses, and her admitted handwritings were obtained from her office, which along with the original identity card were sent to the CFSL. However, no attempt has been made to explain why the said original identity card could not be produced in the inquiry proceedings. What is instead stated is that “if the original documents are tied up in a court of law, the CBI, Investigating Agency which had taken possession of the original documents should be asked to authenticate the documents.” In the present case, it is stated that the CBI had furnished true copies of the documents including the identity card.

9. Even before this Court, the Petitioners are not able to categorically state where the original identity card continues to remain and why it was not produced in the inquiry proceedings.

10. The admitted position is that the handwriting expert, Mr. D. R. Handa of the CFSL, who had deposed in the inquiry proceedings, admitted that the original identity card was not shown to him in order to verify whether it was the same identity card which was shown to him for obtaining his opinion.

11. The Petitioners have no answer for not complying with the circular dated 23rd February, 2011 issued by the Government of India in relation to departmental inquiries held under the CCS (CCA) Rules, 1965. The relevant portion reads thus:

“However, in a number of instances, it has been noticed in the Board that the proceedings in the field formations are being routinely conducted on the basis of the unauthenticated Xerox copies only, either because the original documents are not available or are tied up in a court of law. It is clarified that such a course of action is not permissible. If the original documents are tied up in a court of law, the CBI/Investigating agency which had taken possession of the original documents should be asked to authenticate the documents. Its assistance may also be taken for getting the original documents in custody of the court inspected by the charged officer by making an appropriate application for inspection in the court, if the charged officer so insists. If the original documents are otherwise not in custody of Court/CBI/investigating agency but can still not be located, then the disciplinary authority should not proceed to conduct the inquiry till all out efforts are made to locate the original documents.”

12. In the present case, no such “all out effort” appears to have been

made to locate the original identity card. At no point was the CBI requested to send it for the purposes of the inquiry proceedings.

13. The handwriting expert can only give opinion evidence which can corroborate the main evidence. It cannot be the substantive evidence in itself. In any event, the original identity card was the most crucial piece of evidence, and this was not made available during the inquiry proceedings. As rightly held by the CAT, the finding of the IO that the charge stood proved against the Respondent is based on no evidence and is liable to be set aside.

14. The Court further concurs with the view of the CAT that since it is not the case of the Petitioners that any financial loss has been caused to the Government or the identity card in question was misused, there was no occasion to remand the matter for a fresh inquiry.

15. For the aforementioned reasons, the Court finds no grounds to interfere with the impugned order of the CAT. The writ petition and the pending application are dismissed. The interim order stands vacated.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 10, 2019/tr