



W.P.No.1884 of 2022

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 24.02.2023

DELIVERED ON : 10.03.2023

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.P.No.1884 of 2022

B.Balamurugan,
Assistant Commissioner of GST & Central Excise,
127/D, Ellaimman Koil Street,
Thiruvottiyur, Chennai - 19. ... Petitioner

Vs.

1.The Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
2.The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi. ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records pertaining to the impugned order dated 30.03.2021 of the Hon'ble Central Administrative Tribunal, Madras Bench in M.A.458/2019 in O.A.No.310/01097/2019 and quash the same.



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For Petitioner : Mr.B. Balamurugan,
Party in Person
For Respondents : Mr. V. Sundareswaran
Senior Panel Counsel

ORDER

(R.HEMALATHA, J.)

Challenging the order dated 30.03.2021 of Central Administrative Tribunal, Chennai, in O.A.No.310/01097/2019, the present writ petition is filed.

2.Briefly into the facts of the case :

The petitioner joined the Customs Department as Appraising Officer in 1993 and was promoted to Indian Revenue Service in the year 2003. He was posted as Assistant Commissioner of Central Excise & Customs initially at Salem and later at Mumbai. On 18.06.2009, he was issued with a charge memo prior to which he was placed under suspension in February 2009 itself. There were two charges against him one pertaining to unauthorised absence from duty from 05.01.2007 and



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the second one pertaining to observing hunger strike in his native town for seven days from 3rd February 2009 to 9th February 2009 in support of Sri Lankan Tamils and also for writing a letter to the President of All India Congress Party criticizing the policies of the Congress Government especially regarding the Indo-Sri Lankan Peace Accord. After a detailed process of inquiry in which a reasonable opportunity was given to the petitioner, final orders dated 08.08.2014 was issued inflicting the penalty of pay-reduction by three stages for a period of three years. The petitioner's representation dated 25.06.2015 addressed to the President of India did not yield any response and his subsequent representation dated 16.04.2019 citing certain procedural lapses on the part of the employer also remained unresponded. In the meanwhile, the petitioner had also obtained certain information under Right to Information (RTI) based on which he had approached the Central Administrative Tribunal in OA.1097/2019 in which M.A.458/2019 was filed for condonation of delay. The delay was condoned. However, O.A.No. 1097/2019 was dismissed as devoid of merits. This is the subject-matter in the instant writ petition.



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3. Heard, Mr. Balamurugan, Party-in-Person and Mr.V.Sundareswaran, learned Senior Panel Counsel, appearing for the respondents.

4. Mr.Balamurugan, the petitioner contended that the entire disciplinary proceedings initiated against him was erroneous in the sense that while approval for initiation of disciplinary proceedings against him was obtained from the Union Finance Minister who is the Disciplinary Authority, no such separate approval was obtained for issuance of charge memo. This, according to the petitioner, had vitiated the entire proceedings and therefore the charge memo itself is liable to be quashed. He had also relied on the decision of the Supreme Court in ***Union of India & others vs. B.V.Gopinath*** reported in ***2014 (1) SCC 351***, wherein it was held thus:

"...Ultimately, it appears that the charge memo was not put up for approval by the Finance Minister. Therefore, it would not be possible to accept the submission of



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Minister for initiation of departmental proceedings would also amount to approval of the charge memo."

It was also his contention that the two stages, one of approval for initiation of disciplinary proceedings and the second for approval for framing of charges, are prerequisites for any disciplinary action and the absence of anyone of the two prerequisites makes the entire exercise defective. Furthermore, his contention is that neither his resignation in 2009 nor his application for Voluntary Retirement in 2017 was accepted by the respondents putting him into distress and also that he has been denied promotion for more than 10 years making it appear like 'witch hunting' for his only fault of expressing his sentiments supporting his fellow Tamils in Sri Lanka. It is also his contention that he has been served with another charge memo dated 02.05.2017 for certain deficiencies in the export drawback allegedly causing a loss of Rupees Six lakhs to the exchequer, which again smacks of bias. This charge memo was issued nearly six years after the first stage advice which in



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5. Per contra, Mr.V.Sundareswaran, learned Senior Panel Counsel, appearing for the respondents contended that the petitioner as a Central Government employee had contravened the Conduct Rules which automatically invited the major penalty proceedings. According to him, the petitioner being a Government Servant took part in politics, participated in demonstration, strike and also criticized the Government policies which cannot be taken lightly. He further contended that there was a proper inquiry conducted affording reasonable opportunity for the petitioner to defend himself. The Inquiry authority in the report dated 31.03.2011 had held the allegation which contravened Rule 7 of CCS (Conduct) Rules, 1964 (participation in strike) as not proved which in itself would go to show that there was a fair trial. According to the learned counsel for the respondents the ruling in ***Union of India & others vs. B.V.Gopinath*** (cited supra), relied upon by the petitioner has no relevance in the instant case as both the approval for major penalty proceedings as well as for issuance of charge memo were very much a part of the note put up before the Hon'ble Finance Minister, who had

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approved it. It is also pointed out by the learned counsel for the respondents that such objections raised by the petitioner after a lapse of more than a decade is clearly an after thought, that too when he has already undergone the punishment.

6. After careful scrutiny of all the relevant records presented and relied upon by both the sides, it is abundantly clear that the petitioner did not raise any objection till the enquiry proceedings were over and even after he expressed his desire to opt for Voluntary Retirement in 2017. As could be deciphered from the petitioner's submissions, initially he had applied for resignation in 2009 at a time when the enquiry proceedings were pending and subsequently his application for Voluntary Retirement was made in 2017 when he had received a second charge memo for certain alleged lapses. The Conduct Rules of any Government servant clearly prohibit being a member of any political party or openly expressing support or opposing any Government Policies. It is true that the petitioner showed his empathy towards his fellow Srilankan Tamil crisis, but as a Government servant he ought to have

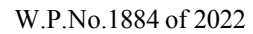


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restrained himself in expressing his personal opinion. He has not denied the misconduct. Therefore, after having accepted the punishment awarded to him and also having undergone the financial implication of the said punishment, the petitioner has come up with another issue challenging the first charge memo issued in 2009 itself. The respondents had clearly substantiated that the Hon'ble Finance Minister as the Competent Authority had approved of the initiation of disciplinary proceedings for major penalty under Rule 14 of CCS(CCA) Rules 1965 in which the draft charge memo was also approved. Therefore, there is no dispute as to whether approvals were obtained for initiation of disciplinary proceedings and issuance of charge memo. In this regard, the relevant portion of the order passed by the Central Administrative Tribunal, Madras Bench, is reproduced below:

9. The extract from file No.C-14011/6/2009-Ad.V., with the note file in this regard has been reproduced by the applicant as well as by the respondents. The note available from pages 12 to 14 specifically mentions about the draft charge memorandum in para-2 wherein the



"Detailed notes at pages 12-14/N refer".

The applicant would contend that since this note does not say anything about the charge-memo, the approval of the Finance Minister, the disciplinary authority dated 14.06.2009 would only relate to initiation of disciplinary proceedings and not the charge memo.

10. It is patent that the draft charge memo is not only discussed in detail in the note pages-12 and 13, but it is



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also specifically referred to in the note at page 14. The Chief Vigilance Officer refers to the detailed notes at pages 12-14 in his note at page 15 and, therefore, we are unable to appreciate the point that the disciplinary authority had not applied his mind with respect to the charge memo issued against the applicant.

7. In such circumstances, the petitioner has erred in making a claim that there was no approval for the issuance of charge memo. The Central Administrative Tribunal, Madras Bench, was right in holding that the petitioner's case had no merits and in the result, the Writ Petition is dismissed. No costs.

(V.M.V.,J.) (R.H.,J.)
10.03.2023

Index: Yes/No
Internet: Yes/No
Speaking/Non-Speaking order
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To,

- 1.The Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

- 2.The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.



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and
R. HEMALATHA, J.
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Pre-delivery Order in
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10.03.2023