IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4980 of 2023

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Suresh Kumar Raman, S/o Chandra Deo Bhagat, Resident of Village- Ekauna Math Road, Chandmari, P.O. and P.S.- Motihari, District- East Champaran, at present Posted as Superintendent Central G.S.T. Motihari, East Champaran.

... ... Petitioner

Versus

1. The Union of India through the Secretary, Department of Revenue, Ministry of Finance, Government of India, 6th Floor, HUDCO Vishala Building, Bhikaji Cama Place, R.K. Puram, New Delhi-66.
2. The Under Secretary (Ad-v), Central Board of Excise and Customs, 6th Floor, HUDCO Vishala Building, Bhikaji Cama Place, R.K. Puram, New Delhi-66.
3. The Chairman, Central Board of Excise and Customs, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi- 110001.
4. The Director, Central Vigilance Commission, Government of India, Satarkta Bhawan, G.P.O. Complex, Block AINA, Delhi- 110023.
5. The Director General (Vig.), Central Board of Excise and Customs, 1st and 2nd Floor, Hotel Samrat, Kautilya Marg Chanakyapuri, New Delhi- 110021.
6. The Chief Commissioner, Central Excise and Service Tax, Ranchi Zone, Patna, C.R. Building (Annex), 1st Floor, Veerchand Patel Path, Patna- 800001.
7. The Commissioner, Central Excise and Service Tax, Patna, C.R. Building (Annex), 1st Floor, Veerchand Patel Path, Patna- 800001.
8. The Joint Commissioner (Vig). Custom Hqrs., C.R. Building (Annex), 1st Floor, Veerchand Patel Path, Patna- 800001.
9. The Assistant Commissioner, Central Excise and Service Tax Division, Laheriasarai.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar No.III, Advocate
For the Respondent/s	:	Dr. Krishna Nandan Singh, Sr. Advocate (ASGI)
		Mr. Anshuman Singh, Sr. SC CSGST & CA
		Mr. Shivaditya Dhari Sinha, AC to ASG

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 26-04-2024

In the instant writ petition, petitioner has assailed the order dated 13.01.2023 passed in O.A./050/00234/2017 by the Central Administrative Tribunal, Patna Bench, Patna (for short 'CAT) whereby and whereunder the aforesaid O.A. has been dismissed.

02. The petitioner while working as Inspector (Sector-1), Central Excise Range, Bettiah during the period from 31.01.2000 to 07.02.2002, was subjected to disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965 (for short 'Rules 1965'). The charge-memo was issued on 20.12.2005. There were four articles of charges. The petitioner had submitted reply denying the charges on 16.01.2006 and it was not accepted by the Disciplinary Authority and the authority proceeded to appoint the Inquiring Officer and Inquiring Officer submitted his report dated 07.01.2008 on 10.01.2008. On 24.01.2012, the Director, Central Vigilance Commission agreeing with the recommendation of CVO, CBEC advised for major penalty against petitioner Sri S. K. Raman, Inspector and dropping of charges against Smt. Asha Srivastava, Inspector. On 06.03.2012, the Commissioner, Central Excise & Service Tax, Patna-Disciplinary Authority issued a show-cause notice as to why the inquiry report should not be rejected and why on the basis of tentative reasons annexed, all the charges should not be

considered as proved and why one of the appropriate penalties as specified under Rule 11 of Rules, 1965 should not be imposed upon petitioner. Petitioner furnished his explanation on 15.03.2012. The Disciplinary Authority on 30.03.2012 proceeded to impose penalty and ordered that the pay of petitioner be reduced by 2(two) stage from Rs. 18730/- to Rs. 17370/- in the time scale of pay of Rs. 9300-34800/- for a period of two years with effect from 01.04.2012. It was further ordered that petitioner would not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction would have the effect of postponing future increments of his pay under Rule 11(v) of Rules, 1965”. Feeling aggrieved by the order of the Disciplinary Authority dated 30.03.2012, the petitioner preferred appeal before the appellate authority. The appellate authority remanded the matter to the Disciplinary Authority on 27/28.12.2012 while making an observation that “the Order No. A-731/KOL/2012 dated 19.09.2012 of Hon’ble CESTAT, EZB, Kolkata has given rise to a situation for consideration whether the CESTAT order will have any bearing on the sustainability of the charges levelled against the appellant in the Charge Memorandum”. Accordingly, the matter was remanded to the Disciplinary Authority for passing order afresh in the light Rule 27(2)(ii) of Rules, 1965. Whereas the Disciplinary Authority proceeded to issue afresh order on 30.10.2013 reiterating earlier penalty passed by the Disciplinary Authority and afresh order was passed. Once again petitioner preferred appeal before the appellate authority assailing afresh order dated 30.10.2013. The appellate authority, on 28.02.2014, modified the Disciplinary Authority's orders dated 30.10.2013 to the extent of imposing penalty of 'CENSURE'. Feeling aggrieved by the 'CENSURE' penalty, petitioner preferred revision application. The Revisional Authority rejected the revision application on 15/16.09.2016. Feeling aggrieved by the rejection of revision application, the petitioner filed OA/050/00234/2017 before the CAT and it was decided on 13.01.2023 whereby the CAT dismissed OA/050/00234/2017. Hence, the present writ petition.

03. Brief allegations are that in respect of examination of Assessee and declaration for the periods from November, 1999 to March, 2000, the petitioner failed to point out certain discrepancies in the declaration submitted by the Assessee, namely, by M/s. Trishul Electro-Casting (Private) Limited, Bettiah and also failed to make any reference regarding wrongly approved declaration, wrongly checked and singed the RT-12

Returns for the months of November, 1999 to March, 2000, submitted by M/s Trishul Electro-Casting (Private) Limited, Bettiah and did not ensure timely issuance of two demands-cum-show cause notices before 31.03.2001 under the provisions of Section 11-A of the Central Excise Act, 1944. Perusal of the list of witnesses show, M/s. Trishul Electro-Casting (Private) Limited, Bettiah, Managing Director or a Director or a person who has been authorized to handle the matter of taxation has not been arrayed as witness in a departmental inquiry initiated by the respondents. List of documents in support of the charges are as under:-

> *"List of Documents by which, the Articles of Charge framed against Shri Suresh Kumar Raman, Inspector, Customs (Preventive) Division, Motihari (the then Inspector (Sector-1), Central Excise Range, Bettiah), are proposed to be sustained.*

Sr. No.	***List of the Documents.***
1.	*Copy of the Notification No. 24/970 C.E. (N.T.) dated the 25.07.1997*
2	*Copy of the erstwhile Rule-96 ZO (I) (II) (inserted vide Notification No. 33/97-C.E. (N.T.) dated the 01.08.1997) of the Central Excise Rules, 1944.*
3.	*Copy of Section-11A of the Central Excise Rules, 1944.*
4.	*Copy of the letter dated 01.06.1999 of the Assessee addressed to the Commissioner, Central Excise, Patna giving intimation*

	regarding start of manufacturing and clearance of ingots and billets of non-alloy steel falling under sub-heading Nos. 7206.90 and 7207.90 of the Schedule of the Central Excise Tariff Act, 1985, w.e.f. 01.06.1999.
5.	*Copy of the letter C. No. V (7206)-3/Dec/42/96/1894 dated the 09.08.1999 of the Assistant Commissioner, Central Excise Division, Laheriasarai enclosing therewith the approved Declaration dated the 01.06.1999 submitted by the said Assessee under the provisions of Rule-173B of the Central Excise Rules, 1944.*
6.	*Copy of the Verification Report dated the 29.10.1999, regarding capacity of Crucibles of the said Assessee, duly signed by S/Shri R.B. Baitha, the then jurisdictional Assistant Commissioner, Sunil Kumar Singh, the then Range Officer, S.K. Raman, the then Inspector and Rajesh Kumar Todi, the Director of the said Assessee.*
7.	*Copy of the letter C. No. II(37)-1/PL/AC/99/72 dated the 29.03.2000 of the Assistant Commissioner, Central Excise Division, Laheriasarai enclosing therewith the order of the Commissioner, Central Excise, Patna issued under C. No. IV (16)-120/T.I/97/608-609/dated the 27.03.2000, regarding determination of the Annual Capacity of Production, in respect of the said Assessee.*
8.	*Copy of the monthly RT-12 Returns, in respect of the said Assessee, for the months of June, 1999 to March, 2000, duly assessed by the then Superintendent, Central Excise Range, Bettiah.*
9.	*Copy of the Demand cum Show Cause Notice dated the 10.09.2002 issued by the Commissioner, Central Excise, Patna under C. No. V (72) (15)-127/Adjn./98/Pt.II/7399-7403 dated the 11.09.2002 against the said Assessee and four Departmental Officers.*

10.	*Copy of the Demand cum Show Cause Notice dated the 11.09.2002 issued by the Commissioner, Central Excise, Patna under C. No. V(72, 73, 84 & 86) (68)/Bettiah/ L'sarai/SCN-Cell/Adj./02/7474, 7476, 7477, 7479, 7481/dated the 13.09.2002 against the said Assessee and four Departmental Officers.*
11.	*Copy of the then Adjudicating Authority's Order-in-Original No. 16-MP/Commissioner/2003/dated the 24.10.2003 issued under C. No. V (72) (15)-102/Adjn./02/8419-25 dated the 13.11.2003.*
12.	*Copy of the Adjudicating Authority's Order-in-Original No. 10/MP/Commissioner/2005/dated the 20.05.2005 issued under C. No. V (72) (15)-1-2/Adjn./02/3611-15 dated the 24.05.2005.*
13.	*Copy of the Order dated the 10.03.2000 of the Superintendent, Central Excise Range, Bettiah issued under C. No. GLI/BTH/2000/216-229 dated the 10.03.2000.*
14.	*Copy of the Charge Report dated the 10.03.2000, regarding handing over of the charge of the Sector-1, Central Excise Range, Bettiah by Smt. Asha Shrivastava, Inspector to Shri Suresh Kumar Raman, Inspector.*
15.	*Copy of the Estt. Order No. 06/2000 dated the 21.01.2000 of the Additional Commissioner (P&V), Central Excise Hqrs., Patna issued under C. No. II(3)-81/ET/99/230-410 dated the 21.01.2000.*
16.	*Copy of the Joining Report dated the 31.01.2000 of Shri Suresh Kumar Raman, Inspector, endorsed to the Assistant Commissioner, Central Excise Division, Laheriasarai under C. No. GLI/BTH/2000/53 dated the 31.01.2000.*
17.	*Any other evidence or evidences."*

04. Learned counsel for the petitioner submitted that

petitioner was entitled to have a copy of the Vigilance Commission's opinion along with show-cause notice read with Inquiring Officer's report in the light of Rule 15(3)(b) of Rules, 1965, but the same has not been made available to him. Resultantly, there is violation of principles of natural justice as well provision of Rules, 1965. Rule 15(3) of Rules, 1965 reads as under:-

> ***"15. Action on the inquiry report.***
> ***(1)****………*
> ***(2)****………*
> ***(3)*** *(a) In every case where it is necessary to consult the Commission, the Disciplinary Authority shall forward or cause to be forwarded to the Commission for its advice:*
> *(i) a copy of the report of the Inquiring Authority together with its own tentative reasons for disagreement, if any, with the findings of Inquiring Authority on any article of charge; and*
> *(ii) comments of Disciplinary Authority on the representation of he Government servant on the Inquiry report and disagreement note, if any and all the case records of the inquiry proceedings.*
> *(b) The Disciplinary Authority shall forward or cause to be forwarded a copy of the advice of the Commission received under Clause (a) to the Government servant, who shall be required to submit, if he so desires, his written representation or submission to the Disciplinary Authority within fifteen days on the advice of the Commission.*
>
> *(emphasis added)*

It has further been submitted by the learned counsel for the petitioner that initiation of inquiry was against petitioner and Smt. Asha Srivastava, Inspector, in such circumstances, there should have been a joint inquiry/common inquiry. Therefore, from the inspection, there is violation of Rule 18 of Rules, 1965. Rule-18 of Rules, 1965 reads as under:-

> ***"18. Common Proceedings***
>
> *(1) Where two or more Government servants are concerned in any case, the President or any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in a common proceeding.*
>
> *NOTE - If the authorities competent to impose the penalty of dismissal on such Government servants are different, an order for taking disciplinary action in a common proceeding may be made by the highest of such authorities with the consent of the others.*
>
> *(2) Subject to the provisions of sub-rule (4) of rule 12, any such order shall specify-*
>
> *(i) the authority which may function as the disciplinary authority for the purpose of such common proceeding;*
>
> *(ii) the penalties specified in rule 11 which such disciplinary authority shall be competent to impose;*
>
> *(iii) whether the procedure laid down in rule 14 and rule 15 or rule 16 shall be followed in the proceeding."*

05. The respondents could not apprise this Court as to

why the Disciplinary Authority failed to invoke common proceeding under Rule 18 of Rules, 1965 insofar as initiating common proceeding against petitioner and Smt. Asha Srivastava. Similarly, they have not apprise this Court insofar as non-compliance of Rule 15(3)(b) of Rules, 1965. Therefore, on these two issues the petitioner has made out a case on legal infirmity.

06. Further, the basic documents furnished on behalf of the M/s. Trishul Electro-Casting (Private) Limited, Bettiah are crucial to the extent of making allegations/charges against the petitioner. Hence, crucial witness should be the representative of M/s. Trishul Electro-Casting (Private) Limited, Bettiah. In the absence of representative from the aforementioned firm, declaration submitted by the Assessee and consequential records cannot be proved in a departmental inquiry. In other words, author of the documents was required to be examined and cross-examined in the departmental inquiry. The Hon'ble Supreme Court, in the case of ***S.C. Girotra Vs. United Commercial Bank (Uco Bank),*** reported in ***1995 Supp. (3) SCC 212,*** in Para-3, has held that author of the documents was required to be examined in a departmental inquiry/domestic inquiry, failing which, entire inquiry proceeding stands vitiated.

Paragraph No.3 of the said decision reads as under:-

> *"3. Admittedly, the disciplinary authority while making the order of dismissal stated as under:*
>
> *The presenting officer has submitted 28 exhibits, most of which are in the form of certificates of Shri Rajinder Paul and B.B. Bhatia, Officer and the then Assistant Manager of the branch, while one document (PEX-26) is in the form of inspection/investigation report of Shri V.P. Jindal and Shri J.R. Sharma. The certificates and inspection-cum-investigation report are most comprehensive documents.*
>
> *Inspection-cum-investigation report has been prepared by two senior officers of the then Division Office, Punjab Division, Chandigarh, after their painstaking efforts of about two months. This has been substantiated by various certificates of the two officers of the branch.*
>
> *All the four officers appeared before the Enquiry Officer" and testified to their authorship of the documents. Their certificates/Inspection-cum-Investigation Report comprehensively cover all the allegations/charges made/leveled in the charge-sheet. They have also been supported by other documents.*
>
> *From the above extract it is clear that the report on which reliance was placed by the disciplinary authority was a comprehensive document in which conclusions were reached against the appellant on the basis of materials including the books and records of the bank as well as some certificates issued by officers of the bank which constituted*

evidence in support of the charges leveled against the appellant. It is also clear that no opportunity was given to the appellant to cross-examine either the makers of that report, Mr. V.P. Jindal and Mr J.R. Sharma or the officers who had granted such certificates which formed evidence to prove the charges which led to the order of dismissal passed by the disciplinary authority, even though those persons were examined for the purpose of proving the documents relating to them. In our opinion, the grievance made by the appellant that refusal of permission to cross-examine these witnesses was denial of reasonable opportunity of defence to the appellant, is justified."

07. In identical matter, the Hon'ble Supreme Court in the case of ***Roop Singh Negi vs. Punjab National Bank*** reported in ***(2009) 2 SCC 570*** at Paragraph no. 14, it is held as under:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the

> *disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.”*

In the aforesaid decision, the Hon’ble Supreme Court has held that it is a mandatory requirement of examination and cross-examination of the crucial witness in a departmental inquiry. But the same has not been taken note of by the CAT, Patna while deciding O.A./050/00234/2017.

08. Be that as it may, Disciplinary Authority having regard to the departmental inquiry records, proceeded to impose penalty of reduction of the pay of petitioner by 2(two) stage from Rs. 18730/- to Rs. 17370/- in the time scale of pay of Rs. 9300-34800/- for a period of two years with effect from 01.04.2012. It was further ordered that petitioner would not earn increments of pay during the period of reduction and that on the expiry of this period, the reduction will have the effect of postponing future increments of his pay under Rule 11(v) of Rules, 1965. Such penalty was modified to “CENSURE”. No doubt it is one of the minor penalties and it would not be a hurdle for the purpose of service condition. However, the

departmental inquiry has commenced on 20.12.2005 and it was concluded in the year 2016 and in the meantime petitioner has been denied promotion due to pendency of departmental inquiry. In other words, for more than one decade, petitioner has been denied benefit of promotion. Penalty of “CENSURE” would be a hurdle for promotion. Petitioner has already undergone mental agony while facing departmental inquiry for about a decade that is sufficient punishment in lieu of imposition of punishment of ‘CENSURE’ after one decade from the date of framing of article of charges. This issue may also assist the petitioner’s case. On these two counts also, the petitioner has made out a case. Hence, the order dated 13.01.2023 passed in O.A./050/00234/2017 by the CAT, Patna stands set aside.

09. Resultantly, original application filed by the petitioner stands allowed while quashing the modified penalty order of Appellate Authority’s dated 28.02.2014 and Revisional Authority’s order dated dated 15/16.09.2016.

10. Accordingly, the present writ petition stands allowed.

11. The competent authority/promoting authority is hereby directed to promote the petitioner from the date which was due to him and extend all monetary and service benefits if

he is otherwise eligible. The above exercise shall be undertaken within a period of four months from the date of receipt/production of a copy of this order.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	20-05-2024
Transmission Date	NA