(2007) 08 P&H CK 0110

In the Punjab And Haryana At Chandigarh

Rajan Chaudhary APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 22-08-2007

Acts Referred:

Citation : (2007) 08 P&H CK 0110

Hon'ble Judges : Ajai Lamba, J;Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This petition has been filed against judgement of the Central Administrative Tribunal (CAT) dated 2.5.2006, Annexure P.20, declining to quash the order of holding enquiry (Annexure P.15 dated 21.2.2005), under Rule 14(5)(a) of the Central Civil Services (CCA) Rules, 1965 (in short, '' The Rules''). Case of the petitioner is that he was a member of Customs and Central Excise Service Group A. On 9.9.2003, a charge sheet dated 26.6.2003, Annexure P.10 was served on him in respect of an incident which took place in the year 1998, alleging wrongful clearance of baggage. The petitioner submitted a reply dated 9.9.2003,Annexure P.11 to the charge sheet. Thereafter, the impugned order dated 21.2.2005, Annexure P.15 appointing an Enquiry Officer was passed, against which the petitioner approached the CAT. The CAT dismissed the application. The CAT rejected the contention that there was no application of mind at the stage of appointment of Enquiry Officer by the appropriate authority. It was observed:

7. ...In order to satisfy ourselves before taking any view in the matter, we had summoned the original record from the department pertaining the disciplinary proceedings against the applicant. After going through the same, we find that on completion of investigation by the CBI, it was recommended to take departmental action against the applicant. The report of CBI was examined by the Director General (Vigilance) in consultation with the CVC which vide his letter dated 12.6.2002, inter-alia, recommended for initiating departmental proceedings for major penalty against the applicant. The applicant being a Group

A officer, approval of the Finance Minister was also obtained before charge sheet was served upon him. Reply given by the applicant to the charge was duly considered by the CVC and it has been observed that applicant has tried to shift responsibility on to others and even has gone to the extent of saying that the DRI who had made the seizure had planted the same. This was said to be unimaginable that such a huge quantity of goods could be planted. Rejecting the contentions raised by the applicant in his reply, the CVC proposed to hold inquiry against him which was also agreed to by the Chairman. In view of this, both the contentions of learned Counsel for the applicant that charge sheet had been served without approval of the competent authority and appointment of inquiry officer was made without due consideration of reply of the applicant by the appropriate authority, fall to the ground....

2. When the writ petition initially came up for hearing, contention of the petitioner was noted down as under:

Learned Counsel for the petitioner relies on the observations made by the Supreme Court in Para 34 of the judgement rendered in State of Punjab Versus V.K.Khanna AIR 2001 SC 343, which are as follows:

...It is well settled in Service Jurisprudence that the concerned authority has to apply its mind upon receipt of reply to the charge sheet or show cause as the case may be, as to whether a further inquiry is called for. In the event upon deliberations and due considerations it is in the affirmative - the inquiry follows but not otherwise and it is this part of Service Jurisprudence on which reliance was placed by Mr. Subramaniam and on that score, strongly criticised the conduct of the respondents here and accused them of being biased. We do find some justification in such a criticism upon consideration of the materials on record.

In addition, the learned Counsel relies on Rules 2 (g), 8, 12 and 14(5) of CCS (CCA) Rules, 1965 in support of the submission that even though the respondents had taken approval of the Minister concerned for issuance of the charge sheet, the reply to the charge sheet had to be examined by the concerned Minister before a decision could be taken to hold the inquiry by appointing an Inquiry Officer.

In view of the above, we are, prima facie of the opinion that the conclusion recorded by the Tribunal in Paragraph 7 of the impugned judgement that reply to the charge sheet given by the petitioner was duly considered by the CVC is sufficient compliance of the rules, is erroneous.

Notice of motion for 6.7.2006.

At this stage, Mr. GKS Taank, Advocate accepts notice of motion on behalf of respondent No. 1, Union of India as he has been duly authorised to accept notice of motion by letter dated 17.4.2006.

Dasti process for respondent Nos. 2 and 3. Notice regarding stay as well. In the meantime, further proceedings before the Inquiry Officer are stayed.

3. Learned Counsel for the petitioner reiterated the submission which has already been noticed above. Learned Counsel for the respondents supported the order of the CAT and also pointed out that after the order of enquiry had been passed against the petitioner, the matter was further clarified vide order dated 19.7.2005 specifically laying down that level of decision making on written statement of defence will be the Chairman, Central Board of Excise and Customs, who had taken such a decision in the case of the petitioner. Relevant averments in para 8 of the written statement filed in this Court are as under:

In the context of observation of Learned CAT, Chandigarh Bench as reproduced above, it is humbly submitted that the charge-memo in the case was approved by the Finance Minister and reply of the petitioner to the charge-memo issued to him was considered by the Chief Vigilance Office and the Chairman of Central Board of Excise & Customs as per procedure followed in the Central Board of Excise & Customs. Even the instructions issued vide G.I.M.H.A. O.M. No. F.39/169-EST. (A) Dated 16th April 1969 AND No. 11012/7/79-EST.(A) DATED 7th SEPTEMBER 1979 AND annexed by the petitioner at Annexure P.16 to the writ petition, the minister has only to give approval at the time of initiation of charge memo and at the time of final order. After studying the existing procedure and to avoid stress on time and resources in the Department, Order F. No. 50/10/2005-Ad.1 dated 19.7.2005 has been issued wherein it has been specifically laid down, inter alia, that Level of Decision Making on Written statement of Defence would be Chairman if denial is accompanied by representation.

4. In view of above, it is clear that charge sheet was duly approved upto the level of the Minister and order of initiating enquiry was approved at the level of the Chairman, Central Board of Excise and Customs, who had been duly given this authority. Under Rule 14 of the Rules, the disciplinary authority, which is the Central Government,is required to draw up the charge sheet and where the charges are disputed, an order of appointment of an Enquiring Authority has to be taken. It cannot be disputed that such a power can be delegated by the disciplinary authority. In fact, the rules specifically provide for delegation. The Hon''ble Supreme Court, inter-alia, in State of Madhya Pradesh and Others Vs. Shardul Singh, and P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, , has upheld such a power. Thus, it cannot be held that order of initiating charge sheet was not by the competent authority. It is also not possible to say that there was no application of mind. Even though, it was submitted that the delegation of power was subsequent, we are of the view that quashing of the order on this ground will be futile as the same authority has admittedly been now conferred power of passing of order, which has earlier passed the impugned order. Judgement in VK Khanna (supra) relied upon on behalf of the petitioner is distinguishable, as in the present case, it cannot be held that there was no application of mind before passing of the order of enquiry.

5. In view of above, we do not find any merit in this petition and the same is dismissed.

