

Missed the Board - fifty years ago

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THIS

week, I bring to you a story that throws some light on the way the Indirect Taxes Department functioned more than fifty years ago. We get glimpses from the following extracts from an affidavit filed (before the Delhi High Court) by one Mr. R. Prasad who was Collector of Central Excise and Customs in Delhi in 1968. The **appellant** in these extracts is Mr. Prasad.

Appellant belongs to the erstwhile Indian Central Excise Service. The Appellant was directly recruited as Superintendent (Gazetted) in 1938. The Appellant was selected to the Indian Police Service and was in the IPS for a period of about 5 years from 1950 to 1954. In 1954 the Appellant came back to his parent Department i.e. the Central Excise. The Appellant was confirmed as a Collector of Central Excise in the grade of Rs. 1600-1800 on 15th August 1957.

In the year 1956, Central Excise Service was formed. In 1959, the merger of the Indian Central Excise Service and the Indian Customs Service took place.

The Appellant was the President of the Central Excise Officers Association while Shri D. P. Anand, was the President of the Indian Customs Service Officers Association. As President of the Customs Service Association Shri D. P. Anand bore a grudge against the senior officers of the Central Excise Service generally and against the Appellant particularly as the Appellant was **the pivotal force** in the Central Excise Service.

In the year 1963, the Central Board of Revenue was bifurcated. Shri B. N. Banerjee became the first Chairman of the Central Board of Excise and Customs and Shri D. P. Anand was the second Member.

In 1962, Chinese aggression took place. The Appellant was embodied to the Army and rendered useful service to the country.

In 1967, Shri B. N. Banerjee, became the Chairman of the Tariff Commission and in his place Shri D. P. Anand was made the Chairman of the Central Board of Excise and Customs. Ever since Shri D. P. Anand assumed charge as Chairman, a reign of victimization was started by the Customs dominated Board against the senior officers of the Central Excise generally and the Appellant particularly. A systematic, calculated and an organized campaign of vilification was launched against the Appellant.

By the promotion of Shri D. P. Anand as Chairman, a vacancy occurred in the Central Board of Excise and Customs. The case of the Appellant (Central Excise) and that of Shri M. G. Abrol (Customs) was considered for selection and appointment as Member, Central Board of Excise and Customs by the Establishment Board of the Government of India and thereafter by the Cabinet Committee on Appointments. The Appellant, along with Shri M. G. Abrol, was selected for appointment as Members, Central Board of Excise and Customs. On the basis of better service record and seniority, the Appellant was placed above Shri M. G. Abrol. The selection of the Appellant for the post of Member, was also approved by the Prime Minister of India in March, 1967.

Shri D. P. Anand, the Chairman of the Central Board of Excise and Customs, did not reconcile himself with the selection of the Appellant to the post of Member and made up his mind to see to it that the Appellant did not take charge of the post of Member and his appointment to the said post was withheld or withdrawn on one excuse or the other. He launched an all-out attack against the Appellant and thereby poisoned the entire atmosphere against the Appellant. The then Finance Secretary and then Dy. Prime Minister (Shri Morarji Desai) who was also Finance Minister at that time were completely turned hostile towards the Appellant by the Customs dominated Board. Thereafter when the Appellant was about to take charge as Member, Central Board of Excise and Customs, certain complaints were manoeuvred against the Appellant solely with the ulterior motive and designs of preventing the Appellant from becoming Member, Central Board of Excise and Customs.

The Appellant was given to understand that the strategy of the Customs dominated Board was somehow or the other to pull the Appellant down and see to it that he did not take charge of the post of Member, Central Board of Excise and Customs by organizing a systematic campaign of vilification. As a result of this campaign the Appellant was ultimately denied the post of Member, Central Board of Excise and Customs while Shri M. C. Abrol was appointed as Member of the Board sometime in November, 1967. The appointment of the Appellant was arbitrarily, malafide and illegally withheld by the Respondent No. 3 and the then Finance Secretary and the then Finance Minister. It is submitted that the Finance Minister was not competent in law to withhold the appointment of the Appellant which had been approved by the Cabinet Committee and the Prime Minister.

In order to justify the withholding of the appointment of the Appellant to the post of Member, Central Board of Excise and Customs, the Respondents No. 1 to 3 started digging out some material against the Appellant. Adjudication orders and various other Administrative orders passed by the Appellant were subjected to close scrutiny. When the Customs dominated Board failed to get anything against the Appellant they came out with a lame excuse that the Appellant had treated one **Jai Kishan Das**,

a gold dealer licensee leniently in his quasi-judicial capacity and had imposed a lesser penalty without giving reasons for the same and on that account 'displeasure of Government of India' was communicated to the Appellant. Before communicating the displeasure, the Appellant was sent for and told by the Chairman personally that this displeasure would not stand against the future prospects and promotion of the Appellant and that the same would not form part of his confidential character roll. It is submitted that the real reason for conveying the displeasure of the Government was not the case of Jai Kishan Das but something else.

On 15th September, 1967, foreign marked gold of the value of more than Rs. 2 crores was seized by the subordinates of the Appellant from an aircraft belonging to the BOAC at the Palam Airport which gold was brought to India in contravention of the Customs Law and the Rules and Regulations then in force. After the seizure of gold, adjudicating proceedings took place and a show cause notice was issued by the Appellant to the BOAC to show cause as to why the gold and the aircraft in which gold was being carried be not confiscated and penalty imposed upon the persons concerned in the offence .

During the course of the adjudication proceedings, the then Finance Secretary, Shri T. P. Singh started pressurising the Appellant to release the gold forthwith by sending personal messages. The Appellant did not pay any heed to the personal messages of the Finance Secretary. The Appellant was called to the Board by Shri T. C. Seth, the then Member, Central Board of Excise and Customs and was apprised of the decision of the Finance Secretary to release the gold. Later on, the Appellant was again sent for and in the presence of Shri Jasjit Singh, Member of Central Board of Excise and Customs required the Appellant to release the gold forthwith. Shri Jasjit Singh, who was the Gold Control Administrator at that time remarked that if the appellant felt any difficulty in releasing the gold, he could obtain for the Appellant a favourable opinion from Law Ministry. The Appellant did not submit to this undue pressure and took up the stand that he would see as to what could judicially be done in the matter.

The then Finance Secretary (Shri T. P. Singh) personally told the Appellant several times to release the gold forthwith without any further delay and pass an adjudication order favourable and complimentary to the BOAC. He went even to dictate the Adjudication Order. The Appellant very humbly submitted that he would consider the matter and pass his adjudication order according to law.

The investigation of this case was entrusted to the then Director of Revenue Intelligence. The then Director, Revenue Intelligence, was also pressurised and made to submit another investigation report. He went personally to the Appellant and asked for the earlier investigation report and handed over to the Appellant the subsequent investigation report. The Appellant handed over the earlier report to the then Director, Revenue Intelligence and kept the new report on the file. After this the Appellant was again called by the then Finance Secretary and told to pass the adjudication order in favour of BOAC releasing the foreign marked gold. The Appellant again refused to submit to this undue and illegal pressure. The then Finance Secretary

at that time observed that the Deputy Prime Minister who was also the then Finance Minister was interested in the matter and that it was in the fitness of affairs that the Appellant should pass an adjudication order in favour of BOAC.

The Appellant sniffing something in the matter came out of the room of the Secretary and sought for the personal advice and guidance of the then Minister of State for Department of Revenue and Expenditure. The then Minister of State for Department of Revenue and Expenditure advised the Appellant to pass the adjudication order according to law and in accordance with the evidence on record. The Minister also apprised the Appellant of the hostile propaganda going on against the Appellant in the higher echelons of the Finance Ministry.

The Appellant was termed as an officer belonging to the Prime Minister's group. The displeasure of the Government was conveyed to the Appellant on 7th February, 1968 when the Appellant refused to submit to the illegal pressure. The adjudication order in the BOAC Gold case was passed by the Appellant on 15th February, 1968. It is submitted that this was the primary reason behind the conveying of the displeasure of the Government and not the case of Jai Kishan Das which was apparently made the ground for conveying the displeasure.

After the release of the gold by the Central Board of Excise and Customs by setting aside the order of adjudication, a discussion took place in the Parliament. During the course of discussion a reference was also made to the changing of the Investigation Report to which no reply was forthcoming on behalf of the Government. Shri Morarji Desai, the then Deputy Prime Minister went to the extent of branding the Appellant as 'Wrong Man'. The Appellant vehemently protested to this and conveyed his injured sentiments and wounded feelings to the then Finance Secretary. The Appellant also brought to the notice of the then Finance Secretary the injustice done to the members of the Central Excise service during the regime of Shri Morarji Desai. A request was also made to him to convey these feelings to the Hon'ble Deputy Prime Minister.

Shri T. P. Singh and Shri D. P. Anand were averse to Central Excise Officers generally, because they were opposing vehemently the unfair and under-hand machinations of the Customs dominated Board. They were particularly against the Appellant, because he was the moving spirit in offering resistance to the injustices committed by the Central Board of Excise and Customs and the Ministry of Finance.

When the turn of the Appellant for being considered for the post of Member, Central Board of Excise and Customs again came, it was pointed out to the then Finance Secretary that it would not be fair to ignore the Appellant. The then Finance Secretary Shri T. P. Singh remarked that he had to consolidate his position with the Deputy Prime Minister (Shri Morarji Desai) and that he wanted officers of his complete confidence in the Board. Since Shri Morarji Desai and the then Finance Secretary, Shri T. P. Singh were hostile towards the Appellant as he had not obliged them in the BOAC gold case, he was completely ignored.

The Finance Minister and the Board have no right, power or authority in law to withhold the name and thereby prevent the Appellant from being considered by the Appointment Committee of the Cabinet. Had the Appointment Committee of the Cabinet considered the name of the Appellants, the Appellant would have been selected and appointed to the post of Member, Central Board of Excise and Customs. The Appointment Committee of the Cabinet consists of not only the Finance Minister but other Cabinet ministers including the Home Minister and the Prime Minister.

What was the Board's response to such damning allegations?

The Chairman of CBEC told the Public Accounts Committee of Parliament that this affidavit came to his notice much after the case was decided. The Chairman submitted:

Since it was possible that a copy of it may have been made available to our counsel, we made an attempt to trace these things from his file; but even there, it was not available. The Litigation Section of the Law Ministry has a file on this Letters Patent appeal. This file also did not contain a copy of the said affidavit. Now, therefore, we deputed our Deputy Secretary to go to the court itself and see the file. He has reported that a copy of Shri Prasad's affidavit was available in the paper book of one of the judges who had heard the Letters Patent appeal.

When the PAC asked the Chairman whether Shri Prasad's allegations before the Hon'ble High Court at Delhi went unrefuted and unchallenged, the Chairman replied,

"They went unrefuted and unchallenged; but this also should go on record that I have stated the sequence of events and that it did not come to our notice at any stage. This affidavit has come to our notice much later and after a lot of research."

And you get it after fifty years!

Until next week