

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 436/2014

Date of Decision:- 23.01.2020

CORAM: DR. BHAGWAN SAHAI, MEMBER(A)
RAVINDER KAUR, MEMBER (J)

Jhamman Singh,
 Indian Inhabitant, aged 64 years
 Assistant Commissioner of Customs (Retired)
 Residing at A-602, Gurudristi CHSL,
 MHADA Layout, S.V.P.Nagar
 Four Bungalows, Andheri (West)
 Mumbai - 400 053

Office last attended :
 Office of the Joint Chief Departmental Representati
 CESTAT, WZB, Jai Centre, P. D'Mello Rd.
 Masjid (E), Mumbai - 400 009.

(By Advocate Shri L. S. Shetty)

... *Applicant*

VERSUS

1. The Union of India
 through the Secretary to
 the Government of India
 Ministry of Finance
 Department of Revenue
 North Block, New Delhi - 110 001
2. The Chairman
 Central Board of Excise and Customs
 Government of India
 Ministry of Finance
 Dept. of Revenue, North Block
 New Delhi - 110 001
3. Shri B. K. Mahanta
 Under Secretary to Government of India
 Ministry of Finance, Department of Revenue
 having his Office at 6th Floor, Hudco Vishala
 Bikaji Chama Place, New Delhi 110 066.
4. The Commissioner of Customs (General),
 New Custom House, Ballard Estate
 Mumbai - 400 001

(By Advocate Shri R. R. Shetty)

... *Respondents*

Reserved on: 05.04.2019

Pronounced on: 23.01.2020

ORDERPER: RAVINDER KAUR, MEMBER (J)

This application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:

- “(i) That this Hon'ble Tribunal by exercising its powers under the provisions of the Administrative Tribunals Act, 1985 will be pleased to call for the papers and proceedings of the Enquiry held against the Applicant and underlying the impugned Order dated 26.04.2013 (Annexure "A-1" hereto) and after examining the legality,, validity, regularity and propriety thereof be pleased to declare the same to be null and void, bad in law, illegal and in operational in law and will further be pleased to quash and set aside the same;
- (ii) that the cost of this Application be directed to be paid to the Applicant.
- (iii) for such further Orders/directions and/or reliefs as in the facts and circumstances of the case this Hon'ble tribunal deems fit and proper be granted.”

2. The applicant retired from Govt service in the Customs department on 30.06.2010 on superannuation while working as Departmental Representative in the Customs, Central Excise and Service Appellate Tribunal, Western Zonal Branch at Mumbai. He joined the post of Asst. Commissioner appraising Group V - A, New Customs House, Mumbai on or about 16.04.2004 and continued in the said position till 31.07.2005.

While performing his official duty, he was required to handle the case of cancellation of bond and bank guarantee in respect of three bills of entry of importer M/s Expotec International Ltd, New Delhi. Relying upon the

office note put up before him by the concerned appraiser, he cancelled the bank guarantees given by the aforesaid importer in respect of three bills of entry 850, 851 and 852 on 21.05.2004.

On 04.07.2005, the applicant on receipt of intelligence information through a source, made informal inquiries regarding the importer having committed a fraud in the matter leading to evasion of payment of duty due to Government. He submitted appropriate report to the superior authorities to initiate action against the importer so as to safeguard the interest of the department. Consequently, show-cause notice in terms of Section 111(o) read with Section 112 of the Customs Act, 1962 was issued to the importer on or about 16.09.2005.

3. It is stated that such prompt action on the part of the applicant establishes that his alleged lapse was quite bonafide and unintentional. On account of his timely action, the Commissioner Customs(import), following the procedure laid down granted opportunity of hearing to the importer and vide order dated 29.03.2006 confirmed the demand. Against said

order, the appeal of the importer is pending before CESTAT(WZB) at Mumbai.

4. The applicant was served with memorandum dated 20th/24th August 2007 under Rule 14 CCA(CCS) Rules, 1965(hereinafter referred as Rules 1965) proposing to hold an enquiry against him in respect of the misconduct/misbehaviour in above referred proceedings(purportedly signed by the Under Secretary to the Government of India, Department of Revenue, Central Board of Excise and Customs, New Delhi, in the name of Hon'ble President of India) as per Annex A-1 containing the statement of Articles of Charge, which are reproduced below:

"Article of Charge - I: That he erroneously cancelled three bank guarantees concerning Bills of Entry Viz. 1) S/9-RE-105/2003 Gr. V-A, 2) S/9-RE-106/2003 Gr. V-A and 3) S/9-RE-128/2003 Gr. V-A, without proper scrutiny and verification of documents put up to him and without ensuring compliance of the norms prescribed by the Notification No. 27/2002 dated 01.03.2002.

Article of Charge - II: That he failed to notice that the extension of time for re-export in respect of three Shipping Bills viz . (1) 1000000467, (2) 1000000470 and (3) 1000000468 all dated 13.02.2004, was given by an un-authorized officer and that differential duty had also not been realized from the importer, as prescribed by the Notification No. 27/2002 dated 01.03.2002.

Article of Charge - III: That he failed to conduct and maintain proper supervision on the functions of Group V-A and also failed to take all possible steps to ensure the integrity and devotion of duty of the government servants for the time being under his control and authority, while he was posted as Assistant Commissioner of Customs, Group V-A, New Custom House, Mumbai. "

Along with the said memorandum, he was also supplied Annex I - Statement of Articles of charge framed against the applicant, Annex II -

Statement of imputation of misconduct or misbehavior in support of Articles of Charge framed against the applicant, Annex III - List of documents by which Articles of charge framed against the applicant are proposed to be sustained and Annex IV - The list of witnesses by whom the Articles of Charge framed against the Applicant are proposed to be sustained.

5. Besides, he was also supplied with the copy of Office Memorandum signed by Director from the office of the Central Vigilance Commission, New Delhi, received in the Department of Revenue, M/o Finance on or about 26th December 2006 tendering advice for initiating major penalty proceedings against the applicant. All these documents are Annex A-2 to A-7 respectively.

6. The applicant denied all the charges leveled against him vide letter dated 10.09.2007 (Annex A-8) and also made request to be heard in person as well for ventilating his grievance of non-furnishing of copies of documents listed in Annex A-3 above. Later on, vide letter dated 16.10.2007 (Annex A-7), he received the duly certified copies of relied

upon documents.

7. The Inquiry Officer and Presenting Officer in terms of Rule 14(2) and 14(5)(c) of the Rules, 1965 were appointed. The Inquiry was conducted. The copy of the Inquiry Report dated 17.09.2008 along with copy of CVC's 2nd advice tendered vide memorandum dated July, 2009 were served upon the applicant, seeking his comments thereon within 15 days. Since page no. 6 of the Inquiry Report was missing, on the request of the applicant, he was furnished the complete copy of the Inquiry Report vide letter dated 19.10.2009. He was required to furnish his comments thereon within 15 days, however, he submitted his written representation/comments vide letter dated 01.02.2010.

8. Vide letter dated 13.02.2013, the advice of UPSC commission dated 02.01.2013(Annex A-17) was served upon the applicant. He made his representation dated 09.03.2013(Annex A-18) in this regard.

9. Vide impugned order dated 26.04.2013, the Disciplinary Authority concluded that the applicant had erroneously cancelled three bank guarantees referred to above without proper

scrutiny and verification of documents put up to him and without ensuring compliance of the norms prescribed by the notification no. 27/2002 dated 01.03.2007. He also failed to notice that in respect of three Shipping Bills viz. (1) 1000000467, (2) 1000000470 and (3) 1000000468 all dated 13.02.2004, differential duty had not been realized from the importer as prescribed by the Notification No. 27/2002 dated 01.03.2002.

In the opinion of the Disciplinary Authority, the proved charges against the applicant constitute grave misconduct warranting action under Rule 9 of the CCS(Pension) Rules, 1972. On the basis of facts and circumstances of the case, nature of the gravity of the charge proved against the applicant and relying upon the advice of the commission, the DA imposed penalty of "withholding of 10% of monthly pension otherwise admissible to him for a period of three years."

10. It is stated by the applicant that the entire disciplinary proceedings initiated by, issuance of charge memo dated 20/24th August 2007 under Rules 1965 and the impugned orders dated 26.04.2013 are illegal, unlawful, without powers

and jurisdiction and against the principles of natural justice on the following grounds:

- (i) In terms of Rule 14(2) of the CCS(CCA) Rules, it is mandatory requirement that the Disciplinary Authority form an opinion that there are grounds for initiating the proceedings. The applicant being a group 'A' officer having been appointed by the Hon'ble President of India to the said post, he becomes the Disciplinary Authority in his case. Under the Rules of Business of Government of India, it is the M/o Finance, Government of India being the disciplinary authority who has to form the opinion and record the same in the files.

Whereas in the present case, the initiation of Inquiry vide Memo No. 19/2007 dated 20/24th August, 2007 Annex A-2 was done under the influence and in pursuance to the advice given by the CVC vide Office Memo received by the Ministry on 26.12.2006. The Disciplinary Authority has not formed an independent opinion for initiation of the Disciplinary Proceedings. Consequently, the entire Disciplinary proceedings culminating

into the impugned order dated 26.04.2013 (Annex A-1) are illegal and non-est in law.

(ii) The applicant has relied upon the judgment of Hon'ble Apex Court in the case **Union of India & Others Vs. B.V. Gopinath** (2014) 1 SCC 351, to the effect that in the case of the applicant the Chargesheet/Chargememo dated 20/24.8.2007 issued to him was without being approved by the Finance Minister and therefore, it cannot be acted upon having not been approved by the Disciplinary Authority.

(iii) As per Para 8 on page 21 of File No. C-14011/10/2007 Ad-V the proposal for initiation of Disciplinary proceedings for imposition of minor penalty was put up. The matter was put up to the CVC for advice. The CVC advised issuance of charge memo for major penalty proceedings as mentioned in para 5 of the noting on page 26 of file no. C-14011/10/2007 Ad-V. It is stated that the chargesheet has been issued at the instance and under the influence of CVC and not as per the independent opinion of the

Disciplinary Authority as required by Rule 14.

11. As per para 11 on page 21 of the aforesaid file of M/o Finance, the approval/sanction of the Hon'ble FM was solicited for initiation of departmental proceedings under Rule 14 of Rules, 1965 and under Rule 9 of CCA(Pension) Rules, 1970 against the applicant and three other Group 'A' Officers. The draft charge memorandum and draft sanction order were also put up before the FM for his approval. The sanction/approval of the FM for initiation of the disciplinary proceedings was being sought along with the approval of the draft charge memorandum in one go and in one process. It is stated that it is settled proposition of law that at the first stage, the decision is to be taken by the competent authority only with regard to the initiation of the proceedings and if such approval is accorded by the competent authority, thereafter, the draft charge memorandum has to be put up before competent authority for its approval. In the present case, both the approvals were granted by the Hon'ble FM in one

go i.e. simultaneously and therefore in view of the law laid down by the Hon'ble Apex Court in the case of **B V Gopinath**(supra), the impugned order is liable to be set aside. To this effect the applicant has also relied upon the following judgments:

1. **S Rajguru vs Union of India & Ors** in OA No. 2815/2012
2. **Shri V. B. Mohanti vs Union of India** in OA No. 1208/2013
3. **Gammon India Pvt Ltd vs Commissioner of Customs, Mumbai**(2011) 12 SCC 499.

12. It is further stated by the applicant that as per the report of the Inquiry Officer, Article of Charge - I is proved, Article of Charge - II is partly proved and Article of Charge - III is not proved. As such, the alleged misconduct viz: exhibiting lack of devotion to duty has been held as established and the alleged misconduct of failure to maintain absolute integrity and acting in manner of unbecoming of a Government Servant are not proved. It is stated that alleged misconduct viz: exhibiting lack of devotion to duty is not

sustainable in law as there is no evidence on record to this effect. Therefore, penalty of withholding 10% of monthly pension for a period of three years is liable to be quashed and set aside.

The applicant further claims that Article of Charge - II and Article of charge - III stem from Article of Charge - I, which only speaks that the applicant erroneously cancelled three bank guarantees without proper scrutiny of documents put up to him and without ensuring proper compliance of the norms prescribed vide Notification No. 27/2002 dated 01.03.2002. In none of the Articles, there is any whisper that the alleged action of the applicant was not bonafide but with the intention to favour the party and to obtain personal monetary gain. To this effect, he has relied upon the judgment of Hon'ble Apex Court in the case of **Union of India & Ors. vs. K K Dhawan** 1993 SCC 1478

13. Further that the Customs Act, 1962 provides remedies for errors, administrative or otherwise by the superior authorities. In the present case, Commissioner of Customs(imports)

vide his order dated 29.03.2006 raised and confirmed the demand in respect of the amount of duty not paid by the importer and therefore, the lapse and/or error by the applicant which was unintentional and not deliberate, stood corrected. The applicant immediately on noticing that there was something fishy in the matter made inquiry and approached the higher authorities for initiating appropriate proceedings for recovery of the alleged loss for revenue.

14. It is further stated that the charge of failure to maintain absolute integrity and acting in a manner unbecoming of a govt servant is not proved as concluded by the IO, The applicant is, thus, not guilty of charge of lack of devotion to the duty and has not committed any misconduct.

15. The finding of Inquiry Officer holding the applicant guilty of Article of Charge - I is absolutely perverse, arbitrary and unjustified. Further, even otherwise the fact that Article of Charge - I is held as proved cannot be treated as misconduct.

16. The respondents have filed detailed

affidavit in reply whereby relying upon the judgment of Hon'ble Apex Court in the case of State of Tamil Nadu vs S. Subramaniam AIR 1996 SC 1232 stating that this Tribunal is devoid of power to re-appreciate evidence and come to its own conclusion. The Tribunal has no power to trench on the jurisdiction of the competent authority to appreciate the evidence and to arrive at its own conclusion. Judicial Review is not an appeal against a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent received fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the Court or the Tribunal. The only consideration, the Court/Tribunal has in its Judicial Review is to consider whether the conclusion is based on evidence on record and supports the finding.

17. The respondents have further contended that Customs Notification No. 27/2002 dated 01.03.2002 allows duty exemption on temporary import of leased machinery, equipment and tools provided the goods are re-exported within six months of the date of import or within such

extended period not exceeding one year from the date of import as the Asst/Deputy Commissioner of Customs may allow. Where the Asst./Dy. Commissioner grants extension of the period of re-export, the importer shall pay the difference between the duties payable under clause (ii) in column (3) of the notification and duty already paid at the time of import. M/s. Expotec International Ltd., Noida imported consignments of pipeline project claiming concessional rate of customs duty @ 15% of the aggregate customs duty under the Customs Notification 27/2002 dated 01.03.02.

In terms of the condition of the said notification, the goods were to be re-exported within 6 months of date of import and in case of failure to re-export the goods within 6 months, the importer was required to pay duty @ 30% of aggregate customs duty. To ensure payment of differential duty @ 15% in case importer fails to re-export within 6 months, the importer had executed bonds and the bank guarantee in terms of the said notification. M/s Expotec International Ltd. had reexported the above mentioned imported goods from time to time. But

of the 5 shipping bills, it was noted that re-export of goods covered under 3 Shipping Bills was made after six months from the date of import.

It has been alleged that the requisite permission for extension of time period beyond 6 months for re-export under the Notification was granted by the Asst. Commissioner, Group VII Exports. As already explained herein above, the importer was required to pay differential duty amounting to 15% of the aggregate customs duty in terms of the said notification as the re-export of some of the goods in question took place after expiry of six months.

In the instant case, the importer did not pay the differential duty and made a request vide letter dated 21.05.2004 for cancellation of bonds and bank guarantees executed at the time of import of goods. The applicant in the OA under reply who was then working as Asst. Commissioner cancelled the bonds and bank guarantees without ensuring payment of differential amounts of duty. The case was adjudicated vide Order-in-Original No. 69/2006/CAC/CC(I)1KP dated 29.03.2006, passed by

the Commissioner of Customs(import), Mumbai - I confirming the demand of Rs. 46,51,735/- against the M/s Expotec International Ltd. in terms of customs Notification No. 27/2002 and by imposing fine of Rs. 60 lakhs and penalty of Rs. 40 lakhs on M/s Expotec International Ltd. and Rs. 20 lakhs on the shipping company, M/s Link Shipping and Management Systems Pvt. Ltd. The party had filed an appeal against the above Adjudication Order before the Hon'ble CESTAT, Mumbai, which was reported to be pending in October, 2012.

18. The Inquiry Proceedings were conducted and vide its report dated 17.09.2008, the Inquiry Officer gave finding that Article of Charge - I was proved. Article of Charge - II was partly proved and Article of Charge - III was not proved. The Inquiry Officer held the charge against the applicant as proved on the ground that he should have verified all the documents before cancelling the bonds and the bank guarantee. The Respondents admit that the Inquiry Officer, however, did not find any evidence of ill motive on the part of the applicant.

After examining the report of the

Inquiry Officer, the respondents referred the matter to CVC for their 2nd Stage Advice. Vide it's report dated 31.07.2009, the Commission held that the case appeared to be a fit case for imposition of major penalty of reduction to a lower stage in the time scale of pay for two years against the applicant.

19. The applicant was provided with the copy of Inquiry Report and 2nd Stage Advice of CVC. He made his representation dated 06.10.2009 which was found devoid of any merits by the respondents. Applicant filed another representation on 01.02.2010 followed by reminders. However, the said representation could not be considered due to the retirement of applicant in the near future i.e. 30.06.2010.

20. Reference to the UPSC for its advice was made on 06.12.2011 but the proposal was received vide communication dated 11.01.2010 as the disciplinary authority had not given para wise comments on the applicant's representation dated 01.02.2010 on the Inquiry Report. The case record was again sent to the Commission along with comments on the representation of the applicant. Vide communication dated 02.03.2013,

the Commission conveyed its advice recommending imposition of penalty of withholding 10% of monthly pension otherwise admissible to him for a period of three years as against two years tentatively decided by the Disciplinary Authority by making reference to UPSC. The applicant was furnished a copy of advice of UPSC and after considering his response to the same, the impugned order of penalty was issued.

21. The respondents have stated that the inquiry proceedings were conducted in accordance with Rules/prescribed procedure and the applicant was given adequate opportunity to defend himself. There is neither any procedural flaw nor violation of the statutory Rules. The punishment imposed is commensurate to the gravity of the misconduct proved.

22. It is further stated that the charges against the applicant had their roots in negligence on his part resulting in huge revenue loss to the Government. On retirement of the applicant on 30.06.2010, the proceedings continued under Rule 9 of the CCS(Pension) Rules.

23. It is stated that the term 'grave' in

respect of misconduct or negligence with reference to the conduct of retired charged officers as a per-condition for continuing the proceedings against them is a relative term and has to be seen in the context of the consequences of such misconduct and negligence. In the present case, substantial loss was caused to the exchequer attributable to the applicant's negligence and therefore, it cannot be ignored as a case of inconsequential negligence.

24. The respondents have denied that the departmental proceedings were initiated against the applicant at the instance and under the influence of CVC, which is an advisory body and it's opinion is not binding in any manner to the Disciplinary Authority, the statutory authority under the provisions of the Rules, 1965. The charge memo was issued by the Disciplinary Authority after taking into consideration all the procedural aspects including seeking advice of the CVC. They have contended that the OA is devoid of any merits and is hence liable to be dismissed.

25. The applicant has filed rejoinder to the reply Affidavit of the respondents stating that

this Tribunal in exercise of its powers of judicial review is entitled in law to examine the matter to find out:

- i. whether the initiation of the proceedings is as prescribed by the Rules and law;
- ii. whether such initiation is by the competent Disciplinary Authority;
- iii. whether the concerned employee is given adequate and reasonable opportunity to defend himself in the matter;
- iv. whether the proceedings have been conducted with due observance of the procedure laid down and also in strict compliance with the Principles of Natural Justice; and
- v. whether the conclusion reached is supported by some evidence or not and whether such conclusion is perverse or arbitrary.

26. The contents of the reply have been denied and all the contentions in OA have been reasserted.

27. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions of the parties in the case.

28. One contention of the applicant is that approval for initiation of disciplinary proceedings and chargesheet simultaneously by the Disciplinary Authority is bad in law. The second contention is that the major penalty proceedings were initiated against him under the influence of CVC and not by forming an independent view by the Disciplinary Authority. However, the respondents contended that the CVC is only an advisory body and its opinion is not binding on the Disciplinary Authority in any manner. In the present case, the Disciplinary Authority had ordered initiation of the Departmental proceedings for major penalty after taking into consideration all the procedural aspects.

The third contention raised by the applicant is that as per Article of Charge I itself, he had erroneously cancelled three bank guarantees without proper scrutiny and verification of documents put up to him and without ensuring compliance of the norms prescribed by the Notification No. 27/2002 dated 01.03.2002. There is no allegation that the action of the applicant was malafide with

intention to favour the importer and to obtain personal monetary gain. In these circumstances, therefore, even though the Article of Charge - I as per the Inquiry Report stood proved against the applicant, the said Acts of omission and commission on his part cannot be considered and construed to be misconduct. As per the Customs Act, 1962, administrative errors committed by the subordinates can be rectified by the superior authority as happened in the present case. Learned counsel has drawn our attention to the fact that the Commissioner, Customs(import) vide his order dated 29.03.2006 had raised and confirmed the demand in respect of the amount of duty which had not been paid by the importer. Thus, the lapse or error on the part of the applicant was not intentional and it stood corrected by the superior authority and finding of the Inquiry Officer holding the applicant guilty of Article of Charge - I is not justified in law.

The fourth argument of the applicant is that on the Inquiry Officer's report, the applicant had submitted his representation but it does not find mention in the UPSC Advice

tendered vide letter dated 02.01.2013. Since the contentions raised by him in the representation were not considered, the UPSC Advice cannot be accepted.

The fifth contention is that as per Rule 9 of CCS(Pension) Rules, 1972, the penalty specified therein can only be imposed when it is established that the concerned employee has committed not only misconduct but grave misconduct.

29. On the other hand, learned counsel for the respondents has submitted that there is no infirmity in the action of the Disciplinary Authority approving initiation of disciplinary proceedings and the chargesheet in one go. Further, that the issue involved in the present case was not the subject matter before the Apex Court in the case of **B V Gopinath**(supra) as in that case the Disciplinary Authority had only granted approval only for initiation of the disciplinary proceedings and there was no approval to the chargesheet. Consequently, the Hon'ble Apex Court was of the view that the chargesheet issued to the charged officer therein was without jurisdiction. Learned

counsel for the respondents has relied upon the judgment of Hon'ble Delhi High Court in the case of **Suresh Sharma Vs. NTRO Through Its Chairman & Ors.**, W.P.(C) 3937/201, which discussed the judgment of Hon'ble Apex Court in the case of **Gopinath**(supra). In that case, there was only approval of the chargesheet without prior approval for initiation of the Disciplinary Proceedings. In para 20 of its judgment the Hon'ble High Court observed that approval of chargesheet implies implied approval for initiation of Disciplinary proceedings. It is further submitted that Rule 14 CCS(CCA) Rules does not lay down that both the above noted steps are to be approved by the Disciplinary Authority separately.

30. The learned counsel for the respondent has further argued that in the present case, the charges against the applicant clearly proved grave negligence on his part due to which the respondents suffered huge revenue loss of Rs. 46,51,735/-, the details of which find mention in the chargememo. The representation of the applicant was duly considered before passing of the final order. Since the applicant had retired

on 30.06.2010, the departmental proceedings against him continued under Rule 9 of the CCS(Pension) Rules. As per Rule 9, since the applicant was found guilty of grave negligence in the departmental proceedings, the penalty of withholding of 10% of monthly pension otherwise admissible to the applicant for a period of 3 years is lawful and justified.

The Inquiry Officer has categorically observed in his report that Article of Charge - I, i.e. The applicant erroneously cancelled 3 bank guarantees containing bills of entry no. 850, 851 and 852 without proper scrutiny and verification of documents put up to him and without ensuring compliance of the norms prescribed by the notification no. 27/2002 dated 01.03.2002. Though there is no allegation of any misconduct on the applicant, however, the erroneous cancellation of the three bank guarantees referred to above shows his grave negligence. Consequently, there is no infirmity in the order of the Disciplinary Authority dated 26.04.2013 awarding him the punishment referred above.

31. The first question to be decided in the

present OA is whether the order of the Disciplinary Authority granting approval/sanction for the initiation of the Disciplinary proceedings and the approval of the chargememo/chargesheet i.e. the substance of imputation of misconduct or misbehaviour as definite and distinct articles of charge, statement of imputation of misconduct or misbehaviour in support of each Article of charge, in terms of Rule 14(3) of the Rules simultaneously vide one order would be sufficient compliance of the Rules.

32. At this stage, it would be appropriate to extract Rule 14(1)(2)(3)(4)&(5) of the Rules which reads as follows:

"14. Procedure for imposing major penalties

(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided in this rule and rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

[Provided that where there is a complaint of sexual harassment within the meaning of rule 3 C of the Central Civil Services (Conduct) Rules, 1964, the Complaints Committee established in each Ministry or Department or Office for inquiring

into such complaints, shall be deemed to be the inquiring authority appointed by the disciplinary authority for the purpose of these rules and the Complaints Committee shall hold, if separate procedure has not been prescribed for the Complaints Committee for holding the inquiry into the complaints of sexual harassment, the inquiry as far as practicable in accordance with the procedure laid down in these rules. Central Civil Services (Classification, Control and Appeal) Rules, 1965 13 Explanation.— (i) Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority. (ii) Where the disciplinary authority appoints a retired Government servant as inquiring authority, any reference in sub-rule (7) to subrule (20) and in sub-rule (22) shall include such authority. (3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up- (i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge; (ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain- (a) a statement of all relevant facts including any admission or confession made by the Government servant; (b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained. (4) (a) The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article or charges is proposed to be sustained. (b) On receipt of the articles of charge, the Government servant shall be required to submit his written statement of defence, if he so desires, and also state whether he desires to be heard in person, within a period of fifteen days, which may be further extended for a period not exceeding fifteen days at a time for reasons to be recorded in writing by the Disciplinary Authority or any other Authority authorized by the Disciplinary Authority on his behalf: Provided that under no circumstances, the extension of time for filing written statement of defence shall exceed forty-five days from the date of receipt of articles of charge. 5 (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not Central Civil Services (Classification, Control and Appeal) Rules, 1965 14 admitted, or, if it

considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in rule 15. (b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge, or may, if it considers it necessary to do so, appoint, under subrule (2), an inquiring authority for the purpose. (c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge. Explanation- For the purposes of this rule, the expression 'Government servant' includes a person who has ceased to be in Government service."

33. The applicant contends that the Disciplinary Authority is first required to grant approval on the file for the initiation of the Disciplinary proceedings in terms of Rule 14(2) to inquire into the truth of any imputation of misconduct or misbehaviour against the Government servant. Once such approval is granted by the Disciplinary Authority, thereafter, in terms of Rule 14(3), the Disciplinary Authority shall draw up or cause to be drawn up by him the chargememo/chargesheet. It is submitted that the approval of the chargememo/chargesheet is a stage subsequent to the grant of approval to initiate the

Disciplinary Proceedings. Both the stages are independent of each other, whereas the Disciplinary Authority approved the initiation of the Departmental proceedings as well as the Chargememo/Chargesheet vide his single act of approval which is against the spirit of the Rules. He has relied upon the judgment of Hon'ble Apex Court in the case of B. V. Gopinath(supra) and has read the following relevant paragraphs during the course of his arguments:

"43. Clause (8) of the Circular makes it abundantly clear that it relates to approval for issuing charge memo/sanction of prosecution. A plain reading of the aforesaid clause shows that it relates to a decision to be taken by the disciplinary authority as to whether the departmental proceedings are to be initiated or prosecution is to be sanctioned or both are to commence simultaneously. The competent authority for approval of the charge memo is clearly the Finance Minister. There is no second authority specified in the order. We do not agree with Ms. Indira Jaising, learned Additional Solicitor General that the use of the word "approval of" is not an expression distinct from "approval for" initiating major penalty proceedings.

44. Under Clause (9), the department firstly puts up the file before the Finance Minister seeking "approval for issuing charge memo/sanction of prosecution." The department is seeking an order as to whether the officer is to be proceeded against departmentally or criminal proceedings are to be initiated or both proceedings are to be commenced simultaneously. When the decision is taken by the Finance Minister that the departmental proceedings are to be held (initiation), only then the question of approval of charge memo arises. The department would thereafter complete the necessary formalities and then place the file before the Finance Minister, for "approval of" charge memo. This provision is in harmony with the mandate contained under Articles 311(1) and (2) that no civil servant shall be dismissed or removed by an authority subordinating to that by which he was appointed. The second limb of the same direction is that punishment on a public servant of dismissal, removal or reduction in rank can only be imposed when the charges have been proved against him in a departmental enquiry held in accordance with the rules of natural justice.

50. In our opinion, the Central Administrative Tribunal as well as the High Court has correctly interpreted the provisions of the Office Order No. 205 of 2005. Factually also, a perusal of the record would show that the file was put up to the Finance Minister by the Director General of Income Tax (Vigilance) seeking the approval of the Finance Minister for sanctioning prosecution against one officer and for initiation of major penalty proceeding under Rule 3(1)(i) and (3) (1) (iii) of the Central Civil Services (Conduct) Rules against the officers mentioned in the note

which included the appellant herein. 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 Ms. Indira Jaising that the approval granted by the Finance Minister for initiation of departmental proceedings would also amount to approval of the charge memo."

34. It is observed that in the case of B V Gopinath(supra), the file was put up to the Finance Minister by the Director General of Income Tax(Vigilance) for initiation of major penalty proceedings under Rule 3(1)(a) and 3(1)(c) of the Central Civil Services(Conduct) Rules against the Officers mentioned in the note. The Chargememo was not put up for approval of the Finance Minister. Therefore, the Hon'ble Apex Court came to the conclusion that the chargesheet/chargememo having not been approved by the Disciplinary Authority was non-est in the eye of the law. Though, we respectfully agree with the aforesaid judgment of the Hon'ble Apex Court, however, the facts before us are distinguishable as in the present case. It is admitted by the applicant also that the proposal for approval/sanction of the initiation of the Disciplinary proceedings and the draft chargememo/chargesheet were put up before the Disciplinary Authority simultaneously for approval. The FM being the Disciplinary

Authority simultaneously approved the initiation of the Disciplinary proceedings and the draft chargesheet.

35. The respondents have produced the office record File NO. C-14011/10/2007 Ad-V for the perusal of the Tribunal whereby proposal for initiation of the Departmental proceedings under Rule 14 of CCS(CCA) Rules 1965 and under Rule 9 of CCA(Pension) Rules, 1972 against the applicant and few other officers was put up for approval before the Disciplinary Authority i.e. the Finance Minister in the present case. Along with that, the Draft Charge Memorandum and draft sanction were also placed for his approval. Para 11 of the aforesaid record is reproduced as under:

"S/Shri H.R. Vaity, Asstt. Commissioner, Jhamman Singh, Asstt. Commissioner and S.P. Gawade, the then Appraising Officer(now Asstt. Commissioner) and R.K. Tuplondhe, Asstt. Commissioner (since retd.) are the Group "A" Officers and the President of India is the disciplinary authority in their case. Approval /sanction of Hon'ble FM is solicited for initiation of departmental proceedings under Rule 14 of CCS (CCA) Rules, 1965 and under Rule 9 of CCA (pension) Rules 1972 ibid against the said officers and for other ancillary action against them. Draft chagememoranda and draft sanction order are also placed below for kind approval please. With regard to other co- accused i.e. Shri M.L. Kaushal, Appraising Officer, Shri Arvind Kumar Singh, Appraising Officer Ms. Prajakta R. Sakharkar, Examining Officer, action against them will be taken by the, concerned Commissionerate being disciplinary authority in their cases. Draft Chagememo are also placed below"

36. It is observed from the above paragraph that the respondents had put up before the Disciplinary Authority two proposals vide common note. The first proposal was for approval/sanction for initiation of the Departmental proceedings under Rule 14 of CCS(CCA) Rules, 1965 and under Rule 9 of CCA(Pension). Along with that they had also put up the draft charge memorandum and draft sanction order for the approval of the Disciplinary Authority. The Disciplinary Authority/FM had approved this note vide making endorsement "**Approved**" on 09.08.2007.

The approval thus granted by the Disciplinary Authority was not only for initiation of the disciplinary proceedings against the applicant and others but also of the draft charge memorandum/Charge Sheet.

37. The approval granted thus by the competent authority cannot be construed only for initiation of the disciplinary proceedings as both the requests/proposals, one after another, were made simultaneously before the Disciplinary Authority vide the common note. When that note/proposal was approved by the

Disciplinary Authority, he was well aware that the proposal under consideration was for both the approval for initiation of the Disciplinary proceedings as well as approval of the Chargememo/chargesheet. So it cannot be said that he approved only the initiation of the departmental proceedings and not the charge memo/chargesheet. Though, no doubt the disciplinary authority was at liberty to approve only the initiation and to disapprove the chargesheet, if the same was found lacking in material particulars, etc. But 'Approved' indicates he approved both the initiation of departmental proceedings as well as the chargesheet.

38. Moreover there is no such requirement prescribed under the Rules that the sanction/approval for initiation of the disciplinary proceedings and approval of chargesheet cannot be granted simultaneously. The scheme behind Rule 14(1) of the Rules is to grant protection to the Govt Servant so that he shall not be penalized with any of the penalties specified in clauses (v) to (ix) of Rule 11 except after holding an inquiry under Rule 14

and Rule 15 of CCS(CCA) Rules, 1965. As per Rule 14(2), whenever the Disciplinary Authority is of the opinion that the inquiry is to be held, the same may be held either by the Disciplinary Authority himself or by an Inquiry Officer appointed by him. The object of such an inquiry is to inquire into the truth of imputations of misconduct and misbehavior.

39. Subrule 3 to 5 of Rule 14 prescribe the sequence in which the Disciplinary Authority is to reach the stage of forming the opinion under Rule 14(2). As per Rule 14(3) where it is proposed to hold an inquiry against the Govt servant under Rule 14 and Rule 15, the Disciplinary Authority shall draw or cause to be drawn up the chargememo/chargesheet.

40. As held in the case of Suresh Sharma(supra) by the Hon'ble High Court of Delhi, till the time the Disciplinary Authority acts in accordance with sub rule 3 of Rule 14, there are no disciplinary proceedings against the Government Servant, the relevant paragraph of the judgment to this effect is para 23 which reads as under:

"Sub-Rule (3) of Rule 14 opens with the words "where it is proposed to hold an

inquiry against a Government servant". (emphasis supplied). Sub-rule (3) of Rule 14, therefore, deals with the manner in which the Disciplinary Authority shall proceed when there is a "proposal" to hold an inquiry against a government servant. The expression "proposal" is defined in the Shorter Oxford English Dictionary as "An action of stating or propounding something"; "a course of action etc. proposed; a scheme, a plan, a motion; a suggestion, an idea". Till the time the Disciplinary Authority acts in accordance with sub rule (3) of Rule 14, there is no disciplinary proceeding against the government servant, since it would be in the realm of a "proposal" i.e. a suggestion, and nothing more. The disciplinary proceedings would get initiated against the government servant only when the proposal therefor is put into action by issuance of a charge memo/ charge sheet under Rule 14(3). "

41. In the above noted case, the Prime Minister had accorded the approval of the chargesheet under the rules but there was no prior approval for initiation of the Disciplinary proceedings. While interpreting the law laid down by the Hon'ble Apex Court in the case of B V Gopinath(supra), the following observations were made by Hon'ble Delhi High Court in para 29, 30 and 31 of its judgment:

"29. Thus, on a plain reading of Rule 14, it is evident that sub rule (2) of Rule 14 does not imply that the Disciplinary Authority should first grant his approval/sanction on the record to "initiate" disciplinary proceedings against the government servant. In fact, under the Rules, there is no such requirement prescribed - obliging the Disciplinary Authority to first sanction/ approve the "initiation" of the disciplinary proceedings, and thereafter to again approve the charge memo/ charge sheet in terms of sub rule (3) of Rule 14. Sub rule (2) of Rule 14, in fact, would get invoked only after the procedure under sub rules (3) and (4) have been exhausted, and at the stage when the procedure under sub rule (5) is being implemented by the Disciplinary Authority.

30. When the Disciplinary Authority, after consideration of all the relevant material, approves the charge memo, it is implicit therein that the Disciplinary Authority has also approved the "initiation" of Disciplinary Proceedings against the government servant. It is obvious that the Disciplinary Authority would grant approval to the charge memo/charge- sheet, only if he has formed the opinion that there are grounds

available for initiation of Disciplinary Proceedings against the government servant. The general and initial approval - that the petitioner talks about on a plainly erroneous reading of sub rule (2) of Rule 14, even if granted, would be a non specific approval - with no clarity on the specific articles of charge that may, or may not, eventually be framed. This is not mandated by the Rules. On the other hand, the approval of the charge memo/ charge sheet under sub rule (3) of Rule 14 is in respect of definite and distinct articles of charge which are drawn up against the government servant on the basis of the imputation of misconduct or misbehaviour. The Disciplinary Authority is obliged to draw up, or cause to be drawn up, with his approval, the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge; the statement of the imputation of misconduct or misbehaviour in support of each articles of charge which shall contain a statement of the relevant facts including any admission/ confession made by the government servant, and; a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained.

31. Thus, in our view, it is not necessary for the Disciplinary Authority to give its separate/ distinct and initial approval for "initiation" of disciplinary proceedings. Once the Disciplinary Authority grants its approval to the charge memo/ charge sheet after perusing the entire material, it would be sufficient compliance of the Rules, and the same would completely safeguard the interests of the government servant concerned."

42. The applicant has relied upon the judgment of C.A.T., Principal Bench in the case of Shri S. Rajguru vs. Union of India, whereby the issue involving initiation of departmental proceedings and issuance of chargememo having been decided together by the competent authority was also discussed in para 24 and it was observed that such a combined process is a procedural infraction. Learned counsel for the applicant has submitted that the aforesaid judgment/order of this Tribunal in Shri S.

Rajguru has been upheld by the Hon'ble High Court of Delhi vide judgment in WP No. 5113/2014. We have carefully gone through both the above noted judgments. Perusal of para 28 and 31 of the Judgment delivered by the Principal Bench clearly reflects that the impugned chargememo dt. 26.04.2012 was quashed for the reason that the applicant's action being of quasi-judicial nature and having acted as a quasi-judicial authority, his decisions in those four cases, wherein no malafide, arbitrariness or question of integrity has been raised, cannot be treated as misconduct.

43. The respondents challenged the aforesaid order in WP NO. 5113/2014 whereby the Hon'ble High Court of Delhi no doubt did make mention in para 10 of its judgment that the Tribunal held that there were procedural infirmities because the initiation of disciplinary proceedings and issuance of chargememo against the respondents had been done at one go, however, no finding has been given on this aspect and the Writ Petition was disposed of on merits of the case. Therefore, both these judgments are of no help to the applicant.

44. Here we also take note of the fact that the powers of the Tribunal for judicial review are limited. It is settled law that in judicial review the Court or the Tribunal has no power to trench on the jurisdiction to appreciate the evidence and to arrive at its own conclusion. Judicial Review is not an appeal from a decision but a review of the manner in which the decision is made. It is meant to ensure that the delinquent receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in view of the Court or Tribunal.

It has been held by the Hon'ble Apex Court in the case of State of T.N. And Another Vs. S. Subramaniam, 1996 STPL 1373 SC that when the conclusion reached by the authority is based on evidence, the Tribunal is devoid of power to re-appreciate the evidence and to come to its own conclusion on the proof of charge. The only consideration the Court/Tribunal has in its judicial review is to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion

is based on no evidence.

45. In the present case, on perusal of record of the Disciplinary proceedings, it is observed that the charges were framed against the applicant on the basis of material available. The Inquiry was conducted in proper manner and applicant was given appropriate opportunity to defend himself in the inquiry. It is only after the examination of the evidence, the disciplinary authority came to the conclusion that the Charge - I was proved, Charge - II was partly proved and Charge - III was not proved. Accordingly, show-cause notice was issued to the applicant.

The Disciplinary Authority sent note dated 17.07.2009 to CVC, who gave second stage advice dated 31.07.2009 to the effect that the case appeared to be a fit case for imposition of major penalty of reduction to a lower stage in the time scale of pay for 2 years. The applicant was served with the Inquiry Report as well as 2nd stage advise of CVC for his comments. The applicant made his representation dated 06.10.2009. Thereafter, he made another representation dated 01.02.2010.

After considering the representations of the applicant, the Disciplinary Authority observed as under:

"And Whereas, the representation of CO was examined and it was noted that under Customs Notification No. 27/2002 which allows the benefit of concessional rate of duty of 15% to leased goods temporarily imported and subsequently re-exported within a period of six months from the date of import and to ensure this conditions, bond and bank guarantee is executed by the importer promising to fulfill this condition. In case, the goods are not exported within six months, the period of export can be extended up to 1 year from the date of import by the Asstt./Dy. Commissioner of customs and duty of 30% is leviable. M/s Expotec International Ltd. filed 4 Bills of Entry in 2003 at Mumbai Custom House under the above Notification and re-exported the goods vide 5 Shipping Bills filed in 2004, the re-export in 3 out of the above 5 Shipping Bills was made by M/s Expotec International Ltd. submitted ante-dated Bills of Lading to Group VA of the Custom House, Mumbai in respect of these 3 Shipping Bills and Shri Jhamman Singh, the CO who was working as Asstt. Commissioner Group VA closed the bonds and bank guarantees executed at the time of import by the party even though there were other evidences to show that the export had been actually done after six months of import. The IO has found that the CO did not scrutinize the documents carefully while closing the above bonds and bank guarantees. In the light of these documents on records, the CO should not have allowed cancellation of the bonds and bank guarantees without payment of differential duty by M/s Expotec international Ltd. "

46. The matter was again referred to UPSC who vide communication dated 02.01.2013 advised imposition of penalty of withholding of 10% of monthly pension otherwise admissible to him for a period of 3 years. The copy of this was also supplied to the applicant and he was asked to make a representation within a period of 15 days from the date of receipt of letter dated

06.02.2013. The applicant submitted his representation on the UPSC advice vide his letter dated 09.03.2013.

47. The perusal of the order (Annex A-1) further shows that the points raised by the applicant on the advice of UPSC were also examined and the Disciplinary Authority rightly came to the conclusion that the applicant had erroneously cancelled the three bank guarantees concerning three bills of entries without proper scrutiny and verification of documents put up to him. He failed to notice that differential duty had not been realized from the importer and came to the conclusion that though the charge of lack of integrity against the applicant could not be substantiated, the proven charges constitute grave misconduct on the part of the applicant, warranting action under Rule 9 of the CCS (Pension) Rules, 1972.

48. It is in these facts and circumstances of the case and nature of the gravity of the charge proved against the applicant, that the Disciplinary Authority held that the advice of the UPSC for imposing penalty of 'withholding of 10% of monthly pension otherwise admissible to

him for a period of 3 years' was reasonable and justified and ordered accordingly.

49. We find no infirmity in the aforesaid order. We cannot lose sight of the fact that the applicant himself has admitted in the OA that while working as the Asst. Commissioner, appraising Group V-A, he was required to handle the case of cancellation of bond and bank guarantee in respect of three bills of entry of importer M/s Expotec International Ltd New Delhi and on the basis of papers brought before him by the concerned appraiser, relying upon what was mentioned in the office note by the said appraiser, he passed orders cancelling the bank guarantees given by the aforesaid importer. No doubt, later on the applicant detected that the importer had committed a foul act and fraud in the matter, he submitted report to his superior authorities to initiate appropriate action against the importer to safeguard the department's interest.

Consequently, show-cause notice under Section 111(o) read with Section 112 of the Customs Act, 1962 was issued to the importer, however, matter is still pending with CESTAT

blocking the revenue of around Rs. 46.5 lakhs for a period of over 9 years when the order of major penalty, Annex A-1 was issued.

50. The conduct of the applicant in the present case is relevant as on the date when he cancelled the bank guarantees i.e. 21.05.2004. No Doubt, it is appreciable that the applicant on realizing the foul play had approached the concerned authority for necessary action but this act on his part cannot undo his act of omission as on 21.05.2004.

51. The decision of cancellation of bonds and bank guarantees taken by the applicant only on the basis of note put up by the Appraiser, without going through the relevant documents and the rules and regulations, though cannot be termed as malafide but is an act of grave negligence.

52. The applicant being a Sr. Officer was not expected to rely blindfold upon the appraiser and pass an order only on the basis of the note put up before him without proper scrutiny and verification of the documents, rules and regulations. This Act on the part of the applicant amounts to grave negligence.

53. Admittedly, the applicant retired on 30.06.2010 and thereafter the departmental proceedings against him continued under Rule 9 of the CCS(Pension) Rules which reads as under:

"9. Right of President to withhold or withdraw pension

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -

(i) shall not be instituted save with the sanction of the President,

(ii) shall not be in respect of any event which took place more than four years before such institution, and

(iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in 2[Rule 69] shall

be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule, -

(a) departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date ; and

(b) judicial proceedings shall be deemed to be instituted -

(i) in the case of criminal proceedings, on the date on which the complaint or report of a police officer, of which the Magistrate takes cognizance, is made, and

(ii) in the case of civil proceedings, on the date the plaint is presented in the court."

54. As per Rule 9, if, in any departmental proceedings, the pensioner is found guilty of any grave misconduct or negligence during the period of his service, the Disciplinary Authority i.e. the Hon'ble President has right of withholding the pension either in full or in part, permanently or for a specified period. In the present case, the disciplinary authority concluded that the applicant is guilty of grave misconduct during the period of his service.

The term "grave" being a relative term has to be interpreted in the context of the consequences of the conduct of the applicant at the relevant time, when he cancelled the bank guarantees on 21.05.2004. Hence, in our considered view, his such conduct is not grave misconduct particularly, in view of the fact that there is no finding of the

Inquiry Officer to the effect that the applicant had acted malafide to favour the importer but to the contrary, without proper scrutiny and verification of the documents put up to him and without ensuring compliance of the norms prescribed by the notification no. 27/2002 dated 01.03.2002, he cancelled the 3 bank guarantees referred to above resulting in loss of Rs. 46,51,735/- to the Exchequer. On account of these consequences of the conduct of the applicant, it can be safely termed as grave negligence. Therefore, as per Rule 9 of CCS(Pension) Rules, 1972, the impugned order imposing major penalty of withholding of 10% of monthly pension otherwise admissible to the applicant for a period of three years is fully justified and needs no interference.

55. In view of the above discussion, the OA is without merits, hence dismissed. No order as to costs.

(Ravinder Kaur)
Member (J)

g.m.

(Dr. Bhagwan Sahai)
Member (A)

JD
07/02

