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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO.3104/2001

This the 31st day of March, 2003

HON'BLE SHRI JUSTICE V.S.AGGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Mahender Kapoor S/O K.L.Kapoor,
R/o A-103, Sharda Puri,
Ramesh Nagar,
New Delhi-110015.

... Applicant

(By Dr. D.C.Vohra, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Finance,
Deptt. of Revenue, North Block,
New Delhi-110011.
2. Office of the Commissioner of
Central Excise Delhi-1,
Central Revenue Building,
Indraprastha Estate,
New Delhi-110002.
3. Chief Vigilance Officer,
Central Board of Excise & Customs,
Ministry of Finance,
Deptt. of Revenue (CBEC),
Govt. of India, North Block,
New Delhi-110011.

.... Respondents

(By Shri R.N.Singh for Shri R.V.Sinha, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

Applicant, an Inspector of Customs and Central Excise in the office of Commissioner of Central Excise Delhi-1, respondent No.2, was charge-sheeted under rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965, as follows :

"2.1While posted and functioning as Air Customs Officer at IGI Airport, New Delhi and posted at Technical Branch in that capacity acted in a manner that involved him directly in smuggling activities of foreign goods

consisting of 8900 pcs. of watch movements, 60,000 pcs. of integrated circuits and 8 pcs. of wrist watches on 22.1.91 from the IAAI warehouse in as much as he removed the above said goods clandestinely in connivance with other persons/officials (co-accused) for consideration of Rs. 1 lakh on the false pretext of carrying the above said goods for appraisement to cargo complex and thereafter by giving false endorsement on DR No.096980 dated 10.1.91 indicating the re-export of the above said goods by flight No.RI-217 dated 22.1.91.

2.2 It is thus imputed that Shri Mahender Kapoor, Air Customs Officer failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby violated Rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) rules, 1964."

The disciplinary authority held applicant guilty to the extent that he endorsed DR No.96980 dated 10.1.1991 worded as "Re-exported vide Flight No. RI-217 dated 21.1.91" which was not part of his duties at the relevant time. As such he failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby violated rule 3(1)(i), (ii) and (iii) of the CCS (Conduct) Rules, 1964. The disciplinary authority has stated to have taken a lenient view in the matter and imposed a penalty of stoppage of five increments with cumulative effect. The appellate authority upheld the order of the disciplinary authority. Through the present OA applicant has challenged the penalty imposed upon him.

2. The learned counsel of applicant contended that the case of the prosecution is one of no evidence as it had not been proved that he was involved directly in smuggling activities of foreign goods. The learned counsel further stated that applicant has been punished

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on his admission that he had endorsed DR No.96980 dated 10.1.1991. He further stated that Shri K.K.Duggal who had been cited as an important witness and who was to prove that applicant had not been authorised to attend to the re-export work, was not examined by respondents and as such applicant did not get any opportunity of cross examining him which has prejudiced his defence. The learned counsel further stated that not only that five increments of applicant had been withheld, he had also not been granted five increments during the period he remained under suspension. The learned counsel also stated that CFSL report was not put up during the course of the enquiry nor was applicant allowed to cross examine the author of the said report.

3. In the end, the learned counsel of applicant stated that punishment imposed upon applicant has been excessive and disproportionate to the charge stated to have been proved against applicant.

4. The learned counsel of respondents, on the other hand, stated that when applicant had admitted in the departmental enquiry that he had endorsed DR No.96980 dated 10.1.1991 worded as "Re-exported vide Flight No.RI-217 dated 21.1.91", it is immaterial whether Shri K.K.Duggal or the author of CFSL report had been examined or not. However, the learned counsel stated that the department made all possible efforts to call the witnesses but many of them did not turn up despite issuance of various summons. Shri Nehra, Senior Scientific Officer, CFSL was not cited as a witness and

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thus he was not called during the course of the enquiry. In our considered view as well, when applicant himself has admitted to have endorsed the aforesaid DR, we do not discover any infirmity in the procedure followed in the disciplinary enquiry against applicant in not securing Shri K.K.Duggal and Shri Nehra for examination. However, the learned counsel of respondents referred to **B.C.Chaturvedi v Union of India & Ors.**, JT 1995 (8) SC 65 to contend that the Tribunal while exercising the power of judicial review cannot normally substitute its own conclusion on penalty and impose some other penalty. It has further been elaborated therein that if the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the court, it would appropriately mould the relief directing either the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, In exceptional and rare cases it may itself impose appropriate punishment with cogent reasons in support thereof.

5. The present case does not shock our conscience. Applicant has admitted having signed the document on which reliance has been placed by respondents. To a pointed query, it was not explained satisfactorily on behalf of applicant that he had been authorised to endorse re-exports. In the facts and circumstances of the case, in our view, it is not a fit case to direct reconsideration of the penalty even.

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6. Having regard to the above discussion, the OA must fail and is dismissed accordingly. So far as the period of suspension of applicant is concerned, respondents should consider and pass appropriate order pertaining to grant of increments claimed by applicant. No costs.

V. K. Majotra

(V. K. Majotra)
Member (A)

/as/

V. S. Aggarwal

(V. S. Aggarwal)
Chairman