

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2862/97

New Delhi, this the 7th day of August, 2000.

Hon'ble Mr. Justice V.Rajagopala Reddy, VC (J)
Hon'ble Sh. Govindan S. Tampli, Member (A)

Shri R.D.Gupta,
s/o late Shri Kirori Mal,
r/o 38, Nangloi Extension, Delhi - 110041
.....Applicant

By Advocate Mrs. Meera Chibber.

Versus

1. Union of India through the Secretary
to the Government of India, Ministry of
Finance (Department of Revenue), North Block
New Delhi.
2. The Chairman, Central Board of Excise &
Customs, North Block, New Delhi.
3. The Commissioner of Customs (General),
New Customs House, New Delhi.
4. The Deputy Commissioner (Personnel & Vigilance),
Central Excise Commissionerate, C.R.Building,
Delhi.

.....Respondents

By Advocate Sh. R.R.Bharti.

ORDER (ORAL)~

By Hon'ble Mr.Justice V.Rajagopala Reddy, VC (J)

Heard the learned counsel for the applicant
and the respondents. The applicant who was working as
Inspector of Central Excise in Delhi, was placed under
suspension by order dated 07-10-96 under Rule 10 of
CCS (CCA) Rules, 1965. A show cause notice dated
7-3-1997 Under Section 124 of Customs Act was issued
alleging that M/s Enkay Exports, New Delhi had
consigned to M/s Yamal Al Sham General Trading,
P.O.Box 2288, Ajman, Dubai, U.A.E. a quantity of
21694 dozen ball pens assessed at Rs. 25,66,460.94
under claim of Drawback of Rs. 4,61,962.96, On
reexamination of the said consignment the pens were
found short in quantity and their value was also found
inflated. It was alleged, that he connived and

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abettet with the said company, he was asked to show cause why punishment should not be imposed Under Section 114 (iii) of the Customs Act. The applicant submitted his explanation denying the allegation. By an order dated 29-08-97, the Commissioner of Customs, Air Cargo, after holding an enquiry came to the conclusion that the charges levelled against the applicant were not proved as there was no evidence to hold that he had connived with or abettet M/s Enkay Exports in their drawback shipping Bills. It was also held that there was a bar Under Section 15 (2) of the Customs Act to take any proceedings against the officer charged without following requirements Under Section 15 (2) of the Customs Act. It is also seen that, subsequently, by an order dated 16-09-98, the ^{Excise and} ~~Central~~ Board of Customs, accepted the order of the Commissioner dated 29-08-97. However, he was still continued under suspension. Subsequently the impugned charge-sheet has been issued on 22-12-97 alleging violation of Conduct Rules. The chargesheet has been issued on the same allegations, as were levelled by the department in the Show Cause Notice dated 7-3-97. The statement of imputation also contain the allegations pertaining to the same bills to which a Show Cause Notice has been issued and enquired into by the Commissioner exonerating the applicant. The ^{new} orders of suspension, however, revoked on. 9-11-98.

2. The learned counsel for the applicant Smt. Meera Chibber contends that as the applicant had been exonerated on the same set of allegations after holding a thorough enquiry, it is not permissible to the department to hold a fresh enquiry on the basis of the same allegations and *in* the same evidence. It is

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also contended that the applicant was entitled for revocation of suspension soon after he was exonerated on 29-07-97 and to consider his case for promotion.

3. Learned counsel for the respondents submits that even on the same set of facts and allegations, it is open to the respondents to proceed against the applicant for violation of Civil Service Conduct Rules, as the applicant was exonerated from being punished under the provision of the Customs Act.

4. Having given careful consideration to the above contentions, we find sufficient force in the contentions of the learned counsel for the applicant. Initially, the applicant was sought to be punished under Section 114 (iii) of the Customs Act. The allegation was that he misdeclared the quantity and value of ball point pens to claim a draw back amounting to Rs. 4,61,962.96, which was not actually due, as the quantity and value of the pens was found to be much less than declared. The Commissioner, on enquiry, however, found as under:-

"I also find that the view taken by the Department that on verification of 36 shipping bills in respect of which the exports had already taken place in the name of M/s Enkay Exports, it was observed that in all these cases the goods had been examined by Shri R.D.Gupta, Inspector. Moreover, in all these cases though the goods were not available for verification, it was observed that on the basis of declared weight and quantity of the pens and the average weight per pen worked out to between 0.71 gms. to 2.98 gms., which showed that Shri R.D.Gupta, permitted export of these consignment wherein the declared quantity appeared to be much larger than the actual quantity, is incorrect in as much as it is a fact that the value and quality of a pen will not depend upon its weight as an inferior pen can be of more weight than a superior pen and vice versa. The observation of the Department appears to be based on presumption and assumption and no other corroborated evidence has been adduced by the Department to this effect.

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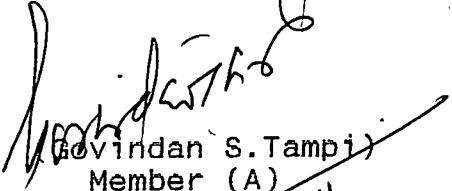
From the foregoing discussions, I find that charges against Shri R.D. Gupta, does not stand proved. There is no evidence to suggest that he had connived or abetted with M/s Enkay Exports in their attempt to claim fraudulent drawback against the said shipping bills! 

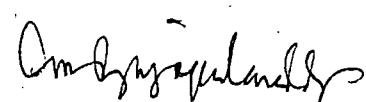
This shows that the applicant was not blameworthy or remiss at all. This order has become final. The Board of Customs also accepted this. The present charge sheet is again issued containing the same allegations. Admittedly, the allegations are the same. No doubt, it is true, he was charged for violating the Conduct Rules. The Commissioner, having considered the entire evidence, both oral and documentary, found that there was no evidence, ^{or} whatsoever, against the applicant ~~and~~ accordingly exonerated. It is seen that the witness as well as the documentary evidence in the present case are the same, as in the previous enquiry. When once it was found by the competent authority that the charges were not established, in our view, considering the allegations and findings in this case, It is not open to the department to proceed once more a-fresh for the violation of same allegations, on the same evidence. If it is a case where a misconduct, on a different set of facts and evidence was sought to be established, then a fresh charge may be laid. As stated supra in this enquiry, the case is sought to be proved on the same evidence, orally and documentary. In view of the above, we hold that the impugned chargesheet ^{and} ~~proposed~~ enquiry as illegal; the charge sheet and all further proceedings taken in pursuance of the charge sheet are quashed.

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5. From the available facts, it is also clear that though the applicant has been exonerated on 29-09-97 and the order of the Commissioner has been accepted by the Board of Customs, the order of suspension was revoked only in 9-11-98. It was, however, stated in the reply, that he was kept under suspension in view of the fact that the proceedings against him were still pending, which is an incorrect statement. This counter was filed on 27-02-98, whereas the applicant had been exonerated on 29-09-97. Thus we find that the applicant was continued under suspension even after he was exonerated, which is illegal. We, therefore, direct that the order of suspension should be deemed to have been revoked w.e.f. 29-09-97, and the applicant ~~is~~ is entitled for promotion, if found fit in accordance with the Rules. The respondents ^{are} ~~were~~, therefore, directed to consider the case of the applicant for promotion, if found fit.

OA is allowed accordingly with the consequential benefits.


Govindan S. Tampli
Member (A)


(V. Rajagopala Reddy)
Vice-Chairman (J)

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