

**CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

Original Application No. 043/00082/2020

Date of Order: This, the 16th Day of February, 2021

THE HON'BLE SMT. MANJULA DAS, MEMBER (J)

THE HON'BLE MR. NEKKHOMANG NEIHSIAL, MEMBER (A)



Shri S. Osborne Kharjana
Aged about 49 years
Son of Nit Shabong
District – East Khashi Hills
Shillong, Meghalaya, Pin – 793009.

Presently serving as an Inspector
Balat Land Customs Station
Under Shillong Customs Division
Shillong, Meghalaya.

... Applicant

- Versus -

1. The Union of India
Represented by the Secretary
To the Government of India
Ministry of Finance, R.K. Puram
New Delhi – 110066.
2. The Chief Commissioner of GST & Customs
Guwahati Zone, GST Bhawan
5th Floor Kedar Road
P.O. – Panbazar, Guwahati
District – Kamrup (M), Assam, Pin – 781001.
3. The Commissioner, GST Commissionerate
3rd Floor, Crescens Building
M.G. Road, Shillong
Meghalaya, Pin – 793001.

O.A. No. 043/82/2020

4. The Commissionere (Custom Preventive)
Office of the Commissioner of Custom (Preventive)
110 Mahatma Gandhi Road, NER
Shillong, Meghalaya, Pin – 793001.

...Respondents.

For the Applicant : Sri S. N. Tamuli & Ms. A. Begum

For the Respondents : Sri R. Hazarika, Addl. CGSC



Date of Hearing: 02.02.2021

Date of Order: 16.02.2021

ORDER

NEKKHOMANG NEIHSIAL, MEMBER (A):-

This O.A. has been filed by the applicant under
Section 19 of the Administrative Tribunals Act, 1985
seeking for the following reliefs:-

- 8.1 To set aside and quash the Memorandum of charge dated 11.12.2019 issued by the Commissioner, GST Commissionarate, Shillong whereby the Department has proposed to initiate disciplinary proceeding against the applicant.
- 8.2 To direct the respondents to promote the applicant to the post of Superintendent from the date of promotion of his juniors as the same was withheld for the reason of pendency of the impugned Disciplinary Proceeding.

O.A. No. 043/82/2020

8.3 Any other relief (s) as the Hon'ble Tribunal may deem fit and proper.

8.4 The cost of the application."

2. He is also asking for interim relief as follows:-

"9.1 To stay the further action of the impugned Memorandum of Charges dated 11.12.19 till disposal of this OA.

9.2 To declare that the pendency of this application shall not be a bar for the respondents to promote the applicant to the rank of Superintendent, Group "B" Gazetted as per the Recruitment Rule."



3. After completion of pleadings, matter was finally heard on 02.02.2021 and put under CAV. Since the learned counsel for the applicant had already filed written argument on 25.01.2021, Sri R. Hazarika, learned Addl. CGSC was allowed to file written argument on behalf of all the respondents within 10 days. Accordingly, he has filed the same on 09.02.2021.

4. Facts of the case are that – the applicant along with office bearer of other Associations had sent a representation to the Hon'ble Finance Minister on 25.10.2019 in the name of Joint Action Committee of All the Service Associations of Customs, Central Excise and

Service Tax, HQRS, Shillong ventilating their grievances as contained therein. As a result, the respondent authorities called for his explanation vide their Memo dated 05.11.2019, Annexure-A3, page 20 to the OA. His representation was considered and communicated vide order dated 04.12.2019 with the remark as under:-



"However, it appears that the afore-mentioned Joint Action Committee is not a recognised Service Association for non-fulfilment of conditions as enumerated in Para 5 of DoPT Notification No. 2/10/80-JCA (Vol.IV) dated 5th November, 1993. Therefore, the communication made by you is being treated as done in an individual capacity which is in violation of Rule 20 of CCS (Conduct) Rules, 1964.

As such, in terms of Rule 20(1)(i) of CCS (Conduct) Rules and instructions vide O.M. 11013/7/85-Estt(A) dated 22.05.1985 you are hereby strongly advised to desist from approaching members of Parliament/Members of State Legislature to further your interest in respect of matters pertaining to your service conditions. Further violation of provisions of Rule 20 of CCS (Conduct) Rules will attract disciplinary action under the provisions of CCS (CCA) Rules, 1965."

(emphasis supplied)

5. Another Memo was issued on 11.12.2019 under Rule 16 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 containing Article-1 of charge, on the same issue as above.

O.A. No. 043/82/2020

6. The basic argument of the applicant is that – since the representation dated 25.10.2019 was sent to the higher authority in his capacity as General Secretary of the Joint Action Committee of all recognised Associations, he has not violated any rules/instructions as contained in CCS (CCA) Rules, 1965. This fact has also been taken cognizance by the respondent authorities in their Memo issued to him indicating him as General Secretary.



7. The applicant also stated that since his reply to the Memo dated 05.11.2019 issued to him has been considered and concluded with remark that – “*you are hereby strongly advised to desist from approaching members of Parliament/Members of State Legislature to further your interest in respect of matters pertaining to your service conditions. Further violation of provisions of Rule 20 of CCS (Conduct) Rules will attract disciplinary action under the provisions of CCS (CCA) Rules, 1965*”. According to the applicant, the issue has been closed by the respondent authorities. They cannot initiate

another further disciplinary proceedings by issuing another Memo dated 11.12.2019.

8. The respondent authorities' submissions are that since the applicant had submitted the aforesaid representation in his personal capacity since the Joint Action Committee was not a recognised Association. According to the respondents, the applicant has violated Rule 20 of CCS (Conduct) Rules, 1964.



9. We have carefully perused the papers, submissions made on both sides of the parties. It is observed that the remarks in the letter dated 04.12.2019 has been repeated in Memorandum of Charge Sheet issued under Rule 16 of the CCS (CCA) Rules, 1965 on 11.12.2019 as under:-

"In this regard the officer has been strongly advised in terms of Rule 20(1)(i) CCS Rules, 1964 vide letter dated 04.12.2019 to desist from approaching members of Parliament/Members of State Legislature to further his interest in respect of matters pertaining to service conditions. Further violation of provisions of Rule 20 of CCS (Conduct) Rules will attract disciplinary action under the provisions of CCS (CCA) Rules, 1965."

(emphasis supplied)

10. From the above, it is clear that Memorandum dated 11.12.2019 issued to the applicant lacks clarity in its intend and purpose. Accordingly, Memorandum of charge dated 11.12.2019 issued by the Commissioner, GST Commissionarate, Shillong is hereby set aside.

11. O.A. stands allowed. No order as to costs.



(NEKKHOMANG NEIHSIAL)
MEMBER (A)

(MANJULA DAS)
MEMBER (J)

PB

O.A. No. 043/82/2020