

~~AM~~ (14)

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 620 of 1987

Mahendra Kumar Dubey Applicant

Versus

Union of India & Others Respondents.

Hon. Ajay Johri, A.M.

This is an application under Section 19
of the Administrative Tribunals Act XIII of 1985.

The applicant Mahendra Kumar Dubey is working as
an Upper Division Clerk in the office of Collector,
Central Excise, Headquarters, Allahabad. His case
is that he was issued a show cause notice by the
Assistant Collector of Customs Gonda on 12.9.70 for
having been found in possession of certain ceased
goods. He submitted his representation against
the show cause notice and he was completely
exonerated by the said Assistant Collector vide
his order dated 18.8.1972. However, later on a
departmental inquiry under Rule 14 of the C.C.S.
(CC&A) Rules, 1965 was initiated and the applicant
was suspended. Though his suspension order was
revoked by the Assistant Collector, Hqrs. Allahabad
he was awarded a punishment of stoppage of his
next increments for a period of two years without
cumulative effect on 15.2.75. He filed an appeal.
His appeal was rejected by the Collector, Central

1
3/

AM
2

5

- 2 -

Excise, Allahabad and he was communicated the same on 24.2.76. Thereafter he filed a review petition before the Secretary, Board of Central Excise and Customs. He was advised that the same was time barred by an order dated 19.11.82. According to him, since the appeal of the applicant was not decided on merit he filed a mercy petition before the Hon'ble President of India for condoning the delay but his review petition which was filed by him was rejected and the same was communicated to him by the impugned order of 6.1.1987. According to the applicant he has been charged for the same allegations on which he was exonerated by the Assistant Collector, Gonda. Therefore the chargesheet and the imputation of charges were without jurisdiction. He had cooperated in the departmental proceedings and even in this proceeding the Inquiry Officer had exonerated him but the disciplinary authority without giving any reason why he had disagreed with the finding awarded punishment and on his appeal. He was not given the copy of the appellate order but only conveyed the orders of the appellate authority rejecting his appeal. His case is that the order of the disciplinary authority is not a speaking order while he has not even seen the appellate order. Thus the provisions of Rule 27(2) of the C.C.S. (CC&A) Rules, 1965 have not been

AM 3

(b)

- 3 -

complied with. His review petition was rejected because he had filed it after a lapse of about five years and therefore it was taken as time barred. According to him since he was not given the appellate order he could not file a review petition.

2. I have heard the learned counsel for both sides. Shri G.D. Mukherjee, counsel for the applicant contended that since the applicant had been exonerated by the Assistant Collector, Gonda he could not be given a chargesheet again by the Assistant Collector HQrs as it amounted to double jeopardy. He also contended that since the appellate order has not been given to him he was not in a position to file a review petition which was rejected being time barred and his mercy petition to the President was rejected on 5.1.1987. According to Shri N.B. Singh, the learned counsel for the respondents the applicant was taken up under C.C.S. (CC&A) Rules for misconduct and lack of integrity ^{3/ in} ~~1/ and~~ as much as he had allowed the third country material to be brought in without imposing the customs duty. According to the learned counsel for the respondents the chargesheet under Rule 14 was a separate issue as the earlier inquiry done by the Assistant Collector Customs was under the Customs Act and not under the C.C.S.(CC&A) Rules. I have also gone through the records of the case.

3. This incident occurred in 1970 and inquiry

(A)
4

(7)

- 4 -

was done by the Assistant Collector Customs in 1972 in which the applicant was exonerated. A fresh chargesheet was issued under Rule 14 and a punishment was imposed on the applicant on 15.2.75. He had availed of the departmental remedies available to him and his appeal was rejected on 24.2.1976. Thereafter he filed a review petition after a lapse of about five years and this was rejected in November, 1982 as having been time barred. According to him since his review application had not been rejected on merits he filed a mercy petition before the Hon'ble President of India for condoning the delay for which sufficient reasons were also mentioned in the petition. This petition is placed at Annexure-XI of the paper book. In this he has referred to a copy of the memorial dated 31.3.1981 issued by the Collector Customs Allahabad rejecting his memorial to the President of India on the ground that it was time barred. By this application dated 3.3.86 the applicant had mentioned that owing to the odd family circumstances, because of his disturbed mental condition which was generated on account of prolonged suspension, death of his elder brother, death of his mother etc. coupled with the ^{✓ Show} ~~elder~~ [✓] ~~g~~ [✓] responsibility of family burden of deceased elder brother, he was cornered and engulfed in the midst of whirlwind odd family circumstances and therefore lost the comprehension of making memorial to the Hon'ble President in time. He had requested and prayed that his memorial may be considered by the

(An 8)

President in keeping with the principles of equity and justice and on humanitarian ground. This second memorial was rejected on the ground that his earlier petition was rightly rejected as being time barred and the Govt. has nothing further to add to what had already been communicated to him.

4. The above clearly shows that the impugned order of 6.1.1987 has only upheld the position as it existed in 1982 when his first memorial to the President was rejected on account of its being time barred. It is not a question that his petition was considered on its merit and therefore it was rejected by the impugned order on 6.1.1987 which could give him a lease to agitate the matter before this Tribunal. The fact remains that his appeal was finally decided in 1976 and his memorial to the President was rejected in 1982 on account of its being time barred and the 1987 order only upheld the views held in 1982 order. It would be thus clear that the impugned order of 1987 does not ~~so~~ give any right to the applicant to agitate the matter which became final in 1976 and therefore I do not find any merit in this application and reject it on the grounds that it is badly time barred and it has already reached a finality and cannot be agitated now. Parties will bear their own costs.

Dated the 4th July, 1988
RKM

Member (A)

3/EP/STC/1