

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

D.A./T.A./C.A./R.A./M.A./No RA/ 198 in OA/62/92

DR Bhalia

APPLICANT (S)

Mr. R.S. Gajjar

COUNSEL

VERSUS

4012085

RESPONDENT (S)

COUNSEL

[illegible]

Office Report.

O R D E R

DATE

Office Report.

5-10-98

Two weeks time is granted for removing office objections.

(P.C. Kannan)
Member (J)

(V. Radhakrishna)
Member (A)

pt

26-10-98

Two weeks time is granted for removing office objections. After removing office objections, registry to give fix R.A. before the appropriate Bench.

(P.C. Kannan)
Member (J)

(V. Radhakrishna)
Member (A)

pt

12-11-98

Two weeks time is granted for removing office objections. After removing office objections, registry to give fix R.A. before the appropriate Bench.

(P.C. Kannan) xxxxxxxx (V. Radhakrishna)

82-33-30 ...

DATE Office Report. ORDER

For

nan)

82-31-33

DATE

Office Report.

O R D E R

5-10-98

No body has
come to remove
obj.
pl. after 62 place
on 26.10.98
410

P
10/11/98

Two weeks time is granted
removing office objections.

pm
(P.C. Kannan)
Member (J)

al
(V. Radhakrishnan)
Member (A)

pt

26-10-98

Time given over
still 410.
place on 12-11-98
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10/11/98

Two weeks time is granted
removing office objections. After
removing office objections, regist
to give fix R.A. before the appropri
Bench.

pm
(P.C. Kannan)
Member (J)

al
(V. Radhakrishnan)
Member (A)

pt

~~12-11-98~~

~~Two weeks time is granted~~
~~for removing office objections after~~
~~removing office objections, regist~~
~~to give fix R.A. before the appropri~~
~~Bench.~~

~~(P.C. Kannan) xxxxxxxx~~

DATE

OFFICE REPORT

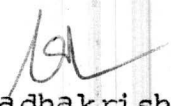
ORDER

12-11-98

Time granted is
over.
Still ylo.
May be place on 27-11-98
before Hon'ble Bench

P
25-11-98


Two ~~xxx~~ more weeks time is granted
for removing office objections. After
removing office objections, registry to
fix R.A. before the appropriate Bench.



(V. Radhakrishnan)
Member (A)

pt

27-11-98

Even though sufficient time has been
granted for removal of office objections,
objections still have not been removed.
Registration stands declined.


(P.C. KANNAN)
MEMBER (J)


(V. RADHAKRISHNAN)
MEMBER (A)

*SSN

DATE

OFFICE REPORT

ORDER

DATE

OFFICE REPORT

P.A. St. 37/98 in O.A. No. 62/92

ORDER

12-11-98

Two ~~me~~ more weeks time is granted for removing office objections. After removing office objections, registry to fix R.A. before the appropriate Bench.

(V. Radhakrishnan)
Member (A)

pt

27-11-98

Even though sufficient time has been granted for removal of office objections, objections still have not been removed. Registration stands declined.

(P.C. KANNAN)
MEMBER (J)

(V. RADHA KRISHNAN)
MEMBER (A)

*SSN

DATE

OFFICE REPORT

ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL, DELHI

Application No. PA-37/98 17 of 19

Transfer Application No. CA/62/92 Old Writ. Pet. No.

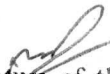
CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the Record Room (Decided)

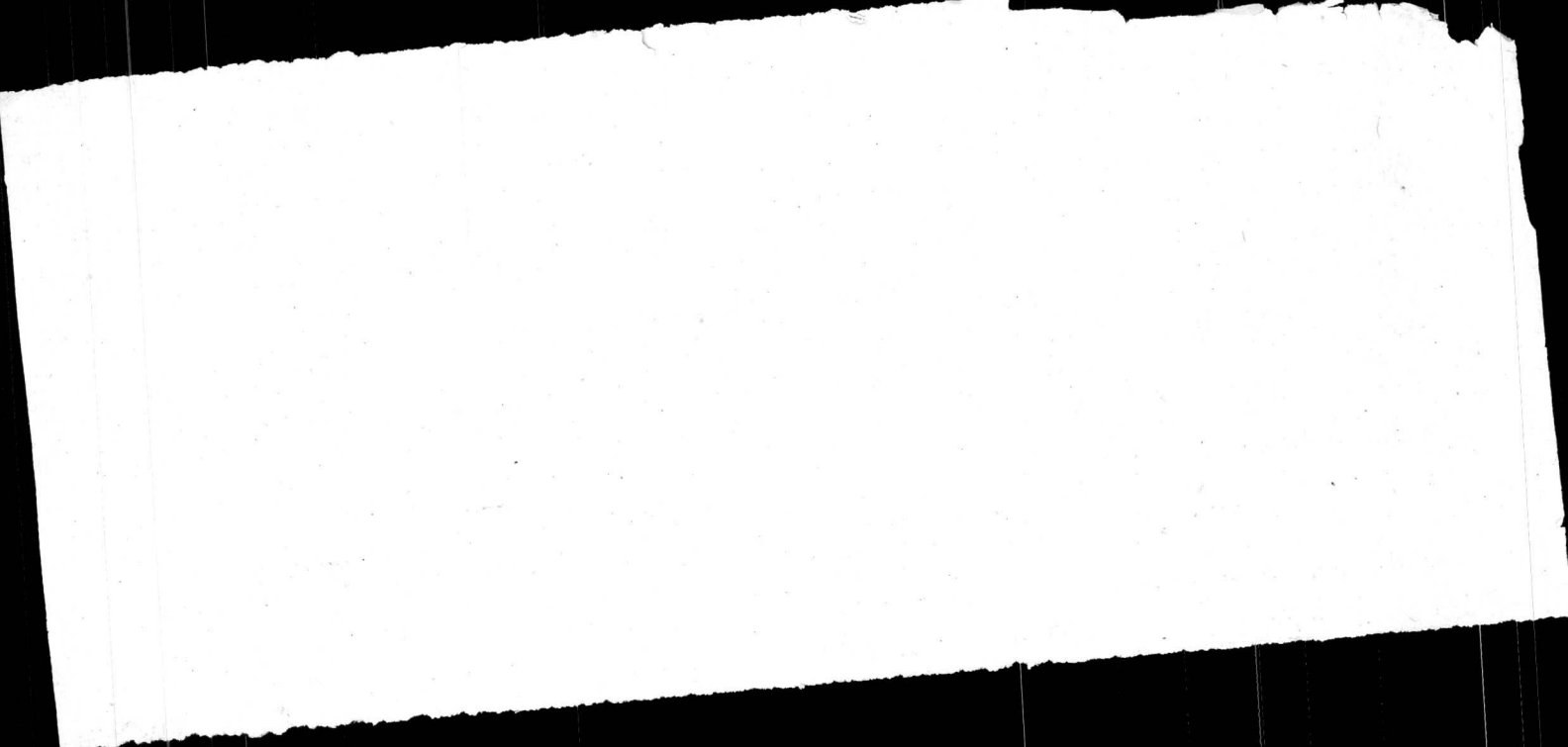
Dated: 18/12/98

Countersigned.

pld
16/4/97


Signature of the Dealing
Assistant

Section Officer/Court Officer.



CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD

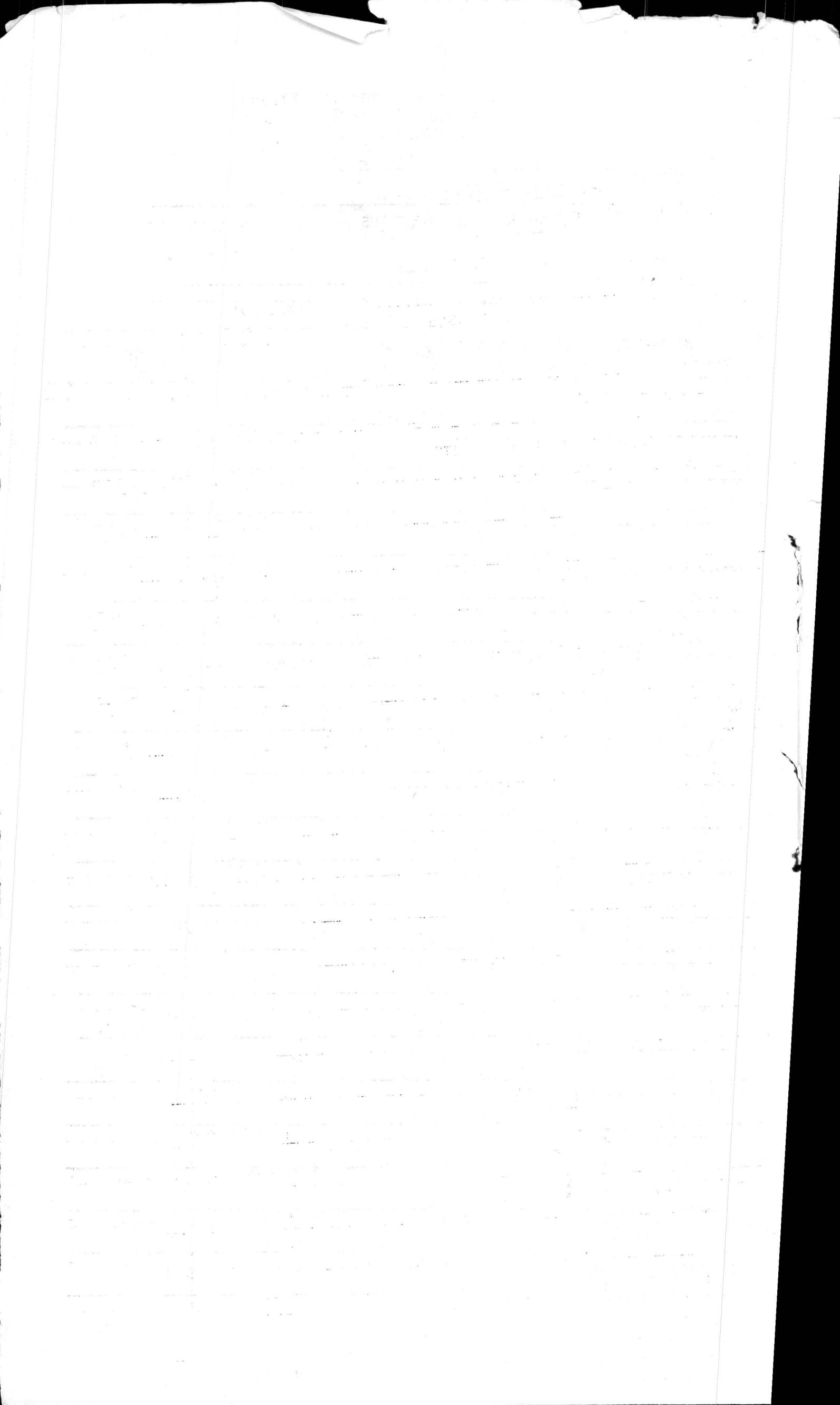
HOUSE TITLE Page 37/98 in 04/62/92

NAME OF THE PARTIES D. R. Bhalla

VERSUS

40220

[illegible]



Judgment / Order by

(i) Hon'ble Mr. V. Radhakrishnan M(A) and

(ii) Hon'ble Mr. T. N. Bhat, M(I)

2. Both the aforesaid Members are functioning in this Tribunal.

2. Hence to be placed before the said Members i.e. Hon'ble Mr. _____

Hon'ble Mr. _____

✓ 3. Hon'ble Mr. V. Radhakrishnan M(A) still belongs to Local Bench but Hon'ble Mr. T. N. Bhat, M(I) is now a Member/V.C. of Principal Bench.

3. Hence may be sent for consideration by circulation to the said Members i.e. Hon'ble Mr. V. Radhakrishnan, M(A) and

Hon'ble Mr. T. N. Bhat M(I)

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.

4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any two Members of this Bench.

5. Hon'ble Mr. _____ has ceased to be Member of Tribunal but Hon'ble Mr. _____

5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____

_____ is available in this Bench.

_____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.

6. Both the aforesaid Members are now Members of other Benches namely _____

6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

_____ and _____ Benches.

7. The case is not covered by any of the above contingencies.

7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble Chairman.



Submitted

On scrutiny of RA, following defects are noticed:-

1. Paras 9(1) (i) and (8) (Page 4 & 8) incomplete.
2. Para numbers not shown in affidavit.
3. Court fee Stamp of Rs 2/- less affixed on 18.
4. Index incomplete.
5. Paging not done and detailing respondents not shown.
6. Annexures not attested.
7. Copy of affidavit not filed in other sets.

Notification is put up for signature.

From copy of Judgment, it is seen that the sum is received by the applicant on 01.7.98 and the same is found correct from the registers.

S.O. (S)

26/8/98

DR (S) 26/8/98

li
06/8/98

Submitted

objections have not been complied with within the time allowed. If approved, RA will be placed before the High Bench for orders.

li
25/8/98

S.O. (S)

25/8/98

as memorandum is on leave upto 19/9/98 please observe the order not removed. DR (S) 23/8/98

Submitted

Above orders may please be perused. Submitted for orders.

li
22/8/98

S.O. (S)

23/8/98

put under objection before the Bench for orders. DR (S) 23/8/98

Gaijar Villa
10/11 Ma Vallabh Colony,
B/h. Durga High School,
Maninagar, Ahmedabad-380 008.
Phone : 2125322

R. S. GAJJAR
I.R.S; B. A. LL.B.
Asst. Collector Customs (Rtd.)
Special A. P. P. Customs (Rtd.)
Advocate High Court Gujarat
28.7.1998.

To;
The Registrar,
Central Administrative Tribunal,
Ahmedabad.

Sir,

Sub : Review application in O.A. 62/92.

Kindly refer to your O.A. 62/92.

I submit herewith Review application in O.A.62/92
in duplicate and one spare copy for respondent for favour
of kind and sympathetic consideration.

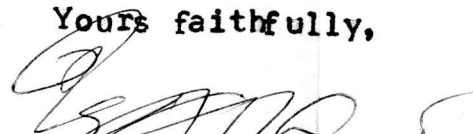
The affidavit duly sworn by the applicant is
attached with Review application.

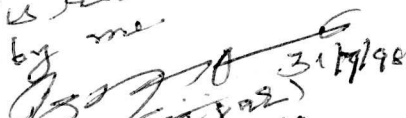
The Vakalatnama with proper court fees stamp
affixed is also enclosed.

The Bankers cheque of Rs.50/- payable to Registrar
Central Administrative Tribunal bearing No.380012007
dtd.28.7.98 is enclosed.

Kindly acknowledge the receipt and oblige.

Yours faithfully,


(R.S. GAJJAR)
Advocate.

Bankers
cheque of Rs.50/-
payable to Registrar
C.A.T. No 380012007
is received back
by me.

(R.S. GAJJAR)
Advocate
31/7/98

28.7.1933.

The Registrar,
Central Administrative Tribunal,
New Delhi.

Sub: Review application in A. 12/32.

Kindly refer to your A. 12/32.

I submit herewith review application in A. 12/32
in duplicate and one spare copy for record of the
Tribunal and your consideration.

The affidavit duly sworn by the applicant is
attached with review application.

The Valuation with proper court fees stamp
affixed is also enclosed.

The Banker's order of Rs. 50/- payable to Registrar
Central Administrative Tribunal bearing No. 12001/33
dated 28.7.33 is enclosed.

Kindly acknowledge the receipt of office.

Yours faithfully,

(Sd/-) (M. L. JAIN)
Advocate.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

IN

ORIGINAL APPLICATION NO. 62 OF 1992.

D. R. Bhalia.

• • •

Applicant.

versus.

Union of India & ors.

• • •

Opponents.

I N D E X.

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R. S. Geyral

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD.

REVISION APPLICATION NO. 37 OF 1998.

IN

ORIGINAL APPLICATION NO. 62 OF 1992.

D.R. Bhalia.

...

Applicant.

versus.

Union of India & others.

...

Opponents.

MAY IT PLEASE YOUR HONOUR :

Brief facts of the application are as under :

1. The applicant was working as Inspector of Customs House Salaya Taluka Jamkhabhalia, District Jamnagar, Gujarat State at the crucial hour of incident i.e. from 1.6.1981 to 31.10.1982. The incident took place on night of 17.7.1982. The applicant was member of a party to intercept a smuggler and the smuggled goods. The applicant could not hold smuggler Yusuf Patel and also his car loaded with smuggled goods. No other officers five in number helped the applicant to resort other means to keep the smuggler Yusuf Patel being detain and goods to be recovered from car intercepted by applicant. The right hand of the applicant was damaged due to closing of the door of the car which was forcibly taken away by the mob. The other five officers did not assist or hold the applicant but remained silent spectator though they were in charge of same duties and were having armed and ammunitions.

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Action was initiated against the applicant and other 5 officers and chargesheet was issued Annexure-I.

2. Shri D.R. Bhalia, Inspector of Customs, customs House Salaya while functioning as such during the period 1.6.1981 to 30.10.1982 exhibited gross negligence in performance of his legitimate duties ~~etc~~ inasmuch as on the night of 17.7.1982/18.7.1982 when he was assigned guarding duties of one Ambassador car No.GJP 5926 loaded with contraband goods 5 gm. Tins of wrist watches he did not consider it necessary to remove the contraband goods first to Custom House of Salaya and safely secure the goods and he did not take any action whatsoever to prevent and resist the smugglers of Salaya from taking away the aforesaid car with contraband goods.

3. The said Shri D.R. Bhalia by his aforesaid conduct failed to maintain devotion to duty and absolute integrity and thereby contraband the Rule 3(1) of Central Civil Services Conduct Rules, 1964.

4. Shri A.K. Rastogi Commissioner of Departmental Inquiry C.V.C. submitted his report dtd.26.12.1984 that the charges against the applicant were partly proved. However the Collector of Customs and Central Excise, Rajkot after perusing the inquiry report, defence reply etc. and held that charge is fully proved disagreeing with the report of inquiry officer and imposed a major penalty by reducing to the lowest of the time scale for a period of 2 years with commulative effects.

5. The appeal filed against the impugned order through proper channel has been rejected.
6. The appeal made to the member to the Central Board of Customs & Central Excise has been rejected.
7. The appeal to the President through proper channel has been rejected.
8. The O.A.No.62/92 made to the Hon'ble Central Administrative Tribunal, Ahmedabad has been recorded.
9. The order of O.A. 62/92 was received by the applicant on 1.7.1998 and this Revision is filed on 27.7.1998 within 30 days of its receipt.

G R O U N D S

(a) Common proceedings under Rule 18(1) of C.O.S. (C.C.R.) Rules 1965.

(i) It is most respectfully submitted that in the captioned case, two orders have been issued for common proceedings by the authorities u/r.18(1) of C.C.S. (C.C.A.) Rules, 1965.

(ii) One is dtd.21.12.83 issued by the Collector of Customs and Central Excise Rajkot bearing confidential F.No.II/10(A) (Con) 21/83 dt.21.12.1983 and (ii) is F.No.C-14012/9/86 vi-II B Govt. of India, Ministry of Finance, Department of Revenue, in name of President of India on 2nd May,1986.

(iii) Now it transpires that both the above orders are on record and it was necessary to scrutinize and

1. The first part of the report is a general
description of the project and its objectives.

2. The second part of the report is a detailed
description of the methodology used in the study.

3. The third part of the report is a detailed
description of the results of the study.

4. The fourth part of the report is a detailed
description of the conclusions of the study.

5. The fifth part of the report is a detailed
description of the recommendations of the study.

6. The sixth part of the report is a detailed
description of the limitations of the study.

7. The seventh part of the report is a detailed
description of the future work.

8. The eighth part of the report is a detailed
description of the acknowledgments.

9. The ninth part of the report is a detailed
description of the references.

10. The tenth part of the report is a detailed
description of the appendices.

11. The eleventh part of the report is a detailed
description of the glossary.

12. The twelfth part of the report is a detailed
description of the index.

desire as to which order should prevail and required to be complied with the Hon'ble C.A.T. has not taken into consideration and decide and therefore this being the question of law coupled with fact required to be considered by this Revision Application.

(iv) I do not wish to bother Your Lordships with the question of competency for issue of order of common proceedings U/A.18(1) of C.C.S. (CCA) Rules, 1965. However when the orders of the different authorities are obtained and produced on record it was material and vital important to be decided on the following counts :

(1) One order of common proceedings is by Collector of Customs and Central Excise Rajkot dtd. 21.12.1983 and the other order is by President of India dtd. 2.5.1986. In the circumstances the later order of President of India is of the Highest authority and also last i.e. after the issue of order of Collector of Customs and Central Excise Rajkot . So it should prevail the other.

(2) It is submitted that on the ground that the President of India is the highest authority of Govt. machinery, as respect as well as discipline, his order is required to be obeyed.

(3) It is submitted that the order of common proceedings has not been issued suo moto. It is the collector concerned must have refer and sought for its guidance and thereby it has been caused to be issued.

(4) It is submitted that issuance of order of common proceedings by the President of India is not an empty formality that it has a scarcity of performance and by not complying the order of President a great disregard and dishonour has been created which do not deserved to be condoned.

(5) It is submitted that the order of President has been issued after a gap of nearly 2 and half year from the date of issue of order by Collector of Customs and Central Excise, Rajkot. It was bounden duty of Collector of Customs and Central Excise Rajkot to appraise the President of India full facts and latest stage of inquiry without concealing any fact or development in the case. The President would have certainly issued appropriate and suitable orders either by way of order or instruction in the order itself or otherwise by separate order either nullifying, amending or regularising the action already taken before the issue of order by President. By not doing so the Collector Customs and Central Excise has misdirected the president of India in rest of law and facts and therefore the conduct of collector of Customs and Central Excise Rajkot is not bonafide and genuine and creates doubt and that he was prejudicial and partial in conduct of the inquiry against applicant.

6. It is submitted that there is no compliance of order of Commissioner proceedings issued by the President of India. There is also no word about the common proceedings being conducted on basis of order

of common proceedings of Collector of Customs and Central Excise, Rajkot either by way of amending or regularising the inquiry already done before the issue of order by President. There the order of punishment awarded after the order of President has no locus standi and NEXUS has been this snapped and so the order of penalty is bad in law and deserves to be set aside.

7. It is submitted that unless and untill any specific and direct instructions are made in the order of common proceeding of President of India, are made, no any prognosis or intention regularising the inquiry already made can be taken for granted as true, correct and legal. Therefore the conclusion made on such part order which do not prevail in absence of such specific instructions is superfluous and imaginary and deserves to be set aside.

8. It is submitted that non compliance of requirement under Rule 18 of C.C.S.(C.C.A) Rules, 1965 amount to violation of mandatory provisions of Rules and it cannot be struck down under excuse of technical and so the penalty order is bad and deserves to be set aside.

9. It is submitted that in this case there are nearly 6 officers who are charge sheeted. There is no parity of justice in imposing the punishment to the

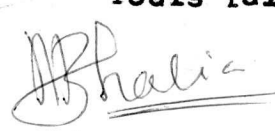
applicants. There is gross injustice caused to the applicant and therefore it of Hon'ble C.A.T. to look into the facts and circumstance of the case and to undo the wrong cause to him. In case of Shri N.C.Modi Supdt. of customs shore-guard Salaxya, the Hon'ble C.A.T. has re-appreciated his evidence and made good the wrong done to him. The case of applicant is similar and gross injustice has been done to him which deserves to be reappreciated.

10. It is submitted that the details of penalty imposed of different officers will be submitted if found necessary at further stage of proceedings.

11. It is submitted that this revision application may kindly and sympathetically and gross and great injustice cause to the applicant may kindly be make good.

FOR ABOVE ACT OF YOUR KIND AND SYMPATHETIC
CONSIDERATION THE UNDERSIGNED AS DUTY BOUND SHALL EVER
PRAY.


(R.S. GAJJAR)
Advocate.

Yours faithfully,

(D.R. BHALIA)
Advocate.



नं. 9739 अ. 20/98.

तारीख 25/7/98

नाम श्री. D. R. Bhalia

पता: 21/7/98, Ahmedabad

प्रमाणित किया जाता है

ला. नं. अ. अ. 20/98

द्वारा कानून के अनुसार

अवधि के लिए

बेनामनी

Bhalia

Serial No.

1403 25-7-98

H. F. Mithawala

NOTARY

A F F I D A V I T

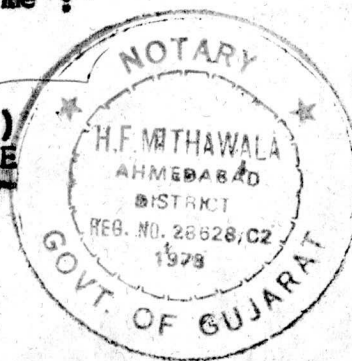
I, Shri D. R. BHALIA, Superintendent, Customs & Central Excise, ~~Rajkot~~ Camp Ahmedabad, do hereby state on solemn affirmation that, what is stated in paras 1 to 9 of Revision Application to which this affidavit is attached are true to the best of my knowledge and belief and rest paras are on legal advice, I believe them to be true and correct.

Solemnly affirmed today on 25th July, 1998, at Ahmedabad.

Explained & read over &

Identified by me :

(R. S. GAJJAR)
ADVOCATE



Solemnly affirmed
BEFORE ME

H. F. Mithawala
H. F. MITHAWALA
NOTARY

25-7-98

Serial No.: 1403
Book No.: 97
Page No.: 80
Date: 25-7-98

Page 1
Date
Time
Place
Subject
Teacher
Student

1. The first part of the lesson was devoted to a review of the material covered in the previous lesson. The teacher asked the students to recall the main points of the lesson and to explain the meaning of the new words and phrases. The students were very active and gave correct answers to all the questions.

2. The second part of the lesson was devoted to the study of the new material. The teacher presented the new words and phrases and explained their meaning. The students listened carefully and took notes. The teacher then asked the students to read the text and to answer the questions. The students read the text and answered the questions correctly.

3. The third part of the lesson was devoted to the practice of the new material. The teacher gave the students exercises to do. The students did the exercises and the teacher checked their answers. The students did very well and showed a good understanding of the new material.

4. The fourth part of the lesson was devoted to the summary of the lesson. The teacher asked the students to summarize the main points of the lesson. The students gave correct summaries and the teacher was satisfied with their work.

5. The fifth part of the lesson was devoted to the assignment for the next lesson. The teacher gave the students homework to do. The students took notes of the assignment and the teacher said goodbye to them.

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

78

O.A.NO.62/92
T.A.NO.

DATE OF DECISION 21.10.97

Shri D.R.Bhalia Petitioner

Mr.R.S.Gajjar Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondent

Mr.Akil Kureshi Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Radhakrishnan : Member (A)

The Hon'ble Mr. T.N. Bhat : Member (J)

Shri D.R.Bhalia
Inspector, Custom,
O & A Section,
C/o. Collector, Customs &
Central Excise, Hqtrs. Office,
Rajkot.

: Applicant

(Advocate: Mr.R.S.Gajjar)

Versus

1. Union of India
(Notice to be served
through Secretary to
the Government of India,
Ministry of Finance, Deptt.
of Revenue, New Delhi.
2. Collector of Customs &
Central Excise, Hqtrs. Office,
Rajkot.

: Respondents

(Advocate: Mr.Akil Kureshi)

JUDGMENT
O.A.62/92

Date: 21.10.97

Per: Hon'ble Mr.V.Radhakrishnan : Member (A)

The applicant was working as Inspector with the respondents. He was involved in the incident on the night of 17.7.1982. The applicant was a member of a party which was to intercept a gang of smugglers. The party could not catch hold the smugglers. Accordingly, action was initiated against the applicant and four other inspectors and one superintendent. The applicant was issued with a charge-sheet and the following charges were levelled against him:

* Article-I

Shri D.R.Bhalia, Inspector of Customs, Customs House, Salaya while functioning as such during the period from 1.6.81 to 30.10.82 exhibited gross negligence in performance of his legitimate duties inasmuch as on the night of 17.7.82/18-7.82 when he was assigned guarding duties of one Ambassador Car No.GJP 5926 loaded with contraband goods - 5 gm.tins of wrist watches he did not consider it necessary to remove the contraband goods first to the Customs office of Salaya and safely secure the goods and he did not take any action whatsoever to prevent and resist the smugglers of Salaya from taking away the aforesaid car with contraband goods.

The said Shri D.R.Bhalia by his aforesaid conduct failed to maintain devotion to duty and absolute integrity and thereby contravened Rule 3(1) of the Central Civil Services (Conduct) Rules, 1964*.

The applicant denied the charges and asked for open inquiry. An inquiry officer was appointed to enquire into the charges in respect of all the accused including the applicant. The inquiry officer submitted his report and his finding was that the charges against Shri Bhalia was partly proved.

The Collector of Customs and Central Excise, Rajkot after examining the inquiry report came to the conclusion that he did not agree fully with the inquiry officer that the charges were only partly proved. He came to the conclusion that the charges were fully proved and imposed the penalty of reduction of pay to the lowest of the time scale of the pay for a period of two years with cumulative effect. The applicant filed appeal to the Member,

Central Board Customs and Central Excise which was rejected by a speaking order dated 24.9.88 (Annexure A-4). The applicant again represented to President of India which was also rejected by that authority (Annexure A-6). He has taken the point that the charged officers were working under different Collectorates. One of the accused is a Superintendent of Customs who is appointed by the President of India. He states that under Rule 18 of the CCS(CCA) Rules, the order of common proceedings should have been issued by the President of India and only after such an order the individual charge-sheets can be issued by the different authorities. He says that he was issued charge sheet on 30.8.83. An inquiry officer was also appointed on 16.11.83 and thereafter the order under Rule C.C.S. (C.C.A.) Rules, 1965 was issued on 22.11.83 by the Collector of Central Excise Rajkot at Ahmedabad whom he claims is not the competent authority to do so. The Dy. Secretary, Govt. of India, Ministry of Finance has issued a covering order dated 2.5.1986. The applicant claims that the proper course for the respondents would have been to scrap the entire proceedings and issue fresh charge sheet to all the officers but this was not done and the Collector of Central Excise, Rajkot has issued letter dated 17.8.96 being the final order. He claims that as per the order of Deputy Secretary to the Govt. of India the Collector of Central Excise, Rajkot is

competent to function as disciplinary authority in respect of officers posted in different Collectorates. Accordingly, he claims that the old orders issued by the Collector of Central Excise, Rajkot before the issue of Presidential Order are bad in law and not in accordance with the procedure of the CCS (CCA) Rules, 1965. Accordingly, he claims for the following reliefs:-

- "(a) The penalty of reduction to the lowest of the time scale and stopage of two increments with cumulative effect to be set aside.
- (b) Any other relief which this Hon'ble Tribunal Court may deem fit, just and proper".

The respondents have filed reply. They have contested the application. They have denied the applicant's contention that he was not responsible for the incident which happend on the night of 17.7.82. The applicant was one among the five who were involved in the incident. They have stated that the disciplinary authority has given full reasons in the speaking order. They have stated that the applicant was not earnest in his attempts to catch smugglers and the contraband goods and because of this lapse the disciplinary action was initiated against him. The applicant was an officer in charge of the guarding duty and it was from his custody the contraband goods and vehicle used for the transportation. The applicant was on duty to secure the vehicle and did not take any action

and the vehicle was removed from the scene of action thereby the applicant exhibited gross negligence in the performance of his legitimate duties and failed to maintain devotion of duty and absolute integrity. They have stated that all the legal requirements for conduct of the disciplinary rules were observed initially the officers were part of the establishment of Rajkot Collectorate and hence, the Collector, Rajkot being the disciplinary authority had issued the charges in cases of all the officers. Regarding the issue of the order from President of India, they have stated that it became necessary to do so as the another charged officer Shri N.C. Modia Superintendent was transferred to Ahmedabad Collectorate and because of his transfer the President of India has issued the order dated 2.5.86 appointing the Collector, Customs and Central Excise, Rajkot as common disciplinary authority. They have stated that the transfer of Shri Modi did not in any way affect the proceedings against the applicant. The respondents have also disputed the contention of the applicant that he was only incharge of guard duty and not responsible for protection of the smuggled goods. They say that guard duty involves protection of the goods also. The contraband goods and the vehicle used were taken away and the applicant was not in a position to stop that. Accordingly, the charges were framed against him for negligence of duty. Therefore, the applicant's contention that he was

not responsible for protecting the goods and vehicle used are not accepted. The inquiry officer also come to the conclusion that the charges against the applicant was partly proved and the disciplinary authority after analysing the evidence issued speaking order establishing the guilt on the applicant. They have justified for imposing the penalty of reduction in the pay of the applicant commensurated with the misconduct.

Mr.Gajjar learned counsel for the applicant stated that the applicant was only assisting another officer. At his request the applicant was to guard the contraband goods which was taken away by the smugglers. Even though the applicant was injured he made attempt to stop the smugglers but could not do so. Instead of appreciating his efforts the respondents had charged him for negligence and dereliction of duty in performing the operations. The main point argued by Mr.Gajjar is that the order for common proceedings was issued by the Collector Customs and Central Excise, Rajkot (Annexure A-10) which was not legally valid as the appointing authority for the first charged officer Shri Modi Superintendent of Customs, was President of India and in this case also the President of India should have issued the orders of common proceedings. Accordingly, he argued the entire proceedings issued under illegal order are vitiated. In this connection he referred to the judgment in the case of Ashok V.Naik vs. Administrator of Goa, Daman & Diu

1979 SLJ 94 in which the common proceedings which were initiated within the sanction of the Governor who may the competent authority was struck down. He also pointed out that the Presidential order was issued only on 2.5.86 (Annexure A-2) after the inquiry against the officers was already over. He also argued that the role played by the applicant was not properly appreciated by the respondents. The failure of operations was actually due to the role played by the another officer Shri Jivarajani who was senior officer not proved that the applicant did not take any step to remove the contraband goods from the car. In fact the applicant had made full efforts to stop the car but he was injured in the process. In these circumstances, he could not be successful. He was only assisting the senior officer at his request and he could not be blamed for the failure of senior officers. The applicant was only asked to perform the duty of guard and nobody gave him instructions. The applicant has performed his duty as per the list of duty which is supported by the statement of the witnesses. The applicant was falsely implicated. Mr. Gajjar further argued that there was discrimination of imposing the punishment on the charged officers. One person was actually exonerated and others given stoppage of two increments without cumulative effect. The respondents could not have issued any orders of second inquiry which was not admissible under the rules. The applicant was only given the maximum punishment

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of reduction of pay which is discriminatory treatment to the applicant and was biased against him by the disciplinary authority.

Mr. Kureshi, learned counsel for the respondents states that as per Rule 18(1) of CCS (COA) Rules, 1965, the competent authority who issued the order of common proceedings is the Collector, Customs and Central Excise, Rajkot. He denied the contention of the applicant's counsel that the appointing authority of Superintendent is the President of India. In this connection he cited CCS (COA) Rules, Appendix VII, Part-II, item 12, according to which the appointing authority and disciplinary authority for imposing penalties of Superintendent of Customs is Collector of Central Excise & Customs, which reads as under:-

Sr. Description No. of service.	Appoin- ting author- ity.	Authority competent to impose penalti- ies & pen- alties which it may impose (with ref. to item Nos. in Rule-II).	Penali- ties	
1	2	3	4	5
12. Central Ex- cise Service Cl. II-Supdt. Cl. II (incl- uding Dy. He- adquarters Asst. to the Collector) & District Opium Officers, Class-II.	Collect- or of Central Excise/ Land Customs; Narcotics Commr.	Collector of Cent- ral Excise/Land Customs, Director of Inspection; Director of Revenue Inte- lligence; Narcotics Commr. In respect of- (i) a member of the Service serving in the statics & Intellig- ence Branch (Central Excise).	Dy. Collec- tor (S & I.B.)	(i) to (iv)

12

1	2	3	4	5
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(ii) any other member Assitant (i)
of the Service. Collector
of C.E.
Class-I.

Further he pointed out that this objection were not taken by the applicant at the time of inquiry. He pointed out that the applicant was a member of the party involded in the operations and he cannot escape from the responsibility. He also pointed out that the inquiry officer who conducted the inquiry after examining the witnesses came to the conclusion that the applicant was partly responsible. The disciplinary authority after analysing the evidence had come to the conclusion that the applicant was fully responsible and imposed the penalty. It is not a case of 'no evidence'. He pointed out that the Tribunal or Courts has no jurisdiction to enter into the analysis of evidence in the inquiry. In this connection he cited the judgment of the Hon'ble Supreme Court in Govt. of Tamil Nadu & another vs. A.Rajapandian (1995 (1) SC SLJ p.12). He also pointed out that the applicant was awarded punishment as considered suitable by the disciplinary authority and he cannot challenge it in the Court. In this connection he cited the judgment of the Hon'ble Supreme Court in Indian Oil Corporation & Anr. vs. Ashok Kumar Arora (AIR 1997 SC 1030) as authority for this proposition. He also referred the judgment of the Hon'ble Supreme Court 1997 (1) SC SLJ 620.

We have heard both the learned counsels and gone through the documents on record. Mr. Gajjar, the learned counsel for the applicant during the arguments has really made a demand for reapprising the evidence in the inquiry. It is not the function of the Tribunal to reappraise the evidence and reassess them. The Tribunal can only in exceptional circumstances disturb the finding of the inquiry officer i.e. when the inquiry officer's report is based on 'no evidence'. The Tribunal cannot go into the question where there is insufficiency of evidence to prove the charge. It has only jurisdiction to go into the question when there is no evidence at all to support the findings. Another reason for interfering with the Tribunal would be in cases where principles of natural justice are violated or where procedure prescribed is not followed resulting in gross injustice to the applicant. There was inquiry conducted by the inquiry officer after following the prescribed procedure. It cannot be attributed as a case of 'no evidence'. The applicant was also not pointed out any violation of procedure committed by the inquiry officer which has resulted in gross injustice to him. He was also not able to point out any violation of principles of natural justice. Accordingly, we come to the conclusion that the Tribunal cannot interfere with this matter.

In so far as the competence of common proceedings are concerned, it has been specified in Rule 18(1) of CCS (CCA) Rules, 1965 which reads as under:-

"18(1) Where two or more Government servants are concerned in any case, the President of any other authority competent to impose the penalty of dismissal from service on all such Government servants may make an order directing that disciplinary action against all of them may be taken in common proceeding."

The main contention argued by Mr. Gajjar is that one of the charged officers the appointing authority was President of India and hence, the common proceedings order should have been issued by him and not by the Collector, Customs and Central Excise. He supported his contention to the judgment in Judicial Commissioner of Goa, Daman & Diu in Special Civil Application (Writ Petition) Nos. 86 of 1983 and 35 of 1975 decided on 2.9.1978. Mr. Kureshi learned counsel produces CCS (CCA) Rules, Appendix VII, Part-II, Item 12, which reads as under:-

Sr. No.	Description of service	Appointing authority.	Authority competent to impose penalties & penalties which it may impose (with ref. to item Nos. in Rule-II)	Penalties
1	2	3	4	5
12.	Central Excise Service Cl. II- Supdt. Cl. II including Dy. Headquarters	Collector or of Central Excise/ Land Customs; Narcotics Commr.	Collector of Central Excise/ Land Customs, Director of Inspection; Director of Revenue Intelligence, Narcotics Commr.	

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1	2	3	4	5
	Asst.to the Collectors) & District Opium Officers Class-II.		In respect of - (i) a member of the service serving in the statis- tics & Inte- lligence Branch	Dy.Colle- (i) ctor (S& to I.B.) (iv)

As per the above document schedule of powers presented by the learned counsel for the respondents, we find that the appointing authority of Superintendent is Collector, Customs and Central Excise. Accordingly, we find that there is no bar for that authority to issue an order for common proceedings. We see no merit in the application and the same is dismissed. No costs.

Sd/-
(T.N.Bhat)
Member (J)

Sd/-
(V.Radhakrishnan)
Member (A)

तैयार करनेवाला 1286
Prepared by: 29/12/97
By: 29/12/97

Received to-day i.e.
1-7-98
Bhalia
(D.R.Bhalia) 1-7-98

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

O. A. NO. ~~129~~ / 91.

82/F1

Shri D.R.Bhalia

.....

Applicant

V/s.

Union of India

.....

Respondant

-: I N D E X :-

Sr.No.	Annexure	Particulars	Pages
1.		Memo of Application	1-22
2.	'A'	Memorandum of charge dated 30-8-83 with Annexure-I, II, III & IV.	23-27
3.	'B'	Report of I.O. C.V.C.G.O.I. New Delhi dated 26-12-84.	28-30
4.	'C'	The order in original issued by disciplinary authority, Collr. of Customs & Central Excise, Rajkot dated 19-8-86.	51-56
5.	'D'	Appeal against the order in origin filed by applicant dated 6-10-86.	57-70
6.	'E'	Order in Appeal issued by Central Board of Custom & Central Excise, New Delhi dated 24/ ^{Sept} / _{Oct} /88.	71-73
7.	'F'	Reference Petition to the President of India dtd.20-4-89.	74-84
8.	'G'	Order in reference application issued by under Secretary in name of President of India dated ____ Aug'90.	85-86

Sr.No.	Annexure	Particulars	PAGES
9.	'H'	Order of common proceedings issued by Collr. Customs & Central Excise, Rajkot dated 22-11-83.	87-90
10.	'I'	Order dated 21-12-83 for cancellation of common proceedings and appointment of I.O.	91-93
11.	'J'	Order of Collr. of Custom & Central Excise making appointment under Rule 5 (2) for I.O. dated 21-12-83.	92-93
12.	'K'	Order by Collr. of Custom & Central Excise, Rajkot of common proceedings under Rule 18(1) & (2) of CCS (CCA) 1965 dated 21-12-83.	94-95
13.	'L'	Order of common proceedings under Rule 18(1)&(2) of C.C.S.(C.C.A) 1965 dated 2-5-86 issued by Deputy Secretary by order and in name of President.	96
14.	'M'	Statement of Shri Shivaing A. Jamadar Shree Gaurd Salaya with I.O.'s Report dated 24-9-84.	97-99
15.	'N'	Report of petrolling of Shri Bhalia dtd. 18-7-82 and his statement dated 22-7-82.	100-104
16.	'O'	Statement of Shri Kantrodia dtd. 21-7-82	105-112
17.	'P'	Statement of Shri M.M. Chauhan dtd. 23-7-82 alongwith cross examination before I. O.	113-115
18.	'Q'	Statement of Shri G.N. Dabhi Sepoy dated 23-7-82.	116-118
19.	'R'	Statement of Shri Dinash D.N. dated 22-7-82 alongwith cross examination before I.O.	116-120
20.	'S'	Statement of Shri K.K. Jadeja dtd. 21-7-82.	121-122
21.	'T'	Order in original (adjudication) No. 27/ Addl. Collr./1983 dtd. 30-9-83, F.No. VIII/10-33/O.C./82	123-137

22. Ann.'U' Extract of order against Shri Jivrajani. 138-142
23. Ann.'V' Extract of order against Shri Kantrodia. 143-146
24. Ann.'W' Extract of order against Shri Thakkar. 147-148
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THE CENTRAL ADMINISTRATIVE TRIBUNAL

AHMEDABAD

Original Application No. 129 of 1991

Shri D.R.Bhalia
Inspector, Custom,
O & A Section,
C/o.Collr.Customs & CEx
Hqtrs, Office,
Rajkot

..... Applicant

V/s.

Union of India

..... Respondent

Details of Application :

(1) Particulars of Applicant

- | | |
|---------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Name of the Applicant | Shri D.R.Bhalia |
| (b) Designation and Office in which employee is serving | Inspector of Customs, O & A Section, C/o.Collr.Of Customs & CEx Hqtrs, Rajkot |
| (c) Office Address | Customs and Central Excise Collectorate Centre, Point Bldg., Rajkot |
| (d) Address for the service of the Notices | (1) Shri D.R.Bhalia,
Inspector of Customs,
O & A Section,
C/o.Collr.of Customs &
CEx Hqtrs,
Rajkot (Gujarat)

(2) R.S. Gajjar, Advocate
10, Panu Villa,
Radha Vallabha Co.,
Maninagar,
Ahmedabad-8. |

(2) Particulars of Respondents :

- | | |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) Name and Address of the Respondents | (1) Union of India
(Notice to be served through, Secretary to the Government of India, Ministry of Finance, Department of Revenue, & New Delhi.

(2) Collector of Custom & CEx, Hqtrs. Office, Rajkot. |
| (b) Office address of the Respondents | As above |
| (c) Address for serve of all notices | As above |

(3) Particulars of the order against which application is made

The order made by under Secretary Shri Vijay Singh by order and in name of the President Bearing F.No. C:17013/20/89-Ad.V. dtd. August '90 in order in Appeal passed by member of Central Board of Excise and Customs, Ministry of Finance, Govt. of India, New Delhi - bearing no. Nil dtd. 24.10.88 in order in original issued by Collr. of Customs and Central Excise, Rajkot Bearing F.No. 11/10(A)(CDN)-20/83 dated 19.8.86.

(4) Subject in Brief

For setting aside the penalty of stopage of the increment with cumulative effect.

(5) Jurisdiction of the Tribunal

The applicant declares that the subject matter for the redressal of the grievances is within the jurisdiction of this Hon'ble Tribunal.

(6) Limitation

The applicant further declares that the application is within the period of limitation as prescribed u/s.21 of Central Administrative Tribunal Act.

(7) Facts and Grounds :

Brief Facts of the Case :

BRIEF OF FACTS :

(1) Shri D.R.Bhalia, Inspector of Customs, Custom House, Salaya was working as Officer Incharge of Customs House, Salaya from 1-6-81 to 31-10-82. Shri V.T.Kantrodia, Inspector of Customs, Shore Guard, Salaya received information on 17.7.82 about landing of contraband goods in a launch in Salaya creek. He appraised the Asst. Collr. Customs, Jam Nagar, who directed him or instructed him to work out the information with the help of R.C.P. Khambhalia and to use Jeep of S.C.Salaya and also directed to carry out preventive duty and keeping watch over the coastal area and search of boat and persons. Shri V.T.Kantrodia requested Shri Bhalia to join in the operation as per XXXX A.C.'s instruction and Shri Bhalia agreed and joined them.

... 3/- ...

Shri Kantrodia and Jivrajani dropped Shri Bhalia to Salaya Jetty and asked him to watch and petrol at Salaya Jetty and was given Assistance of two sepoye and then Shri Kantrodia and Jivrajani with their jeep went to cycus point and kept watch for in-coming and out going traffic from Barar Jetty. On enroute to Barar Jetty Shri Kantrodia and Jivrajani saw one car coming in high speed from Barar Jetty side. They gave signal to stop the car, but the said car did not stop but ren away towards Salaya. They had also seen another vehicle coming from car's direction in Barar Jetty side. Therefore the officers kept their two armed sepoye with instruction that the said another vehicle coming from Barar side should be stopped and checked. The Customs Officers (Kantrodia and Jivrajani) in the said jeep immediately chased the said car and they found the said car in abandoned condition without any occupant therein near Panjra Pole in Salaya. They found two teens wrapped in Gani bags in the rear seat of the ambassador card bearing No. GJP 5926 . On opening the said car they found three similar tins lying in the dickey. Then the Inspector Customs, Shri Kantrodia sent a jeep and called upon Shri Bhalia and sepoye to the spot, Panjra Pole where the abandoned car was found. Shri Kantrodia and Jivrajani instructed Shri Bhalia to perform Guard duty Shri G.B.Sing Jeep Driver suggested to Inspector Shri Jivrajani and Bhalia and Kantrodia to remove the five teens of contraband goods to Custom Office, Salaya but none of them removed the goods to Custom Office, Salaya. Shri Kantrodia and Shri Jivrajani after securing presence of Shri Bhalia went in jeep to collect further more officers for help and came alongwith Shri K.K.Thakkar at the exact spot, Panjra Pole. At that time Yusuf Patel a known smuggler came on Motor Cycle with other persons namely Haroon Ismail, Amad Umar and Amad Langda and Aziz Adam, Shri Jusab Patel opened the door of the card and took seat and tried to start the said car. Shri Bhalia caught hold of

Shri Juseb Patel and lock him out from the car and had a hot discussion. Shri Juseb threatened him like anything. Meanwhile Aziz Adam got in the car from the other side and tried to start the car. Shri Bhalia resisted and put his right hand in the car to catch hold of Aziz to pull him out from the car however his right hand was clamped in the door and got injured. Therefore taking advantage of situation the Juseb Patel and others gave push to the car from behind and the car was driven away. However the officers standing at back of the car did not co-operated nor resisted and the entire operation has not been successfully materialised.

(ii) The disciplinary inquiry was put in motion and a memorandum of charge sheet was issued to Shri Bhalia and the true copy of memorandum of charge with Annexure 1 to 4 have been marked and annexed as Annexure A1, A2, A3, A4 and A5.

(iii) Shri Bhalia asked for an open inquiry denying the charges levelled against him which on granted and on completion of inquiry Shri A.K.Rastogi, Commissioner for Departmental inquiry Central Vigilance Commissioner, Govt. of India, New Delhi - submitted his report bearing No.14/AKR/4(60) dated 26-12-84 reporting that the charges against me are partly proved. The same is marked and annexed as Annexure B.

(iv) The Collr. of Custom and Central Excise, Rajkot, after perusing the report of inquiry and the defence submitted by me held that the charge is fully proved disagreeing with the report of the inquiry officer and imposed a major penalty by reducing to the lowest of the time scale of the pay for a period of two years with effect from the date of the said order and further directed that the reduction will have an effect of postponing further increments of the pay the said order is marked and annexed as Annexure C.

(v) An appeal had been filed against the order in original issued by Collr. of Custom and Central Excise, Rajkot, through proper channel and according to the instructions given in the said order which is marked and annexed as Annexure D.

(vi) The appeal made to the member to the Central Board of Customs and Central Excise was rejected which is marked and annexed as Annexure 'E'.

(vii) Being aggrieved of the said order in appeal a petition was addressed to the President through the head of the department which is marked and annexed as Annexure 'F'. The said petition is also rejected the said order on the petition is marked and annexed as Annexure 'G'.

73 GROUNDS :

The applicant being aggrieved of the order in origin, order in appeal and order in petition , submits his grounds amongst others as under :

(a) The facts stated in Annexure-II of the memo of charges which is at Annexure- A3 is not correct facts focusing the true and honest facts of the case. The important facts that the officer incharge of the operation was Shri Kantrodia who received information and who sought orders and instructions from A.C. Customs, Jaanagar to deploy the R.C.P. unit of Jam Khambhalla and jeep of Customs, Salaya.

(b) It is crystal clear that Shri Kantrodia has never asked for services of officer incharge of Customs House, Salaya from A.C.Jamnagar. Nor A.C.Jamnagar has asked him to deploy my services. However I volunteered my services as he said that A.C. is instructed him and took him to Customs House on my Scooter and from there I went to Salaya Jetty where I was dropped with instruction to watch and petrol on that jetty. This aspect has not been fully discussed

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in this Annexure-II of memo i.e. Exhibit A3.

(c) It is submitted that after dropping me at Salaya Jetty Shri Kantrodis and Jivrajani went in jeep to cycus point for watch and petrolling. At this point they saw one car coming from Barar Jetty side. They signalled the said car to stop but the said car did not stop and ran away towards Salaya village and that is why they chased the said car. The idea behind is that this material portion of the facts have been conveniently and safely omitted in the facts which constitutes or throws light on the behaviour and bonafide of the officers performing duty at cycus point.

(d) The inquiry officer has not dealt with this point, however he has severely criticised on the conduct of this officer in his report which is Annexure 'B', Page-19, Para-5.7.2 (entirely). The officer would have immediately on finding that the car did not stop at the site of signal would have scared the driver by fire in air or in the wheel. They ought not to have stood silent and allow the car to pass away by over taking them. Thus the important aspect has been not taken into consideration while framing the charge which would have thrown light on the integrity or competency of the officers.

(e) It is submitted that the factate is on record that my self caught hold of Jusab Patel who opened the door and took seat in the car and I had a hot discussion with him for resistance.

(f) The fact that thereafter Aziz Amad took seat in the car, I tried to pull him from the car and he shut the door my hand was clamped in the door and I got pain and injury on my right hand. This part of my roll has been supported by ^{most of} all the sepoy and officers. However no note or cognizance has been taken in the charge and as a consequence has been taken in order

in original, Appeal and petition orders and thereby a great injustice has been caused to me and therefore order is bad and deserves to be set aside.

(g) It is submitted that in the captioned case, nearly 6 officers are involved, and their authorities competent to impose the penalties of dismissal from service are different. Shri D.R. Shalia, Inspector of Customs, Custom House, Salaya at the crucial time and now also is under Collector of Customs & Central Excise, Rajkot Shri V.T. Kantrodia, Inspector of Customs & C.E., was Inspector under Collectorate of Customs & Central Ex., Rajkot. Shri M.N. Viradia, Inspector Customs, Shore Guard Salaya, Shri M.C. Modi, Superintendent of Customs, Shore Guard Salaya, under Collectorate of Customs & C.E., Ahmedabad, Shri K.K. Thakkar & Shri L.D. Jivrajani, Inspectors R.C.P. Units at Khambhali are under Collectorate of Customs (Preventive), Ahmedabad and therefore there are different authorities competent to impose penalty of dismissal on them, under the circumstances, it is mandatory under Rule 15 of the C.C.S. (C.C.A.), that order of common proceedings should be issued by the president of India at the initial stage and the order of such common proceedings must incorporate the name and designation of officer functioning as disciplinary Authority in respect of these officers and it should also incorporate under what procedure i.e. procedure prescribed under Rule 14 or 16 of C.C.S.(C.C.A.) Rules of 1965 are to be followed. It is also incumbent upon competent Disciplinary Authority who have to serve the charge sheet to the concerned officers. The disciplinary authority is required to hold inquiry against the Government Servant and is required to draw-up or cause to be drawn-up (a) substance of imputation of mis-conduct or mis-behavior into definite and distinct article of charges under Rule 15 of C.C.S., (b) a statement of imputation of mis-conduct or mis-behavior in support of each article of charge which shall contain (1) statement of relevant facts including

any admission or confession made by the Government Servant (ii) a list of documents by which, and a list of witnesses by whom the articles of charge are proposed to be sustained. Here in the captioned case the disciplinary authority is not an Inquiry Officer and the Disciplinary Authority Shri B.L. Parihar has not issued charge sheet to the concerned officer and therefore the memorandum of charge and article of charge framed vide Annexure- I and II dated 30.9.83 by Shri B.V. Kumar is bad in law because it is disciplinary authority who is required to draw or cause to be drawn the memorandum of charge under Rule 14(3) of C.C.S. (C.C.A.) 1965. Shri B.V. Kumar is never cited as disciplinary authority in this case and so the entire memo of charge and subsequent proceedings is illegal and bad in law and against the principle laid down by law and against the principle of natural justice.

(h) It is pertinent to note that though the charge sheet (memo) dated 30.9.83 has been issued by Shri B.V. Kumar, Collector of Customs, Ahmedabad Shri B.L. Parihar, Collector of Customs & C.E., Rajkot has ordered common inquiry under Rule 19 (2) (i) of C.C.A. 1965 for common proceedings. There is no order or any evidence how the disciplinary authority has been changed from Shri B.V. Kumar, Collector of Customs, Ahmedabad to Shri B.L. Parihar, Collector of Customs & C.E., Rajkot this shows non application of mind and gross negligence on part of the respective authority in ordering and conducting proceedings.

(i) It is submitted that there are two distinct and different authority i.e. 1. Collector of Customs, Ahmedabad and 2. Collector of Customs & C.E., Rajkot who are deemed to be disciplinary authority in this case because some officers are under Collector of Customs, Ahmedabad who is competent authority to impose penalty of dismissal on them. There are some other officers under collectorate of Customs & C.E., Rajkot where is competent authority to impose penalty of dismissal on them.

Under the circumstances the provisions of Rule 18 comes into play and the President is to make an order directing the disciplinary action against all of them to be taken in a common proceedings. The order of Shri S.L. Parihar, Collector of Customs & C.E., Rajkot dated 22.11.83 and 21.12.83 are bad in law and against the mandatory provisions of Rule 18(1) of C.C.S. (C.C.A.), 1955. Therefore the entire proceedings alongwith the charge sheets stands vitiated.

(j) It is submitted that though the article of memorandum has been issued to the applicant by Shri B.V. Kumar, Collector of Customs, Announced the appointment of Inquiry Officer Shri A.K. Rastogi, commissioner of vigilance for departmental inquiry, is made by Shri S.L. Parihar, Collector of Customs & C.E., Rajkot which is bad in law, against the rule of C.C.S. and against the principle of natural justice.

(k) It is submitted that Shri S.L. Parihar, Collector of Customs & Central Excise, Rajkot first issued an order dated 16.11.83 bearing F. No. 11/10(A) (Con)28/82 and 11/10(A) (Con)-21/83 wherein he appointed Shri A.K. Rastogi, commissioner, for inquiry, however vide his letter dated 21.12.83 bearing even number, cancelled the said order without giving any reasons. It is surprising to note that on the day he appoints the same person i.e. on 21.12.83 as an inquiry officer. No reasons or explanation are forth coming. This shows that the mind of disciplinary authority is wavering and vacillating. Thus the appointment of Shri A.K. Rastogi, commissioner is bad in law and against the provisions of the Act or rules in force. Therefore the entire inquiry conducted by him stands vitiated.

(l) It is submitted that an order of common inquiry has been issued by Deputy Secretary to the Government of India on name and behalf of President of India vide File No..C-14012/9/86 -Ad-II-B dated 2nd May, 1986. In this order the Collector of Customs & C.E. Rajkot has been asked to function as disciplinary authority for common proceedings. Collector of Customs & C.E., Rajkot has already

Rajkot has already started and functioned as disciplinary authority from 20.11.83. Therefore the order and the proceedings conducted prior to the order of President dt. 2nd May, 1986 are without authority or jurisdiction can not survive in eye of law.

(m) It is submitted that the order of President dated 2nd May, 1986 can not have any retrospective effect and it can not be given force of operating from 22.11.83. Therefore the entire inquiry from appointment of disciplinary authority, Inquiry Officer, issue of memorandum of charges are unlawful unjust and improper. This infirmity is uncureable and can not be rectified and given a legal status on excuse of technical error, therefore the entire proceedings are illegal and deserves to be quashed or set aside.

(n) It is submitted that the order of President dated 2nd May, 1986, no where on face of order itself states that it has a retrospective effect. It has also nowhere stated that the inquiry which has been conducted prior to the issue of that order be legal. Therefore in absence of such saving clause the order of President dated 2nd May, 1986 can not be interpreted or construed giving legal status or validity to the prior proceedings which has already been started from 22.11.83 to 2nd May, 1986 and therefore the entire proceedings is bad in law and stands vitiated.

(o) It is submitted that the President has been kept in darkness at the time of issuance of order dated 2nd May, 1986 about the common proceedings dated 22.11.83 ordered and in progress as per Collector of Customs & C.E.X. Rajkot's order. The President has not been apprised of this important and vital fact that before 2½ years back the Collector of Customs & C.E.X., Rajkot has already issued an order of common proceedings on 22.11.83. If this fact was brought to the notice of the President by placing the relevant material and disclosing the true and correct fact, he would have rather cancelled the order of Collector of C. & C.E.X., Rajkot and would have issued a fresh

one or would have issued order with retrospective effect and regularised or legalized the act of the Collector of Customs & C.I.T., Rajkot. Thus the President being not apprised of true and vital fact and circumstances for the best reasons known to the concerned officers, the order suffers from (from) incurable infirmities which vitiates the entire proceedings.

(p) It is submitted that the order of President dated 2nd May, 1986 throws light on the subject matter and issue involved in law and confirms the mandatory requirements of order of common proceedings to be issued by President of India in this case. Therefore the order of Collector of Customs & C.I.T., Rajkot is bad illegal and without jurisdiction. This infirmity goes to the root of the case and therefore the entire order imposing penalty deserves to be quashed.

(q) It is submitted that in the entire case the reliance has been placed on statements of co-accused. There is no independent corroborative evidence. Section 30 of The Evidence Act prohibits or restricts the use of statement of co-accused for basing conviction without independent corroborative evidence. The list of witnesses at annexure^{III &} IV of memo shows that not a single man is independent person, but all are officers. Therefore penal action is unwarranted.

(2) It is submitted that in this case the inquiry officer Shri A.K. Rastogi has held in para 5.7.2 of his inquiry report bearing No. 14/ARR/4 (60) dated 25.12.84 that Shri Kantrodia is central figure of this case. He received the information conveyed to Assistant Collector Customs, Jamnagar and received instructions and carried out and organized the implementation of information, collected the staff gave different duty to different officers. He first gave duty of patrolling and Sapey at Salaya Jetty he himself with other officers performed duty at cycus point. When the car in question did not stopped eventhough signled at cycus point, he chased and found the said car in abandoned condition he called for applicant (Shri Ghalia,

and his Sepoys from Salaya Jetty and gave guarding duty to applicant and his sepoy and went for collecting more staff. The applicant (Shri Shalia) carried out guarding of the car in question very faithfully and honestly till the arrival of Shri Kantrodia to the place where the abandoned car was found. It is submitted that no other duty was given to him the duty of Shri Shalia (Applicant) was complete on arrival of Shri Kantrodia and other officers at the crucial place. The disciplinary authority has misdirected himself in holding that applicant did not considered it necessary to remove the car with alleged contraband to Custom House, Salaya and safe place. Therefore the order of disciplinary authority is based on twisted and concocted story and a pure imaginary on supposition and proposition which is bad in law and deserves to be set aside.

(s) It is submitted that Shri Shalia was not asked to remove the goods by the officer in-charge of the operation and was asked to assist the said officer i.e. Shri Kantrodia the same has been done perfectly and sincerely. It is going beyond the scope of guarding duty expecting the applicant to take away the goods from place of abandonment to Custom House, Salaya or elsewhere. Therefore the charge of not removing the goods to Custom House, Salaya without specific order or slightest indication about it is based on supposition and presumption and therefore it is bad in law and deserves to be vacated.

(t) It is submitted that the charge as per article 1 of memo states that "He (Shalia) did not considered it necessary to remove the goods" there was no question of consideration as the officer in-charge of the raid (Operation) was present and he (Shalia) was to assist him. (Kantrodia).

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It is crystal clear from Ann-II the imputation of Misconduct that the suggestion of removing the contraband was suggested by Driver Shri G.B.Sing to Shri Kantrodia and others but none (including Kantrodia) gave reply. This throws light on the fact that Shri Kantrodia Officer in-charge of the party was not inclined to the suggestion of removal of goods and therefore, now (Mr. Shalia) the applicant can remove the same without the consent and against the will of Shri Kantrodia Officer in-charge of the party. Therefore the charge is vague and bad and deserves to be set aside.

(u) It is submitted that in Ann-I article of charge it is stated that "he did not take any action whatsoever to prevent and resist the smugglers of Salaya from taking away the aforesaid Bina car with contraband goods."

It is submitted that from the following evidence on record the charge stands refuted.

(d) Statement of Shri Shiveing A Jamadar Customs Salaya Shore Guard S.W.10-P.16 of report of Inquiry Officer dated 24.2.84 "There was heated discussion between Shri Shalia and Yusuf Patel, Shri Shalia tried to stop him from driving away the car."

(ii) Report of Shri Shalia dated 18.7.82, Page-2 & Statement dated 22.7.82 3-7. It is stated as under "At about 14.00 Hrs. some vagher people arrived near motor car one of them was Yusuf Haji Abdulla Shaya while there was a big mob surrounding the place. At this time Kantrodia, Jivrajani Thakkar & others Group D Staff arrived in jeep. Jivrajani Inspector had some talk with Yusuf Haji Abdulla Shaya alias Yusuf Patel and also he threaten to the staff that the people were ready to attack if car is detained. These other people moved towards car and they hijacked the car at this time I tried to stop them but my hand was fixed in car's door, there was no opposition or support to me from

other officers under the above circumstances my hand which was fixed in the car's door was removed".

(iii) Statement of Shri Kantzodia, A Inspector dated 21-7-82
Page 5 has stated as under :

"He came back again started it's discussion regarding the car, he once tried to seat in the car, but Inspector Shri Shalia made him come down. He started talking to us in high tone and abuses, subsequently he got Ajij Adam, a boy with beared seated on a steering wheel, the push car got started".

(iv) Statement of Shri M.M. Chauhan Japoy Shore Guard Delays dated 23-7-82 is as under :

"Officers as well as other three persons had not discussion I have no idea as to what it was discussed one person from the crowd sat in the motor car, however Shri Shalia Inspector got him out from the car, then after another person was making hot discussions with officer, again one man sat in car and the car was removed by pushing." The above facts has been confirmed by Shri Chauhan in cross examination before the inquiry officer on 25-9-84.

(v) Statement of Shri G.N. Dabhi Japoy dated 23-7-82 is as under : "After some time Yusuf Patel came on bullet, first he went towards office and came back, then he had a hot discussion and he sat in the car, Shri Shalia Sahab dragged him out of the car then one man sat in the car other persons push the car".

(vi) Statement Shri Dinesh D. M. Japoy dated 22-7-82 is as under : " One person name Yusuf Patel a and faty man came on bullet and he discussed with officers. I do not know what was the discussion but that man went one bullet to Custom House and returned after some time and started discussion with Shri Shalia Sahab and other officers, there after he sat in the car and tried to start but Shalia Sahab caught hold of him and brought him out of the car and the hand of Shri Shalia Sahab was affixed with

the door of the car. " The above facts has been confirmed by Shri Dinesh D. N. in cross examination before the Inquiry Officer on 25-9-84,

(vii) Statement of Shri K.K.Jadeja Sepoy R.C.P. Khambhalia dated 21-7-82 is as under : " Then after one person tried to talk with Shri Bhalia saheb taking him aside, I could not hear the talk as I was standing away from the car. Shri Jivrajani Saheb was also near to us. At that time one person sat in the car but Shri Bhalia Saheb caught hold of him and got him out of the car".

(viii) Order-in-original (Adjudication) Bearing No. 27/Addl. Collr./1983 dated 30-9-83 from F.No. VIII/10-33/D.C./82 Page-5 "The said Yusuf Patel has tried to take away the said car alongwith the five teens of the contraband goods.. He took seat in the said car, but the Inspector Bhalia made him get down from the said car after a hot discussion".

(ix) Report of Inquiry Officer bearing No. 14/AKR/4(60) dated 26-12-84 on Page-18 last three lines "No doubt it is on record that Bhalia has offered some resistance for prevention of taking away of the car by the smugglers" and on this bases he says that charge is partly proved as the attempted could have been made very early before arrival of the mobs and by immobilizing the vehicle. The other part of the I.O.'s observation will be discussed in the coming para's. However the resistance and the attempt to prevent the taking away of the car by the smuggler has been proved undoubtedly from the facts and evidence on record shown and discussed above and therefore the charge framed under statement of Articles Annexure-I and statement of imputation Annexure-II is totally disproved and therefore the charge sheet deserves to be set-aside.

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(v) The inquiry officer as well as the disciplinary authority has failed to appreciate that Shri Kentrodia was the proper officer incharge of the operation as central figure in this case and when Mr. Bhalia was engaged in hot discussion and pulling out the smuggler Shri Yusuf Patel from the car and his hand being affixed with the door of the car Mr. Kentrodia and others should have taken initiative of either firing in air or firing towards the wheel of the car so as to immobilize the car and scare the mob rather than to become a silent spectators on the scene. It may be appreciated that the entire operation was not a one man's show and Shri Bhalia should have been supported by some action by others at the material time. It is the right and perfect roll he has played and the frustration only occurred because of non support by others. Therefore he can not be held responsible that even though he had a service revolver and cartridges he did not make use, when other officers like Thakkar are given benefit of doubt due to darkness said darkness would have also affected Shri Bhalia when the car took motion and the range of revolver would hardly fulfil the target and the mob without being scared would have attack the officers for firing or mis-firing.

(u) It is submitted that Incharge sheet there is no material regarding complicity of officer and immobilizing the car. The inquiry officer has selected this words from his own pocket and the disciplinary authority has very convincantly made use of this words even though there is no material supporting such action or inaction. Thereby the inquiry officer as well as disciplinary authority has travelled beyond the scope of charge sheet and for that material no scope of defence has been extended to the applicant where by principles of natural justice has been violated and therefore the order of Collr. (Disciplinary Authority) and the order in appeal and the order on petition issued by different authorities stands vitiated on this count also.

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(x) It is submitted that word immobilization consists separate and different meaning which could not be included in word guarding of duty. It is also submitted that the removal of contraband goods from one place to other can not be considered as implied meaning in act of guarding of duty. Shri Bhalia was imparted guarding duty only till the absence of the the officer in charge of the operation and on arrival of such officer his duty is complete and if any further assistance wanted or necessary the same should have been specifically ordered or imparted in absence of which all that is said in charge sheet is an imaginary based on supposition and proposition and no penal action can be based on such vague and imaginary evidence. The disciplinary authorities and other appellate authorities have acted on such filmy evidence and therefore the orders in Original in Appeal and in Petition are bad in law and deserves to be vacated.

(y) It is submitted that the Inquiry Officer has held that the charge against appellant is partly proved, however the disciplinary authority has in his finding held that charge is fully proved imposed a major penalty. It is worth noting that the disciplinary authority has not recorded its reasons for such dis-agreement nor he has recorded his own findings on such charge. It is submitted that there is sufficient evidence on record to find that Bhalia has made sufficient resistance and attempt to prevent the smugglers from taking away afore said car as discussed in (u) (i) to (ix) and therefore the disciplinary authority has acted contrary to Rule 15 (2) of the C.C.S. (C.C.A.) Rules 1965. Where by the order in origin and other appellate orders as a consequence there of stands vitiated.

(x) It is submitted that the order in original states that Shri Bhalia Inspector be reduced to the lowest of the time scale of pay of Rs. 425 to 800 for a period of 2 years from the date of this order. It further directs that

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Shri Bhalia will not earn increments of pay during the period of reduction and that on the expiry of this period the reduction will have effect of postponing his future increment of pay. It means that it has been given cumulative effect. However order in appeal in para 1st states that the penalty of reduction in pay to the lowest scale of Rs. 425 -800 for a period of two years without cumulative effect was imposed on Shri Bhalia. It is submitted that that this shows gross negligence and non-application of mind by the appellate authority to the reality and truthfulness of the order. The appellate authority has failed to take into consideration the serious and graveness of the punishment awarded to the applicant and there by he has not tried to go in deep with the representation made by the applicant and has simply signed the order without taking cognizance of seriousness of penalty imposed on the applicant therefore order is bad in law and deserves to be set aside.

(aa) It is submitted that the order issued by under secretary under name of President has failed to see that order in appeal and his order is based on reading of order in original which speaks of penalty of reduction in pay to the lowest stage for a period of two years with cumulative effect. This also shows non-application of mind whereby the order stands vitiated.

(bb) It is submitted that in order in appeal the appellate authority contended that the appellant has been offered opportunity to defend himself on point of immobilization of car. The point has been misconstrued in the entire charge sheet. There is no material or any indication about immobilization of car in the charge sheet this has come from the pocket of the Inquiry Officer which is mentioned in Inquiry Report. The disciplinary authority has picked up this words blindly without having any material whatsoever on his imagination. Therefore the opportunity can not said to have been extended by making different changes in meaning from charge without giving any specific particulars. Therefore the Order-In-Original and the Order-In-Appeal are based on presumption and supposition. On this count also order deserves