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CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 485 OF 2000
Cuttack, this the 21st day of August, 2001

Sudhanshu Sekhar Lenka ... Applicant

Vrs.

Union of India and others Respondents

FOR INSTRUCTIONS



1. Whether it be referred to the Reporters or not? *Yes.*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? *No.*

G. NARASIMHAM
(G. NARASIMHAM)
MEMBER (JUDICIAL)

Sonu Nath Som
(SONNATH SOM)
VICE-CHAIRMAN
21.8.2001

CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 485 OF 2000
Cuttack, this the 21st day of August, 2001

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....

Sudhanshu Sekhar Lenka, aged about 43 years, son of Raghunath Lenka, presently working as Joint Commissioner, Customs & Central Excise, Bhubaneswar, At/PO-Rajaswa Vihar, Bhubaneswar-4, Dist-Khurda...Applicant

Advocates for applicant - M/s Sanjit Mohanty
S.C.Samantray
D.Mohanty
S.N.Nanda

Vrs.

1. Union of India, represented by its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
2. Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.

..... Respondents

Advocate for respondents - Mr.A.K.Bose
Sr.CGSC

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this O.A. the petitioner has prayed for quashing the order of punishment dated 24.7.2000 (Annexure-3) imposing on him the punishment of withholding of increment for two years without cumulative effect. He has also prayed for quashing the recommendation dated 8.3.2000 (Annexure-4) of the Union Public Service Commission on the disciplinary proceedings initiated against him. The respondents have filed counter opposing the prayers of the applicant. For the purpose of considering this petition it is not necessary to go into too many facts of this case.

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2. The admitted position is that the petitioner is an officer of Indian Revenue Service of 1982 batch. On the alleged ground of certain irregularities committed by him during September-October 1989, when he was working as Assistant Commissioner, Central Excise, Rourkela, minor penalty proceeding under Section 16 of CCS(CCA) Rules, 1965 was initiated against him in memo dated 26.5.1997 at Annexure-1. The applicant submitted his explanation denying the charges. The disciplinary authority consulted Union Public Service Commission who gave their report in memo dated 8.3.2000. Taking all the reports including the opinion of the Union Public Service Commission into consideration, the punishment order at Annexure-3 was issued in the name of the President of India. The applicant filed an appeal against the order of punishment, but he was informed that no appeal lies against the order made in the name of the President of India. In the context of the above facts, the applicant has come up in this petition with the prayers referred to earlier.

3. We have heard Shri S.C.Samantray, the learned counsel for the petitioner and Shri A.K.Bose, the learned Senior Standing Counsel for the respondents and have perused the record. The learned counsel for the petitioner has filed written note of submission which has also been looked into. The learned counsel for the petitioner has relied on the decisions of the Hon'ble Supreme Court in the cases of B.C.Chaturvedi v. Union of India, AIR 1996 SC 484, Kuldip Singh v. Commissioner of Police, 1999 (2) SCC 10, Bank of India v. D.Suryanarayan, 1999(5) SCC 762, and Steel Authority of India v. Collector of Customs, Bombay, 2000(115) ELT 42 (SC).

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4. Before going into the submissions made by the learned counsel for the petitioner it has to be noted that in disciplinary proceedings the Tribunal cannot act as an appellate authority and cannot re-assess the evidence and come to a finding different from that arrived at by the disciplinary authority. The Tribunal can interfere only if reasonable opportunity has not been given to the delinquent officer or if principles of natural justice have been violated. Interference can also be done if the findings are based on no evidence or are patently perverse. The submissions of the learned counsel for the petitioner have to be considered in the context of the above well settled position of law.

5. The first point urged by the learned counsel for the petitioner is that in his order dated 24.7.2000 (Annexure-3) the disciplinary authority has entirely gone by the advice/recommendation of the Union Public Service Commission (Annexure-4). But this opinion of the Union Public Service Commission, which has been taken into account by the disciplinary authority before passing the impugned order, has not been supplied to the applicant and he has not been given an opportunity to make a representation against the opinion of the Union Public Service Commission. On this ground it is urged that principles of natural justice have been violated. We are unable to accept the above proposition firstly because the opinion of the Union Public Service Commission is only a recommendation and it is open for the disciplinary authority to accept or not to accept the same. Secondly, under Rule 17 of the CCS(CCA) Rules, 1965, it is specifically provided that the opinion of the Union Public

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Service Commission should be supplied to the officer along with the punishment order. The applicant has not prayed for quashing this provision of long standing. Thirdly, besides the mere averment that by non-supply of the opinion of the Union Public Service Commission to him before imposition of penalty, he has been prejudiced, the applicant has not made any averment how by this act he has been prejudiced. In view of the above, this contention of the learned counsel for the petitioner is held to be without any merit. The above being the only ground urged on the question of denial of reasonable opportunity and violation of principles of natural justice, we hold that this contention is not sustainable. We also note that in his explanation in reply to the articles of imputation the applicant did not ask that a detailed enquiry should be made into the charges. In view of this also the contention that reasonable opportunity has not been given is rejected.

6. The second contention of the learned counsel for the petitioner is that the finding is not in accordance with the departmental rules and instructions and is also based on no evidence. For considering this contention it is necessary to refer to the charge at Annexure-1. It is alleged that Orissa Industries Ltd., Lathikata, was, at the material time, importing large quantity of dead burnt magnesite (DBM) from different countries and was having a private bonded warehouse in their factory premises at Lathikata licensed u/s 58 of Customs Act, 1962. They were obtaining imported DBM under deferred payment scheme from the port and therefore, were required to warehouse the commodity in their private

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bonded warehouse. The factory and the warehouse were coming under the jurisdiction of the applicant. Under the instructions the applicant was required to verify the stock once in three months, but he had never verified the stock. Before proceeding further it has to be stated that the disciplinary authority accepting the recommendation of the Union Public Service Commission, held that this aspect of the imputation has not been proved and therefore, it is not necessary to refer to this aspect any further. The second aspect of the charge is that Orissa Industries Ltd. after receiving the material at Lathikata, where their factory and private bonded warehouse were situated, were conducting the material into their factory premises instead of their private bonded warehouse, as required under the rules. After long gap of time, they were then trying to regularise the transaction and applying for space certificates. The dates of their applications were after expiry of 5 to 7 months from the date of lading whereas normally the materials should have reached the warehouse within two months from the date of bill of lading. In spite of this, the applicant granted space certificates and the Section Officer showed the materials as warehoused even though they had been actually consumed by the time space certificates were granted. The learned counsel for the petitioner has urged that under Section 67 of the Customs Act, 1962, removal of goods from one warehouse to another has to be done with the permission of the proper officer, subject to such conditions as may be prescribed. It is urged that under Section 67, Superintendent of Customs has been declared as proper



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officer and therefore, the applicant is no way concerned with the warehousing of the materials on their arrival at Lathikata and for granting of space certificates. This contention is without any merit and is to be rejected firstly because the applicant admittedly did issue the space certificates and therefore, he cannot avoid his responsibility stating that under the Act it was for the Superintendent of Customs to issue the space certificates. Under the law also the above contention is not acceptable because under sub-section(2) of Section 5 of the Customs Act, 1962, which deals with powers of officers of customs the following is provided:



"(2) An officer of customs may exercise the powers and discharge the duties conferred or imposed under this act on any other officer of customs who is subordinate to him."

As such, the action taken by the applicant in issuing space certificates has been done in exercise of his superior position above the Superintendent of Customs who, according to the applicant, was the officer to issue the space certificates.

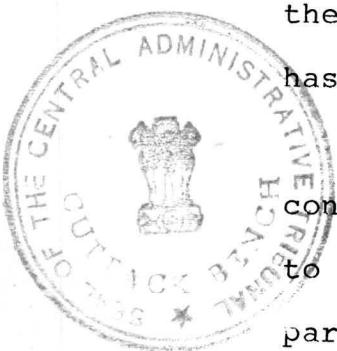
7. The next contention of the learned counsel for the petitioner is that the form of space certificate was prescribed with the sole purpose that the importer, while obtaining inbond removal of goods under Section 67 of the Act, does not bring out material more than the storage capacity in the second bonded warehouse. It is stated that the form of space certificate devised by Bangalore Commissionerate was being followed in Orissa as a matter of long practice and there is no statutory authority behind the form of the space certificate. We are

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unale to accept this proposition because in Steel Authority of India's case (supra), the Hon'ble Supreme Court held that the trade notice issued by one Customs House must bind all Customs authorities. In the instant case, the space certificate devised by Bangalore Commissionerate was in practice followed in Orissa and therefore, it cannot be urged that the space certificate has no valid legal authority.

8. Coming to the next aspect of the contention of the learned counsel for the petitioner it is to be noted that the allegation in this case is that the party, i.e., M/s Orissa Industries Ltd. was importing large quantity of DBM and on import of this, the commodity was originally warehoused in the bonded warehouse at the port. Section 67 of the Act provides that the owner of any warehoused goods may, with the permission of the property officer, remove them from one warehouse to another, subject to such conditions as may be prescribed for the due arrival of the warehoused goods at the warehouse to which removal is permitted. Accordingly, Orissa Industries Ltd. were removing the goods from bonded warehouse at the Port with the promise of warehousing the same at their private bonded warehouse at Lathikata. But actually without warehousing the same inthe bonded warehouse at Lathikata, the party was consuming the commodity and thereby evading the duty which they were required to pay before removal of the materials if those were bonded at the private bonded warehouse at Lathikata. Under the instructions it is provided that before the goods are transported from the warehouse at the place of importation to the inland bonded warehouse the licensee is required

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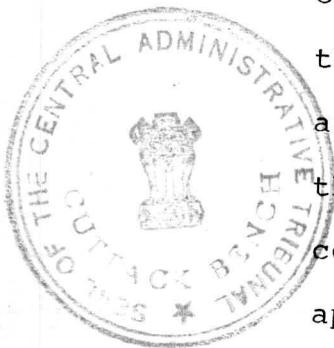


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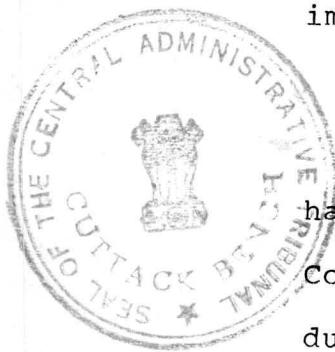
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to obtain space certificate in the prescribed form from the Superintendent in charge of the inland bonded warehouse certifying the availability of space for the goods to be transported from the warehouse at the place of importation to the inland warehouse showing the availability of the space as also the validity of the license of the private bonded warehouse. These instructions have been printed at page 297 of D.N.Kohli's **Manual of Customs Law in India 2001-2002 (21st Edition)**. In the instant case the details of bill of lading, date of first arrival in the factory, date of application for space certificate and date of issue of space certificate in a series of transactions have been included in the statement of imputation itself. From this it is absolutely clear that the importer applied for space certificates months after arrival of goods at Lathikata to be warehoused at the bonded warehouse and later on obtained space certificates. It is absolutely clear from this that the applicant did not exercise the minimum care and caution required of him before issuing the space certificates. Under Regulation 3 of the Warehoused Goods (Removal) Regulations, 1963, it is provided that where the goods are to be removed from one warehouse to another in a different town the proper officer may require the person requesting removal to execute a bond in a sum equal to the amount of import duty leviable on such goods and in such manner as the proper officer deems fit. Regulation 4 provides that the terms of the bond shall be that if the person executing the bond produces to the proper officer, within three months or within such extended period as such officer may allow, a certificate issued by the proper

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officer at the place of destination that the goods have arrived at that place, the bond shall stand discharged, but otherwise an amount equal to the import duty leviable on the goods in respect of which the said certificate is not produced shall stand forfeited. Because the applicant had issued space certificates indiscriminately the Superintendent of Customs and the party had shown that the goods have been re-warehoused at Lathikata and thereby the importer has escaped payment of duty.



9. The learned counsel for the petitioner has urged that it was the responsibility of the Assistant Commissioner, Bonded Warehouse at the Port to realise the duty when such certificate was not produced within three months. But in the instant case we are not concerned with evasion of duty. The applicant has also not been charged for negligence because of which there was evasion of duty. He has been charged for his negligence in issuing space certificates long after the goods arrived and were consumed and this has resulted in the party showing non-existent goods, which had in the meantime been consumed, as rewarehoused.

10. In view of our above discussions and after going through the explanation of the applicant and the order of the disciplinary authority, we do not find that the finding of the disciplinary authority is based on no evidence or is patently perverse.

11. The learned counsel has relied on the decisions in the cases of B.C. Chaturvedi (supra) Kuldip Singh (supra) and D. Suryanarayanan (supra). In Kuldip Singh's

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case (supra), the Hon'ble Supreme Court have considered the scope of judicial review in disciplinary proceedings. We have noted earlier the well settled position of law in this regard and therefore, it is not necessary to refer to the facts of this case and the law laid down therein. In D.Suryanarayan's case(supra) the Hon'ble Supreme Court in paragraph 11 of the judgment, have referred to the limitations on the scope of judicial review in disciplinary proceedings. This decision does not go to support the case of the applicant. In B.C.Chaturvedi's case(supra), it was held by the Hon'ble Supreme Court that even though normally the Tribunal, while exercising the power of judicial review, cannot substitute its own conclusion on penalty and impose some other penalty, if the punishment imposed by the disciplinary authority shocks the judicial conscience it should appropriately mould the relief either by directing the departmental authorities to reconsider the penalty or, to shorten the litigation, in rare cases, impose appropriate punishment with cogent reasons in support thereof. In the instant case, the punishment imposed is a minor one and in consideration of the lapses held proved against the applicant, we do not think that the punishment is one that would shock the judicial conscience.

12. In consideration of all the above, we hold that the application is without any merit and the same is rejected. No costs.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

CAT/Cutt.Bench/ 21/ August, 2001/AN/PS

SOMNATH SOM
21.8.2001
VICE-CHAIRMAN