

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 123/2011

Thursday, this the 09th day of February, 2012

CORAM:

**HON'BLE Mr. JUSTICE P.R RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

R. Valsala Kumari,
Superintendent of Central Excise,
Customs II Range, Central Excise Bhavan,
Press Club Road, Trivandrum – 1

... **Applicant.**

(By Advocate Mr. C.S.G. Nair)

v e r s u s

1. Union of India represented by its
Secretary, Department of Revenue,
Department of Revenue,
North Block, New Delhi.
2. Chief Commissioner of Central Excise &
Customs, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018
3. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018
4. Commissioner of Central Excise & Customs,
Central Revenue Buildings,
Press Club Road, Trivandrum – 1
5. Additional Commissioner of Central Excise &
Customs, Central Revenue Buildings,
I.S. Press Road, Cochin – 682 018

... **Respondents.**

(By Advocate Mr. Millu Dandapani, ACGSC)

This application having been heard on 23.01.12, the Tribunal on 09.02.12, delivered the following:

ORDER

HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER

The applicant in this O.A while working as Inspector of Central Excise, Air Cargo Complex (UB), Trivandrum, was charge sheeted on 23.10.2001 for



(i) not obtaining approval of correct declaration of the contents of the baggage from the passenger, (ii) not correctly recording all the goods, their brand name and quantity after open examination of his baggage and (iii) allowing him to clear the goods in trade quantity in the guise of bonafide baggage and for extending ineligible TR facility to him. In the enquiry report, the Enquiry Officer held that the first charge was not proved and other 2 charges were partly proved. The 5th respondent, on the advise of the Chief Vigilance Commissioner, imposed the penalty of reduction in pay by one stage for a period of six months with effect from 01.08.2004 on the applicant. The applicant did not file any appeal against the penalty order at Annexure A-8 dated 30.07.2004, but filed a revision petition to the 3rd respondent before the expiry of 6 months from the date of issue of Annexure A-8 order. Even after 4 1/2 years no reply was received. As she did not get a reply even after sending reminders, she submitted an application on 02.12.2010 under the Right to Information Act to the 2nd respondent to know the fate of here revision petition. She was informed that her revision petition was seen by the then Deputy Commissioner who observed that she had not preferred any appeal or revision against the original order nor any new material or evidence were produced and hence no action needed. Aggrieved, the applicant has filed this O.A. for the following reliefs:

- (i) To call for the records leading upto the issue of Annexure A-8 and A-14 and quash the same and grant all consequential benefits within a stipulated period
- (ii) To grant such other reliefs which this Hon'ble Tribunal may deem fit and necessary in the circumstances of the case; and
- (iii) To award the costs of these proceedings to the applicant.

2. The applicant submitted that she had followed the prescribed procedure in Annexure A-4 guidelines strictly and as such there is no lapse on her part.



The Disciplinary Authority i.e., the 5th respondent had not applied her mind properly in the matter while imposing the penalty but only followed the advice of the Central Vigilance Commissioner. The Additional Commissioner of Customs, Trivandrum, who adjudicated the customs case as per Annexure A-2, had stated that "the officers cannot on their own conduct 100% examination of the baggage unless discrepancy is noticed during the 10% of the examination of the baggage and that since the officers have abided with the instructions of the CBEC, their act cannot be viewed as an omission." The applicant as Inspector has to examine only 10% of the total number of packages after obtaining a declaration from the passenger. The Assistant Commissioner had inspected the goods and granted the T.R. which proved that there was no malafide action on the part of the applicant. Under Rule 29 of the CCS (CCA) Rules, 1965, there is provision for revision even without submitting an appeal and therefore, the 3rd respondent should have disposed of the revision petition as per law. Disposing of a revision petition by a subordinate authority without obtaining approval from the competent authority is arbitrary and illegal.

3. The respondents contested the O.A. In their reply statement, they submitted that during the pendency of the revision petition, when the orders were about to be issued, the applicant had preferred the instant O.A. Hence the Tribunal may dispose of the O.A directing the respondents to consider and pass appropriate orders on the revision petition submitted by the applicant. The penalty order at Annexure A-8 was passed as per CCS (CCA) Rules, 1965. There is no illegality or arbitrariness in the said order. The guideline that only 10% of the total packages should be examined does not absolve the officer from carrying out any examination of baggage, ultimately rendering loss to the exchequer by way of customs revenue. The advice of the Central Vigilance



Commissioner is obtained before imposing penalty. There is no malafide intention in seeking advice of the CVC in disciplinary proceedings. The revision petition filed under Rule 29 of the CCS (CCA) Rules was entertained by the respondents and the Deputy Commissioner had observed that the applicant had not preferred any appeal or review against the original order nor any new material evidence were produced. However, it is a fact that the above decision was not intimated to the applicant in time. The said delay does not entitle the applicant to approach this Tribunal with a prayer for quashing the disciplinary order.

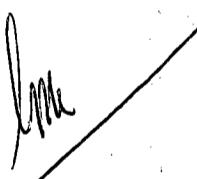
4. In the rejoinder, the applicant submitted that the delay of more than 6 years in disposing of the revision petition filed by her is unjustifiable. The review petition was filed in a casual manner by a subordinate official.
5. We have heard Mr. C.S.G. Nair, learned counsel for the review applicant and Mr. Millu Dandapani, learned ACGSC appearing for the respondents and perused the records.
6. The applicant in this O.A did not file an appeal, but filed a revision petition to the competent authority within 6 months from the date of issue of the penalty order (Annexure A-8). As per Rule 29(3) of CCS (CCA) Rules, "an application for revision shall be dealt with in the same manner as if it were an appeal under these rules." The respondents claim that just when they were about to issue orders on the revision petition filed by the applicant, she preferred the instant O.A. Therefore, they are not in a position to pass orders at this stage. They also admitted that the decision of the Deputy Commissioner to file the revision petition was not intimated to the applicant in time. The



Additional Commissioner of Central Excise and Customs in his order dated 25.09.2000 had held that the charges made against the applicant in the show cause notice on the face of it does not proceed on any legal premises and to substantiate the charge something more has to be proved in the nature of some extraneous consideration influencing the officer to conduct an incomplete examination and he had exonerated the applicant and another officer from the charges levelled against them. The long delay of more than 6 years in disposing the revision petition is unjustifiable and is against the order of CVC dated 10.08.2004 at Annexure A-15.

7. In the above facts and circumstances of the instant case, we are of the considered view that the revision petition filed by the applicant under Rule 29 (3) of the CCS (CCA) Rules, 1965, should be disposed of by the 3rd respondent as per law without further delay, at any rate within 2 months from the date of receipt of a copy of this order.
8. The O.A. is disposed of as above with no order as to costs.

(Dated, this the 09th February, 2012)


K.GEORGE JOSEPH
ADMINISTRATIVE MEMBER


JUSTICE PR RAMAN
JUDICIAL MEMBER

cvr.