

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.332/2002

Friday. this the 7th day of February, 2003

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

V.Mohandas,
Deputy Commissioner of Central Excise
(Retd), Bhagi Villa,
Pullampil Road,
Cherakara,
Tellicherry-4.Applicant

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

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1. Union of India, represented by the
Secretary, Department of Revenue,
North Block,
New Delhi-110 001.
2. Member (P&V)
Central Board of Excise & Customs,
North Block, New Delhi.1.
3. The Commissioner of Central Excise,
Bangalore II Commissionerate,
Central Revenue Buildings,
Queens Road,
Bangalore.1.
4. Commissioner of Central Excise,
Hyderabad II Commissionerate,
Central Revenue Buildings,
Basheer Bagh,
Hyderabad.1.
5. Union Public Service Commission,
Dholpur House,
Shajahan Road,
New Delhi.11.Respondents

(By Advocate Mr. S.K.Balachandran, ACGSC)

The application having been heard on 20.11.2002, the
Tribunal on...7.2.2003 delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

In this Original Application filed under Section 19

of the Administrative Tribunals Act, 1985 the applicant a retired Deputy Commissioner of Central Excise has challenged the validity of the Memorandum of Charge dated 18.6.1996 (A2), the show cause notice dated 10.2.2000 and the Presidential Order dated 26th March, 2002 imposing on him a penalty of 15% cut in monthly pension otherwise admissible to him.

2. The facts can be shortly stated as follows. While the applicant was working as Assistant Collector, Kurnool Division during 1991 he had approved the classification list and price list submitted by M/s Premier Det Chem Pvt. Ltd. a small scale industrial unit manufacturing detergent cakes claiming concessional rate of central excise duty. The Range Superintendent has forwarded the classification list with recommendations for approval stating that the unit was a SSI Unit. Thus the applicant approved the same. However on 25.11.1991 the Central Excise Anti Evasion Wing raided the premises of M/s Premum Det Chem Pvt.Ltd. and registered a case against it for clandestine manufacture and removal of detergents and evasion of central excise duty. On adjudication of the case the Collector of Central Excise, Hyderabad demanded from Premier Det Chem Pvt. Ltd. by order dated 17.12.93 (A1) an amount of Rs. 20,67,905.04/as excise duty. Basing on the raid and the adjudication order the Annexure.A2 Memorandum of Charges dated 18.6.96 was issued proposing to hold an enquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965. The Articles of Charges were as follows:

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ARTICLE.I: Shri V.Mohandas had worked as Assistant Collector of central Excise, Kurnool Division of Hyderabad Collectorate during the period 29.1.90 to 7.1.94.

During the aforesaid period, a Unit under his charge namely M/s Premiere Det Chem Pvt. Ltd. (PDCPL) had filed a classification list on 29.4.91 for Detergent Cakes claiming concessional rate of duty under Notification No.175/86-CE dated 1.3.86. They had also enclosed a SSI registration Certificate No.01/12/02734/Prov/SSI/Rural/90. Shri Mohandas had approved this Classification List on 30.4.91 and granted concessional rate of duty.

Anti Evasion Wing had registered a case against this Unit and after investigations and subsequent proceedings, Collector, Hyderabad had passed Order in Original O.R.No.137/91-Adjn. (A.O.No.3/93) dated 17./2.03 demanding duty of Rs.. 26,12,364.72 towards goods illicitly removed. PDCPL, during the period 29.4.91 to 24.11.91 had failed to file monthly returns, maintain statutory records, account production and clearance of the goods, pay duty on the goods cleared by them. The concerned Superintendent of the Range had not conducted PBC checks contemplated under Hyderabad Collectorate's standing order No.179/90 dated 12.10.90. He had forwarded his XT-1 Diaries to the Assistant Collector on fort-nightly basis and Shri Mohandas had seen these XT-1 Diaries.

Subsequent investigation conducted by the department revealed that the SSI certificate enclosed along with the Classification List was valid upto 30.10.88 only. The investigation conducted by the Anti Evasion Wing proved that PDCPL had, at the material time, manufactured 'Chek' brand Detergent Cakes.

Shri Mohandas appears to have failed to cause enquiry of the SSI registration Certificate as well as the nature of the brand of the goods, before approving the Classification list. He also appears to have failed to guide his superintendent with regard to PBC Checks. His above mentioned lapses appear to have resulted in granting of wrong exemption to PDCPL. His failures also appear to have facilitated PDCPL to evade duty of rs. 26,12,364.72.

Shri Mohandas, Assistant Collector, thus appears to have exhibited lack of devotion of duty and contravened Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE.II: PDCPL had filed price list in Part I from 7.8.92 (BPL No.11/92/93) claiming assessable value as Rs. 8,093.20 per Metric Tonne of Detergent

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Cakes. Shri Mohandas, vide his communication C.No.V/17/34/97/92-VC dated 1.9.92 had ordered provisional assessment of goods under Rule 9B of the Central Excise Rules, 1944, and directed the assessee to execute a bond for differential amount with 25% security. By one more communication dated 24.9.92 he had asked the concerned Superintendent to obtain Price List from PDCPL for the period 21.12.91 to 1.9.92.

He appears to have failed to fix the bond amount and security amount at the time of ordering provisional assessment. Calling for price list for past period appears to be incorrect under Law in terms of standing Order No.22/87 (General No.15/87) dated 23.2.87 of Hyderabad Collectorate.

Shri Mohandas, thus appears to have exhibited lack of devotion to duty and contravened Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE III: M/s Kurnool Petro Products Ltd. (KPPL) had filed a Classification List on 8.4.92 for Acid Slurry seeking concessional rate of duty of 20% adv. in terms of Notification No.175/86-CE dated 1.3.86. The Assistant Collector in his C.No.V/17/34/83/92-VC dated 8.7.92 had asked the concerned Superintendent to advise the assessee to clear the goods without claiming concessional rate or avail procedure of Rule 9B of the Central Excise Rules, 1944.

KPPL had filed a Price List dated 12.3.93 pending approval of this price list, the Assistant Collector had directed the Range Superintendent to ensure clearance in terms of Rule 9B of the Central Excise Rules, 1944, besides instructing the Superintendent to advise the assessee to submit necessary request in the matter, to the Assistant Collector.

Assistant Collector is the proper officer for Rule 9B of the Central Excise Rules, 1944. Shri Mohandas appears to have failed to communicate provisional assessment order to the assessee directly and fix the bond and Bank Insurance amounts, in this case.

Shri Mohandas, Assistant Collector, thus appears to have exhibited lack of devotion to duty and contravened Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964.

ARTICLE IV: PDCPL had filed a Price List in Part I on 7.8.92 and claimed assessable value of Rs.. 8,093.20. On the advice of the Superintendent, they had filed Price List effective from 1.9.92 in Part II. After issue of Show Cause notice dated 26.4.93, the Assistant Collector had passed Order C.No.V/17/34/97/92-VC(A.O.No.32/93) dated 15.9.93,

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deciding that assessable value shall be determined on the price at which M/s Shaw Wallace & CO. had sold the goods in the course of whole sale trade. Basing on this order, he had directed the Range Superintendent to finalise the provisional assessments.

Shri Mohandas appears to have failed in determining the 'normal price' in terms of Section 4 of Central Excise and Salt Act, 1944. On the other hand, he had left the determination of assessable value to the Superintendent which appears to be incorrect (since valuation of excisable goods is the job of Assistant Collector).

Shri Mohandas, assistant Collector, thus appears to have exhibited lack of devotion to duty and contravened Rule 3(1)(ii) of the central Civil Services (Conduct) Rules, 1964.

3. Since the applicant denied the charges an enquiry officer was appointed by the President. The enquiry officer submitted A3 report holding articles of charges I to III not proved and IV partly proved. The President issued Annexure.A4 show cause notice to the applicant proposing to disagree with the finding of the enquiry officer on Article 1 of the charge, on the ground that the applicant could have enquired and made investigation before approving the classification list, that therefore he had not applied his mind properly before approving the classification list and that the enquiry officer has not appreciated the evidence properly. The applicant submitted a detailed reply to the show cause notice (A5) explaining that the range Superintendent having recommended the approval of the classification list the same was approved as was done generally because personal verification by the Assistant Collector was not necessary and practicable in all cases, and that the clandestine manufacture of branded detergents cakes and removal not being in any way the result of the

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approval of the classification list, there was no scope for entering a different finding on article of charge No.1. He also stated that none of the Articles of Charges were established by evidence. The disciplinary authority namely the President on consideration of the enquiry report, the submission of the applicant and the advise of the Union Public Service Commission held the Article I of the charge substantially proved and Article IV of the charge partly proved. The Union Public Service Commission advised that the ends of justice would be met if a penalty of 15% cut in pension is imposed upon the applicant for a period of two years. The President accepting the advise of the Union Public Service Commission and holding the applicant substantially guilty of Article I of the charge and Article IV of the charge partly by the order dated 26.3.02 (A8) imposed on the applicant 15% cut in monthly pension otherwise admissible to the applicant. Aggrieved by this applicant has filed this application seeking to set aside the Memorandum of Charge (A2), the show cause notice (A4) and the Presidential Order of cut in pension (A8) and for a direction to the respondents to make payment of applicant's normal pension without cut from 1.3.01 and to pay to him the interest at the rate of 12 percent per annum for the withheld payment of gratuity, leave salary, pension etc. It is alleged in the application that as the approval of the classification list is a quasi judicial function no charge on this score could have been framed against the applicant, that the charge sheet is therefore illegal, that the approval of the classification list had nothing to do with

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the clandestine manufacture and removal of branded detergent cakes, that the approval had not facilitated evasion of excise duty, that the charge sheet filed after long lapse of time was invalid in law, that as no malafides motive was attributed to the applicant and as no corruption is involved, the decision to cut 15% of the pension is unsustainable, that the long delay in finalising the disciplinary proceedings has resulted in prejudice to the applicant and that as the finding on Articles I and IV are not based on evidence and as no grave misconduct has been established, there is no justification for imposing a cut in pension.

4. The respondents have filed a detailed reply stating justifying the impugned orders. The applicant has filed a rejoinder. The respondents have also filed an additional reply statement.

5. With meticulous care, we scrutinised the entire pleadings and materials placed on record and have heard at length the arguments of Shri CSG Nair, learned counsel appearing for the applicant and Shri S.K.Balachandran, ACGSC appearing for the respondents. Although various grounds have been raised in the application, the learned counsel for the applicant stressed only two points namely (i) the finding in the impugned order Annexure.A8 that the Article I of the charge is substantially proved against the applicant is per verse and without any evidence and (ii) there is no justification for the Presidential Order imposing a cut of

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15% from the monthly pension of the applicant for a period of two years as the applicant has not been found to be guilty of any grave misconduct or negligence.

6. We shall consider the first point first. The gravamen of the charge under Article I is that the applicant as Assistant Collector approved the classification list of M/s PDCPL without causing verification of the veracity of the SSI Certificate produced by them, that he did not properly instruct the Superintendent in-charge of the range to conduct PBC checks of the units and that this facilitated the PDCPL to evade the duty of Rs. 26,12,364.72. The applicant contended that he approved the classification list depending on the verification report of the Superintendent in so far as the SSI certificate was concerned, that it was neither practicable nor necessary to personally verify the correctness of the SSI certificate inasmuch as there was no reason to doubt and that the approval of the classification list had nothing to do with the clandestine manufacture of branded detergent cake, its removal and sale and therefore the approval of the classification list by the applicant was neither faulty nor has facilitated evasion of duty by M/s PDCPL. On the basis of the evidence adduced at the enquiry and on the basis of the rules and instructions, the enquiry officer accepted the contention of the applicant that he was not neither negligent nor had failed in approving the classification list depending on the verification report of the Superintendent regarding the authenticity of SSI certificate, that there was no lapse on his part in the


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matter of directing the Range Superintendent to conduct inspection of the SSI Unit mainly because there was a prohibition at the time in officers visiting the SSI Units and the Superintendent had not sought specific permission of the applicant for conducting an inspection. The disciplinary authority in Annexure.A4 show cause notice proposed to differ from the finding of the enquiry officer that the Article No.I was not established on the ground that before approving the classification list the Assistant Collector with the preventive staff available in the Divisional office should have enquired and made investigation as also detergent cakes are generally marketed under brand name and therefore, the Assistant Collector has not applied his mind properly before approving the classification list. The applicant in his explanation had stated that for approving the classification list no independent personal enquiry by the Assistant Collector was required as per rules and instructions, that he depended on the verification report of Superintendent and what was detected by the ante evasion wing being clandestine manufacture and sale, the approval of the applicant of the classification list had nothing to do with the clandestine manufacture and sale of branded detergent cakes as also the alleged evasion of duty. The contention of the applicant was not accepted by the disciplinary authority. The disciplinary authority found that the applicant could have exercised more care before approving the classification list, that he has failed to guide the Range Superintendent for PBC Cbeck and that his lapses facilitated the PDCPL to

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evade the duty to the tune of Rs. 26 lakhs and above as detected by the ante evasion wing and the charge is substantially proved.

7. On a careful scrutiny of the evidence adduced at the enquiry as also the enquiry report, we are of the considered view that the enquiry officer's finding that the applicant was not guilty of Article I of the Charge is based on a proper appreciation of the evidence and that finding to the contrary in Annexure.A8 is not supported by evidence at all. In the statement of imputation under Article I of the Charge, it has not been stated that personal verification of the authenticity of the SSI certificate by the Assistant Collector was necessary before his approval and that the Assistant Collector cannot rely on the verification report submitted by the Superintendent. Regarding the allegation in the charge that the applicant failed to guide the Superintendent properly in respect of PBC check the enquiry officer has rightly found that there is no allegation in the charge that the Range Superintendent made any request for visiting the SSI Unit and that the applicant did not permit him. The clandestine manufacture of branded detergent cakes and the sale of the same cannot in any way be connected with the approval of the classification list by the applicant in the light of the evidence on record. Under these circumstances we find that the conclusion in the Presidential Order (Annexure.A8) that the Article I of the charge is substantially proved being based on no evidence is not justified.



8. Regarding the finding under Article IV of the charge the learned counsel of the applicant argued that the applicant having enunciated the principle to be followed in finalising the price list dated 7.8.92 but left the quantification alone to the Superintendent he had performed his task and therefore, cannot be held guilty. He further argued that even according to the finding of the enquiry authority the lapse of the applicant in leaving the quantification to the Superintendent was only a technical one and there was no ulterior motive or malafides, which finding has been accepted by the disciplinary authority, there was no justification also to order a cut in pension in exercise of powers under Rule 9 of the CCS (Pension) Rules. Shri Balachandran, learned ACGSC appearing for the respondents on the other hand argued that as the applicant has been found to be negligent and has not discharged the duties cast on him, the only penalty that could be imposed on the applicant after his retirement being cut in pension, the order cannot be faulted.

9. Under Rule 9 of the Central Civil Services (Pension) Rules the President reserves to himself right of withholding of pension or gratuity or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period



of service, including service rendered upon re-employment after retirement. In the Government of India decision M.F.O., M.No.F.5 (75) E.V/59 dated the 28th August, 1959 and the 6th October, 1960 and No.54-E.V(A)/78 dated 28th June, 1978 the scope of the expression grave misconduct has been explained as follows:

"The term 'grave misconduct' used in Article 351-A of CSR (Rule 9, CCS (Pension) Rules 1972) is wide enough to include 'corrupt practices' in cases where the charge of corruption is proved after pension has been sanctioned, action to withhold or withdraw pension may be taken under Article 351A ibid (Rule 9, CCS (Pension) Rules, 1972."

10. We have already held that the finding that the applicant is guilty of Article I of the charge is not sustainable. The only charge established against the applicant partly is Article IV of the charges which according to the enquiry officer is a technical lapse without any malafide intention. Union Public Service Commission also has in its advise stated that no malafide has been either alleged in the charge or established. There is no allegation that the applicant was motivated by any dishonest intention or that he had indulged in corrupt practices. The minor technical lapse on the part of the applicant as has been established in Article IV of the charges does not call for imposition of a major penalty had the applicant been in service. Since the minor technical lapse not motivated by malicious intention or dishonesty cannot be considered as grave misconduct or negligence which would warrant exercise of the right of the President to impose a cut on the pension of the applicant for any term.

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We therefore, hold that there is no justification for imposing a cut of 15% of the monthly pension otherwise admissible to the applicant for a period of two years as has been ordered in Annexure.A8. In taking this view we are fortified by the observation of the Apex Court in D.V.Kapoor Vs. Union of India and others 1990(14) ATC 906 as follows:

"As seen the exercise of the power by the President is hedged with a condition precedent that a finding should be recorded either in departmental enquiry or judicial proceedings that the pensioner committed grave misconduct or negligence in the discharge of his duty while in office, subject of the charge. In the absence of such a finding the President is without authority of law to impose penalty of withholding pension as a measure of punishment either in whole or in part permanently or for a specified period, or to order recovery of the pecuniary loss in whole or in part from the pension of the employee, subject to minimum of Rs. 60."

11. In the light of what is stated above, we hold that the impugned order Annexure.A8 is unsustainable. We set aside Annexure.A8 with all consequential benefits to the applicant. No costs.

Dated this the 7th day of February, 2003


T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN