

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 878/2000

Date of Decision: 9.01.2004

Mrs. Nandini I. Joshi. Applicants

Shri R.Ashokan. Advocate for applicant

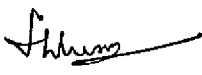
Versus

Union of India & Ors. Respondents

Shri V.S. Masurkar Advocate for respondents

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

1. To be referred to the reporter or not? ☒
2. Whether it needs to be circulated to other Benches of the Tribunal? ☒
3. Library. ☒


(MUZAFFAR HUSAIN)
MEMBER (J)

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.878/2000

THIS THE 9TH DAY OF JANUARY, 2004

CORAM: HON'BLE SHRI ANAND KUMAR BHATT. MEMBER (A)
HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Mrs. Nandini I. Joshi,
Jasraj Niwas,
74, Choralia Chopra Nagar,
Vihitgaon,
Nasik-422 001.

... Applicant

By Advocate Shri R. Ashokan

Versus

1. Union of India through
the Director General (Vigilance/CVO)
Central Board of Excise and Customs,
Department of Revenue,
Ministry of Finance,
New Delhi.
2. The Commissioner of Central Excise
and Customs, Town Centre,
N-5, CIDCO,
Aurangabad-431 003. ... Respondents

By Advocate Shri V.S. Masurkar.

O R D E R
Hon'ble Shri Muzaffar Husain. Member (J)

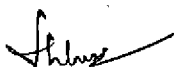
The present application is arising out of an order bearing F. No. C-16018/6/99-Ad.V-1286-87 dated 29.3.2000 passed by the Director General (Vigilance) of the Central Board of Excise and Customs in an appeal preferred by the applicant dated 07.6.1999, as against the order in original dated 22.4.1999 passed by the Commissioner of Customs and Central Excise, Aurangabad, interalia upholding the order of penalty and withholding the increment of the applicant. Aggrieved by this order, the applicant has approached this Tribunal under



...2.

Section 19 of the Administrative Tribunals Act 1985 and sought the following relief:

- (A) This Honourable Tribunal may be pleased to call for the records and proceedings of the present case and after examining the facts, legality and propriety thereof, hold and declare that the punishment imposed upon the applicant vide order dated 22.4.1999 of the Disciplinary Authority i.e. the Commissioner of Central Excise and Customs, Aurangabad that the major penalty imposed viz. that the pay of the applicant be reduced by four stages from Rs. 7425 to Rs.6725 in the time scale of pay of Rs.5500-175-9000 for the period of five years with effect from 01.4.1999 to 31.3.2004 is exorbitant, unreasonable and not commensurate with the gravity of the alleged offence as established in the facts and circumstances of the case viz. there was no violation of Rule 3 (1) (i) of the CCS (Conduct) Rules, 1964 i.e. to maintain absolute integrity and therefore quash and set aside the orders dated 22.4.1999 and 29.3.2000.
- (B) The Honourable Tribunal may be pleased to call for the records and proceedings of the enquiry proceedings and the proceedings of the Disciplinary Authority and its order dated 22.4.1999 regarding the imposition of major penalty upon the applicant and quash and set aside the same in the facts and circumstances of the case.
- (C) To direct the Respondents to withdraw the show cause notice dated 29.10.1999 or drop the same in the facts and circumstances of the case and more particularly, in the light of the order dated 22.4.1999.
- (D) To direct the Respondents to regularise the suspension period of the applicant for the period from 27th August, 1993 to 25th April, 1994 as duty period and release the differential pay and allowance as payable to the applicant at the earliest with 24% interest from the date of the Disciplinary Authority's order dated 22.4.1999.
- (E) Stay the operation of the disciplinary authority's order dated 22.4.1999 and the appellate authority's order dated 29.3.2000 imposing a major penalty upon the applicant, till such time the disciplinary proceedings against the then Range Superintendent Mr.

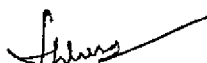


...3.

Kulkarni and Assistant Commissioner who were also co-accused in the same incident and charge sheeted simultaneously, whose disciplinary proceedings are still pending.

- (E) For any such orders, reliefs or directions as this Honorable Tribunal may deem fit and proper in the facts and circumstances of the case.
- (EE) Stay the operation of the order dated 19.12.2000 passed by the Commissioner of Central Excise and Customs, Aurangabad, Exhibit-K to the application.
- (G) Cost of these proceedings.

2. The facts as stated in the original application are that the applicant at relevant time was working as Inspector of Central Excise and Custom, Nasik. She was issued with a memorandum of charge bearing F.No. II/39-39/Vig/93/371 dated 30.11.1994 issued under Rule 14 of the Central Civil Services (Classification control and Appeal) Rules, 1965 (CCS (CCA) Rules for short) imputing charges against the applicant under Rule 3 (1) (i), (ii) and (iii) of the CCS (Conduct) Rules, 1964. The applicant submitted written statement and denied all the allegation of charges and submitted that there was no intentional lapse or malafides or connivance on the part of the applicant with the said exporter firm to cause illegal loss to the government. The subject charges were issued to the applicant on the ground that the stuffing work of certain containers in the premises of the said exporter M/s. Krishna Filaments Limited Nasik was carried out under the Supervision of the applicant. On that particular day of the incident the applicant was working under her immediate superior one



Mr. Kulkarni the then Superintendent of Central Excise and Customs who has assigned the job of supervision to the applicant apart from he himself was supervising and had deputed the applicant to another units in the vicinity also to look after the stuffing work. As regards Article-I of the charge on the particular day, the applicant was deputed for duties at various units single handedly and also required to supervise duties at two physical control units. Due to strike called for by the Transporters on the next day the export clearance at various units were required to be cleared expeditiously and the goods were required to be sent to Bombay Dock before the strike begin at mid night. The second article of memorandum is also denied by the applicant in her written statement that the applicant had handed over the keys of the Customs Bonded Warehouse of M/s. Krishna Filaments Limited on 07.8.1993 to a person other than a departmental official. In the said written statement, the applicant has recorded the correct fact and submitted that the said keys were handed over to a messenger sent by Preventive Unit as per telephonic instructions of her superior officer Shri Kulkarni, the then Superintendent. It was under these circumstances, as per telephonic instructions of Shri Kulkarni the applicant was constrained to hand over the keys of the Customs Bonded Warehouse to a person who approached the applicant. More over the particular day i.e. on 07.8.1993 was a holiday and therefore there was no



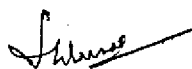
question of taking any written instructions from the superior officer before the key was handed over. It has also been submitted that the Commissioner of Central Excise and Customs appointed Mr. P.K. Jain as Inquiry Officer and the applicant submitted her written statement on 24.01.1997. In the said written statement also the applicant had reiterated her earlier statement dated 03.01.1995. Thereafter, by communication dated 25.11.1998 a copy of the Inquiry Officer's report was given to the applicant in which the charge under Article-II was found to be established under Rule 3 (1) (i) (ii) and (iii) of CCS (Conduct) Rules, 1964. However, the contravention of Rule 3 (1) (i) was not established. Thereafter, the Disciplinary Authority considered all materials on record and arrived at a finding as follows:

- (i) In respect of charges framed under Article-I, contravention of Rule 3 (i), (ii) and (iii) of CCS (conduct) Rules 1964 is established, however, contravention of Rule 3 (1) (i) is not established.
- (ii) In respect of charges framed under Article-II, contravention of Rule 3 (1) (ii) and (iii) of CCS (Conduct) rules 1964 is established, however contravention of Rule 3 (1) (i) is not established.
- (iii) In respect of charges framed under Article-III contravention of Rule 3 (1) (i), (ii) and (iii) of CCS (conduct) Rules, 1964 is not established.

Thus, it would be found from the findings of the Disciplinary Authority that there was no violation of the Rule 3 (1) (i) of the CCS (Conduct) Rules, 1964 and that the applicant had maintained absolute integrity in her services."



The Disciplinary Authority imposed the penalty under Rule 11 (v) of the CCS (CCA) Rules 1965 by ordering that the pay of the applicant be reduced by four stages from Rs.7425/- to Rs.6725/- in the time scale of pay of Rs.5500-175-9000 for a period of five years with effect from 01.4.1999 to 31.3.04. It was further directed that the applicant will not earn increments of pay during the period of reduction and that on expiry of the said period the reduction will not have the effect of postponing her future increment of pay. Against the order of Disciplinary Authority dated 22.4.1999 the applicant preferred an appeal to the Chief Vigilance Officer of the Central Board of Central Excise and Customs interalia praying for quashing of the said order of the Disciplinary Authority. However, by order dated 29.3.2000 the Director General of the Central Board of Central Excise and Customs upheld the order passed by the Disciplinary Authority and the appeal of the applicant was rejected accordingly. In the meantime by a request letter dated 07.6.1999 addressed to the Commissioner of Customs and Central Excise, Aurangabad the applicant requested for the regularisation of the suspension period from August 1993 to April 1994 which the applicant had undergone during the course of the investigation and disciplinary proceedings. That after filing of the present OA the Commissioner of Central Excise and Customs, Aurangabad passed the order bearing F. No.II/39-39/Vig/93/Pt.IV/485 dated 19.12.2000



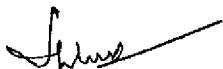
wherein the suspension period of the applicant with effect from 27.8.1993 to 25.4.1994 prior to the issuance of the Memo of charges dated 30.11.1994 should be treated as non-duty as the suspension is not considered to be wholly unjustified under FR 54-B (3) and therefore pay of the applicant during the suspension period should be restricted to subsistence allowance already drawn.

3. The applicant as already stated, submitted that in the instant case, the penalty imposed by the Disciplinary Authority is disproportionate and not commensurate with the gravity of the alleged offence. The disciplinary authority ought to have considered the entire material on record that the service of the record of the applicant is unblemished throughout her career and not even a censure is given to her at any time ~~seriously~~ and therefore, the Disciplinary Authority ought to have taken a lenient view on the facts and circumstances of the case and discharged the applicant from the alleged charges of negligence for which the applicant was not at all responsible, but due to the conduct of her superiors as is evidenced on record. The Disciplinary Authority ought to have considered that once the charge under Rule 3 (1) (i) viz duty to maintain absolute integrity is not proved, it is not possible for any prudent man to think further that the rest of the charges can be established. The disciplinary authority in the instant incident had hand picked the applicant and chose to punish her without

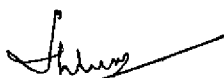
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without taking any penal action against the co-accused persons in the said incident viz. the then Superintendent and the Assistant collector of Central Excise who are also the co-accused in the alleged incident. That the action of the Disciplinary Authority in awarding major penalty under Rule 11 (v) of the CCS (CCA) Rules is inconsistent with the respondents Government of India's own instructions DGP&T letter No.6/19/72-Disc.I dated 29.11.1972.

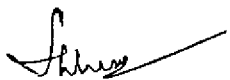
4. The respondents have filed the detailed written reply in which they have countered the plea raised by the applicant and stated that this case is regarding short stuffing of containers of M/s. Krishna Filaments Ltd., Sinar a 100% EOU at the relevant time. The applicant failed to supervise the stuffing of export cargo covered by shipping bill No.460410 to 460412 dated 28.7.1993, APLU 800086 and APLU 802360 on 30.7.1993. Out of declared quantity of 70,103 kgs. only 8841.9 Kgs of HDPE ropes were stuffed in the containers. This is a case of short stuffing of containers by the applicant who has also issued the certificate that the container was stuffed and sealed under the supervision of the applicant. Thus, the applicant has shown utter lack of judgment, gross negligence and dereliction of duty and the applicant's action is unbecoming of a Government servant. As a Bond Officer of 100% EOU the operations under the Bonded Warehouse are under Bond Officer's



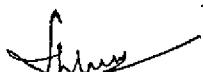
physical supervision and the applicant has admitted that she was not present throughout the stuffing. The applicant has stated that when the work of stuffing of containers was in progress she had to necessarily proceed to other units and that entire stuffing was not done under her physical presence. But the applicant has certified that verified container Nos. found empty and bails/coils stuffed in above contained and sealed under her supervision. The applicant being a Bond Officer of the Custom Bonded Warehouse was duty bound to remain present at all times as all operations (storage and clearance) are to be carried out under the Bond Officer i.e. the applicant's physical supervision. Thus, what is stated in the certificate is false. The false certificate given was not as per the instructions of the Superintendent. The applicant handed over the Customs key of the Bonded Warehouse to the driver of M/s. Krishna Filament Ltd. Her statement that the keys were handed over to a messenger sent by preventive party as per the telephonic instructions of her superior officer Shri Kulkarni the then Superintendent is not correct. From the various statement there appears no dispute that the key of the bonded warehouse which is ^{Expected} ~~excepted~~ to be in the custody of Bond Officer i.e. the applicant was available and produced by Shri Vishwasrao, the Production Manager of M/s. Krishna Filament Ltd. The applicant has not disputed that the keys were given by her to Shri Godse, the driver of M/s. Krishna Filaments



Ltd. It has also been stated there were three charges framed against the applicant vide Memorandum dated 30.11.1994. Each of the Articles of charges are for different acts of misdemeanor of the applicant. Hence the findings of the Inquiry Officer in respect of each article of charge are also different. In respect of Article-I of charges, there is no evidence to prove any malafide on the part of the applicant and there was no evidence of collection or intentional help to the exporters. There was no other material to doubt integrity, hence contravention of Rule 3 (1) (i) regarding integrity was held as not proved. In respect of Article of charge-II there appear to be no dispute that the key of bonded customs warehouse of the unit which was a 100% EDU is expected to be in the custody of bond officer was available and produced by Shri Vishwasrao, the production Manager of M/s. Krishna Filaments Ltd. Further, Shri M.D. Kulkarni in his statement dated 29.10.1993 has clearly stated that he had no contact with the applicant on 07.8.1993 and no instruction was given to hand over the key to anybody. Hence the plea of the applicant that the handing over of the key to Shri Godse, driver of M/s. Krishna Filaments Ltd. had the approval of Range Superintendent Shri Kulkarni is not correct. The applicant, as bond officer, should have gone and be present at the time of Stock taking as operations under bonded warehouse are under bond officer's physical supervision. The



applicant did not truthfully state what actually happened, hence the Inquiry Officer in his Inquiry report concluded that in respect of charge under Article-II of failure to maintain absolute integrity Rule 3 (1) (1) is established. The applicant has thus shown utter lack in judgment, gross negligence and dereliction of duty and the action of the applicant is unbecoming of Government Servant. Hence the major penalty imposed by the disciplinary Authority is not disproportionate to the negligence in the facts and circumstances of the case. The action on the part of charged officer would have resulted in considerable loss of revenue, if the consignment had not been detained by the Customs Officers of Mumbai. The say of the applicant that since the suspension order was revoked much before the issue of the charge sheet memo, the matter has to be considered in a different footing and the period of suspension cannot be thus linked with the major penalties imposed is not correct. Also the contentions that any further action to the major penalty already imposed is a case of double jeopardy is not correct. So far as the charge against Shri M.D. Kulkarni are concerned, there are four charges framed against him. Out of the four articles of charges, two charges are related to the incident. One relating to supervision of the stuffing of cargo which is held as partly proved by the Ministry. Another charge relates to his directing the applicant to hand over the key of



the custom bonded warehouse situated at M/s. Krishna Filaments Ltd. Sinnar to a private person which is held as not proved by the Ministry. Hence, the charges framed against Shri M.D. Kulkarni, Superintendent are not identical to that of the applicant. In the circumstances, the respondents prayed that the application be dismissed with costs.

6. In the oral submission on behalf of the applicant Shri Ashokan stated that for the said incident, the punishment meted out to the applicant is harsh, whereas his supervisory officer M.d. Kulkarni, superintendent was let off lightly. M/s. Krishna Filaments, the guilty party, is notorious for similar activities for which they had been caught in the past also. The maximum that the applicant can be charged with is, that of negligence in supervision. There is no malafide and no money motive. Even negligence is not direct negligence, but only constructive negligence can be shown. The lapse was not deliberate and there is no question of the applicant's integrity being involved. He further states that the applicant was new to Nasik and at the time the incident had happened, she had put in only four months at that place. There was pressure of work because of impending strike of the Transporters from the next day and she had to be present at another party's export loading. The Government instructions regarding cases where major punishment can be given



mention gross negligence with dis-honest motive, which is absent here. The applicant has cited a number of cases which will be discussed later on by us. Shri Ashokan has also drawn attention to a previous mischief committed by the offending party where the weighing machine was manipulated and was calibrated wrongly.

7. On behalf of respondents Shri V.S. Masurkar has stated that out of three charges against the applicant, two charges have been established. The applicant was a Bond Officer in a Godown and it was her responsibility to complete the loading in the container in her physical presence. he has cited AIR 1996 SC 1232 - State of Tamil Nadu Vs. Subramanian, to say that Tribunal cannot re-appreciate the evidence. He has also submitted that the scope of judicial review as is possible in an application before the Tribunal is limited.

8. In rebuttal, Shri Ashokan for the applicant has pointed out that the assessee unit itself admitted the mischief committed. he has stressed the point that because of the impending strike, there was pressure of work and export goods were to be cleared at different warehouses and, therefore, the assessee unit in question got the opportunity to play mischief.

9. We have considered the case and have gone

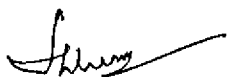


through the pleadings and various documents. As against the certified weight of 70103 Kg, the three containers were found to contain only 8841.9 Kg goods which 12.6% of the total. Had it been a case of 10 to 15% less loading, it could have been taken as avoidable negligence on the part of the applicant and one that could be overlooked on the plea of oversight. However, to think that about 83% of the assignment was not loaded and still the applicant was satisfied that the containers were loaded as intimated by the assessee unit cannot show that the misconduct of the applicant was due to minor negligence. The respondents have shown that as the applicant left M/s. Krishna Filaments at 2.45 pm and went to M/s. Neelkamal Plastics very near the premises of M/s. Krishna Filaments, and returned to M/s. Krishna Filaments at 3.30 pm within 45 minutes as she got a call that the stuffing is complete, it shows utter negligence on the part of the applicant. A 40 feet container with only one opening cannot be stuffed in 45 minutes. As regards the charge relating to handing over key to an unauthorised person, it was found in the inquiry that the key was produced by the Manager of the Unit to the Inspecting Officer A.S. Holkar, Superintendent. It is clear that the key was handed over to an unauthorised person, whereas it should have been in the custody of the applicant. The third charge was not found to be proved. The applicant has mentioned the disputable antecedents of the said unit. As a mater

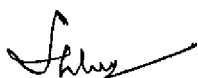


of fact, this fact goes against the applicant in that if she was aware of the dubious character of the party, she should have been more vigilant and careful while dealing with the loading of the export consignment of the said unit. Regarding different treatment for the same charge, the respondents have pointed out that as regards charges framed against M.D. Kulkarni, the then Superintendent, out of four Articles of Charges two charges are related to the incident. One relating to provision of stuffing of the cargo was held partly proved, and another charge relating to his directing the applicant to hand over the key of the Custom Bonded Warehouse to a private person was held as not proved. Therefore, the charges framed, as well as, proved against the two officers i.e. the applicant and M.D. Kulkarni are not identical. We find no reason to disagree with the respondents.

10. ^{sc} As regards the citations given by the applicant AIR 1979/1022 - Union of India and Others Vs. J. Ahmed gives the ratio that failure to attain the highest standard of administrative ability of performance of duty permitting an inference of negligence would not constitute misconduct for the purpose of Rule 3 of CCS (CCA) Rules. AIR 1988 SC 434 - Bhagwati Prasad Dubey Vs. The Food Corporation of India is also a case of similar nature where it has been held that if the office acted to the best of his judgment under the pressure of



necessity at the most the applicant can be accused of an error of judgment. As has been discussed by us earlier, the difference between the declared quantity and actual quantity loaded is so wide it cannot be possible attributed to minor negligence. handing over the key to an unauthorised person of the Bonded Warehouse is also of a serious nature. JT 2000 (Suppl.1) SC 222 Tata Engineering & Locomotive Co. Ltd. Vs. Jitendra Pd. Singh & anr. deals with different punishments meted out to different officials. JT 2001 (Suppl.1) 44 - State of U.P. Vs. Raj Pal Singh and 2001 (2) SCC 386 - Omkumar & Ors. Vs. Union of India are of similar nature. We have discussed above, about the different punishments meted out to the applicant and her Supervisory Officer 1983 (2) SCC 442 Bhagat Ram Vs. State of H.P. AIR 1987 SC 2386 - Ranjit Thakur Vs. Union of India; 1994 (2) SCC 537 - SBI Vs. Samarender Kishore Endow and AIR 1985 SC 772 Shankar Dass Vs. Union of India deal with punishment disproportionate to the misconduct. It is an established principle that if the misconduct/offence is proved, the Tribunal generally does not look into the quantum of punishment unless and until it shocks the conscience of the Court (AIR 1996-32 ATC 44 B.c. Chaturvedi). We have been interfering in the case of terminal punishment i.e. dismissal or removal from service or compulsory retirement and in other cases, the Tribunal has general refrained from interfering with



quantum of punishment if the charges are ^{de}not proved. In the instant case, the negligence on the part of the applicant cannot be termed as of minor nature which can be overlooked. The charges are held to be proved. The quantum of punishment is not that harsh that the Tribunal should interfere with it.

11. In the result, we find no reason to interference with the punishment meted out to the applicant. The O.A. is dismissed. No order as to costs.



(MUZAFFAR HUSAIN)
MEMBER (J)



(ANAND KUMAR BHATT)
MEMBER (A)

Gajan