

5/100

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Closed date- 18/06/06

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SECTION OFFICER (Judl.)

(RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Original Application No. 36/2003

Misc. Petition No. /

Contempt Petition No. /

Review Application No. /

Applicant (s) Shri James Guity

- Vs. -

Respondent (s) Wor. 2018

Advocate for the applicant (s) Mr. M. Chanda

Advocate for the respondent (s) CGSC

Notes of the Registry	Date	Order of the Tribunal
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27.2.2003

Heard Mr. M. Chanda, learned
counsel for the applicant.

Issue notice to show cause
as to why the application shall
not be admitted.

List on 27.3.2003 for
admission.

Vice-Chairman

mb

27.3.2003

Issue notice, returnable by
three weeks. ~~Endeavour~~ List the case on 28
4.2003 for admission. Endeavour shall
be made to disposed of the applica-
tion at the admission stage itself.

s.02
Member

Vice-Chairman

bb

No. Show cause
Reply has been
billed.

26/3/03

Notice issued vide
S.D. No. 380 & 383
dtd. 5/3/03.

N

28/3.

28.4.2003 Heard Mr. S. Dutta, learned counsel appearing on behalf of Mr. M. Chanda, learned counsel for the applicant and also Mr. A. Deb Roy, learned Addl. C.G.S.C. for the respondents who has stated that he is waiting for written statement which was sent to the department. Mr. Deb Roy, learned counsel also referred to the parawise comments received by him. The matter pertains to disciplinary proceeding which ^{recently} ~~event those~~ ^{took place in the year 94.} In the circumstances, it would be appropriate for me to dispose the matter at the earliest. Accordingly post the matter for admission on 8.5.2003. Endeavour shall be made to dispose the same at the admission stage. Mr. A. Deb Roy, learned Sr. C.G.S.C. ^{may file WS, may or} for the respondents may place records ^{or the case for what has} ~~in the absence of written statement~~ if any.

28/4/03
Vice-Chairman

mb

28.4.2003 Heard Mr. S. Dutta, learned counsel appearing on behalf of Mr. M. Chanda, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents who has stated that he is waiting for written statement which was sent to the department. Mr. Deb Roy, learned Sr. C.G.S.C. also referred to the parawise comments received by him. The matter pertains to disciplinary proceeding relating to event those took place in the year 94. In the circumstances, it would be appropriate for me to dispose the matter at the earliest. Accordingly, post the matter for admission on 8.5.2003. Endeavour shall be made to dispose the same at the admission stage. Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents may file written statement if any or may place records of the case on that day.

No written statement
has been filed.

30
7.5.03

Vice-Chairman

mb

8.5.2003 Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.
The Hon'ble Mr. S. Biswas, Member (A).

No written statement
has been filed.

30
(3.6.03)

Heard Mr. M. Chanda, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents.

No written statement so far filed by the respondents. The application is admitted. The matter may now be posted for hearing on 16.6.2003. The respondents may file written statement, if any.

S. R.
Member

mb

Vice-Chairman

19.6.2003

16.6.2003

27

Copy of the Judgment
has been sent to
the Office for
issuing the same
to the applicant
as well as to the
Respondent for the
records.

Heard counsel for the parties.
Hearing concluded. Judgement
delivered in open Court, kept in
separate sheets.

The application is disposed of
in terms of the order. No costs.

C. B. Ganguly

Member

Vice-Chairman

bb

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

ANNEXURE-I

Original Application Nos. 18 & 36 of 2003.

Date of Order : This the 16th Day of June, 2003.

THE HON'BLE MR. JUSTICE D. N. CHOWDHURY, VICE CHAIRMAN.

THE HON'BLE MR. R. K. UPADHYAYA, ADMINISTRATIVE MEMBER.

1. Sri Subodh Dhar
 S/o Late Aswini Kumar Dhar
 Superintendent (Group B)
 Office of the Assistant Commissioner
 Central Excise, Silchar Division
 Circuit House Road
 Silchar. Applicant in O.A.18/2003.

1. Sri James Guite
 Inspector
 Customs Preventive Post
 Churachandpur,
 Central Excise. Applicant in O.A.36/2003.

By Advocates Mr. M. Chanda, G. N. Chakraborty & S. K. Ghosh in
 O.A.18/2003 & Mr. M. Chanda & G. N. Chakraborty in O.A.36/2003.

- Versus -

1. The Union of India
 Represented by the Secretary
 to the Government of India
 Ministry of Finance
 Department of Revenue
 New Delhi.
 2. The Chairman
 Central Board of Excise and Customs
 Ministry of Finance
 Department of Revenue
 North Block, New Delhi.
 3. The Commissioner of Central Excise
 Morello Compound
 Shillong-793001.
 4. Sri Rama Kanta Das
 Deputy Commissioner (on Ad hoc basis)
 Office of the Commissioner
 Central Excise & Customs
 Shillong. Respondents in O.A.18/2003.

1. The Union of India
 Represented by the Secretary
 to the Government of India
 Ministry of Finance
 Department of Revenue
 New Delhi.
 2. The Chairman
 Central Board of Excise and Customs
 Ministry of Finance
 Department of Revenue
 North Block, New Delhi.

Contd./2

*After 5 days
 B. K. Chanda
 Advocate
 21.12.03*

3. The Commissioner of Central Excise
Morello Compound
Shillong-793001.

4. The Deputy Commissioner (P & V)
Central Excise, Shillong... . . Respondents in O.A.36/2003
By Mr.A.Deb Roy, Sr.C.G.S.C in both the cases.

ORDER

CHOWDHURY J.(V.C.):

Both the applications are taken up together for consideration since it involves commonality of facts and common question of law.

1. Both the applicants are serving under the Customs and Central Excise. The applicant in O.A.36/2003 is presently working as Inspector whereas the applicant in O.A. 18/2003 is serving as Superintendent. Disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, were initiated against the applicants as far back as on 1998. So far as the applicant in O.A.36/2003 is concerned, the proceedings against the applicant is initiated as far back on 12.2.1998 whereas in the other case proceeding is initiated on 21.1.1998. According to the applicants, in both the cases first enquiry proceeding was held on 16.9.1999. It has been stated that common proceeding was initiated against a number of officers including the applicants. The applicants referred the case of Sri B.K.Saikia who was also equally charged with similar misconduct in the common proceeding and finally he was exonerated from the charges and was promoted to the grade of Superintendent Group 'B' as far back on 23.9.2002. Both the applicants now moved this Tribunal assailing the continuance of the proceeding which according to them amounts to persecution. Mr.M.Chanda, learned counsel for the applicants contended that inordinate delay in concluding the proceeding itself is a ground for exonerating the applicants. On merit also, the applicants

Contd./3

contended that the facts alleged did not constitute any misconduct against the applicants.

2. Though time granted the respondents did not file written statement. Earlier also we ordered the respondents to file/written statement, but that was not filed. We also ordered for production of the records. Mr.A.Deb Roy, learned Sr.C.G.S.C. stated that records are not made available to him till now and today also he prayed for time to file written statement. Mr.Deb Roy stated that ^{the drafted} written statement is forwarded to the respondents but he is yet to receive the same. Mr.Deb Roy referred to the para wise comments and from the para wise comments it appears that in both the cases the enquiry officer submitted his report and forwarded on 7.8.2001 to the Directorate General of Vigilance, New Delhi for obtaining 2nd stage advice from CVC. The D.G.V. further advised the office to collect the remaining documents from the C.B.I. However the C.B.I. could not furnish all the remaining documents till now. The matter was reported to the D.G.V. and 2nd stage advice from C.V.C. through D.G.V. is awaited. In the same para wise comments the respondents also mentioned that Sri B.K.Saikia was exonerated vide C.V.C.'s 2nd stage advice dated 21.2.2002. As regards the promotion of the applicants the respondents stated that in view of the pendency of the vigilance case their case were not considered.

3. We have given our anxious consideration on the matter. The disciplinary proceeding pertains to certain allegations which took place in Manipur as far back on 26.10.1994. The disciplinary proceeding is going on since ^{February, 1998.} Seemingly one of the Inspectors Sri B.K.Saikia was exonerated from the charges. In the absence of the enquiry report it could not be ascertained as to whether these officials were found guilty or exonerated. However, fact remains that ^{the} disciplinary proceeding is kept going since

1998. It is also a fact that in view of the pendency of the disciplinary proceeding these applicants were not considered for promotion. Materials on record clearly indicated that Enquiry Officer submitted his enquiry report and the same was forwarded to the D.G.V., New Delhi as far back on 7.8.2001. Disciplinary proceeding cannot be continued for an indefinite period. Time limit for passing a final order on the enquiry report is prescribed by the Government of India vide Office Memorandum No.39/43/70-Ests.(A) dated 8.1.1971. Mr. A. Deb Roy, learned Sr.C.G.S.C. however, submitted that this is a case in which consultation with the C.V.C. is required and the proceeding is kept pending because 2nd stage advice from the CVC is awaited. Even in cases requiring consultation with the C.V.C. and the U.P.S.C. also, every effort is ^{required} to be made to ensure that such cases are disposed of as quickly as possible. Administrative ^{imperativeness} as well as public interest also demands expeditious disposal of the disciplinary proceeding. Since the enquiry report was submitted on 7.8.2001 under Rule 15 of the CCS (CCA) Rules, cases need to be disposed within the time framed. No justification is forthcoming for not considering the case of the applicants for promotion till now in view of the Office Memorandum No.22011/4/91-Estt.(A) dated 14.9.1992. The said Office Memorandum was issued after the decision rendered by the Hon'ble Supreme Court in K.V.Jankiraman & Others -vs- Union of India & Others reported in (1991) 4 SCC 109. Guidelines are meant to be obeyed. Even the procedure prescribed for resorting to seal cover proceeding indicated six months time to review of the case. We are not aware as to what steps were taken in this regard.

4. On consideration of all aspects of the matter, we are of the opinion that it is a fit case in which direction is need to be issued on the respondents to take a final decision on the disciplinary proceeding, since the enquiry

was concluded in 2001 and the matter is pending before the C.V.C. from August, 2001. Accordingly, the respondents are directed to take a final decision on the disciplinary proceeding against the applicants within a period of one month from the receipt of the order, failing which the proceeding against the applicants shall be deemed to have been set aside and quashed and the applicants shall stand exonerated. The respondents' authorities are also directed to take appropriate decision for promotion of the applicants as per law and provide the applicants with all consequential benefits in terms of the conclusion of the disciplinary proceeding.

Subject to the observations made above, both the applications stand disposed.

There shall, however, be no order as to costs.

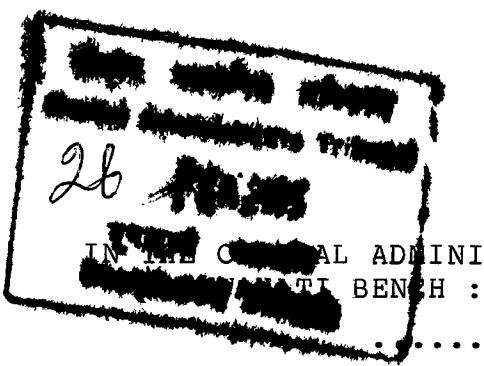
Sd/ vice-CHAIRMAN
Sd/ MEMBER (A)

Verified to be true Copy
KALYANI MISHRA

Section Officer (J)
C.A.T. GUWALIATI BANCII
Guwahati-781005

19/6/03

Attested
Smt. BAWALI
201205



v

Filed by the applicant
Court of High Court of
Assam, Guwahati, 2003
Advocate: [Signature]

36
O.A.No. /2003

Shri James Guity

Vs.

Union of India and others

The above named applicant most humbly and respectfully beg to submit the list of dates and synopsis of the O.A. as stated below;

6-2-1982 : Appointed as direct recruit Inspector under the Commissioner of Customs and Central Excise, Shillong.

12-2-1998 : Memorandum of Chargesheet issued against the applicant relating to certain allegations that took place at Moreh on 26.10.1994 while, the applicant was working in the Customs Division, Moreh. It is alleged that the applicant failed to maintain absolute integrity and devotion to his official duty in respect of the functioning, because he has allowed to pass 13 nos of trucks loaded with rice, garlic, soabin, badam etc. of Myanmar Division without any check and without taking any action under the Customs Act by abusing his official

.....contd/-

position thereby causing financial loss to the Government (Annexure-I).

12-3-1998 : Applicant vide his reply dated 12-3-1998 prayed for supply of relied upon documents for furnishing adequate defence against the charges levelled against him (Annexure-2).

15-9-1998 : The Commissioner of Customs and Central Excise, Shillong appointed Inquiry Officer and Presenting Officer for conducting the Inquiry (Annexure-3 series).

6-9-1999 : First Inquiry held on 16-9-1999 at Division Office, Guwahati and the applicant alongwith 7 other co-accused participated in the common proceeding initiated with the same set of allegations. However, the relied upon documents were not made available before the Inquiry Proceeding as required under the rules for inspection of the charged officials. The charged officials denied the charges before the Inquiry Officer.

9-12-1999 : That the Inquiry Officer asked 4-1-2000 the officials to inspect the relied

upon documents which were available under the custody of CBI, Silchar. The applicant accordingly visited the office of the CBI, Silchar but he was informed that no such documents were available at the CBI office, Silchar. This position was informed to the Inquiry Officer by the applicant on 12-1-2000 (Annexures- 5 and 6).

7-11-2000 : Again Inquiry held on 7-11-2000 in the Division Office at Guwahati the applicant alongwith other charged officials participated in the said proceeding but neither the Presenting Officer nor CBI officials could produce before the Inquiry Officer. In the circumstances the applicant and the other coaccused prayed for dropping of the charges levelled against them.

However, no progress of the Inquiry is made thereafter.

16-1-2001 : One of the coaccused namely Shri B.K. Saikia Inspector approached this Hon'ble Tribunal challenging the validity, legality of the Memorandum of chargesheet containing similar set of allegations through 428/99 (Shri B.K. Saikia Vs. Union of India and

.....contd/-

others). However, the Hon'ble Tribunal disposed of the said O.A. on 16.1.2001 with a direction upon the respondents to conclude the Inquiry expeditiously at any rate within three months of the date of receipt of the order and this Hon'ble Tribunal was further pleased to direct the respondents to consider the promotion of the applicant, Shri B.K. Saikia (Annexure-11).

17-5-2002 : That the Additional Commissioner (P&B) Customs and Central Excise, Shillong exonerated Shri B.K. Saikia, Inspector on the basis of the Inquiry report due to non-availability of relevant documents to prove the charges against Shri B.K. Saikia (Annexure-8).

In the similar facts and circumstances the applicant is also liable to be exonerated from the charges initiated vide Memorandum dated 12-2-1998.

17-12-2002 : That the applicant submitted detailed representation addressed to the Commissioner, Central Excise, Shillong praying for withdrawal of the charge sheet dated 12-2-1998 on the

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ground that the long pending of the Inquiry without any progress adversely affected the promotion prospect to the post of Assistant Commissioner and also prayed for promotion at least from the date of the promotion of his immediate junior but to no result.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O.A. No. _____/2003

Sri James Guite

Vs.

Union of India & Ors.

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Filed by

Date : 26.02.2003

Manik Chakraborty
 Advocate

Filed by the applicant
 through M. Chakraborty Ad. V.
 26.2.03 (M. Chakraborty)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

(An Application under Section 19 of the Administrative
Tribunals Act, 1985)

O. A. No. 36 /2003

BETWEEN

Sri James Guite
Inspector,
Customs Preventive Post
Churachandpur,
Central Excise,

Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Finance, Department of Revenue
New Delhi.
2. The Chairman,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block, New Delhi.

James Guite.

3. The Commissioner of Central Excise
Morello Compound,
Shillong-793001

4. The Deputy Commissioner(P & V)
Central Excise, Shillong

Respondents

DETAILS OF THE APPLICATION

1. Particulars of order(s) against which this application is made.

This application is made against the Memorandum of Charge Sheet issued under letter dated 12.2.1998 and the inquiry proceeding conducted pursuant to the aforesaid Memorandum of charges and praying for a direction upon the respondents to promote the applicant to the post of Inspector with all consequential service benefits at least from the date of promotion of his immediate junior.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

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3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. **Facts of the Case.**

- 4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.
- 4.2 That your applicant initially appointed as Inspector on 6.2.1982 as a direct recruit Inspector after being qualified in the Staff Selection Commission Examination for recruitment.
- 4.3 That your applicant while posted at Sonari Range in the district of Sibsagar, Assam, received a Memorandum of Charge Sheet vide Memorandum bearing No. C No. II(10)A/4/CIU-Vig/98/146 dated 12.2.1998 relating to certain allegations took place at Moreh on 26.10.1994 wherein it is alleged that while the applicant working in the Customs Preventive Force at Moreh, Manipur during 26.10.1994 failed to maintain absolute integrity and devotion to his official duty in respect of the supervision of the functioning of the official under his control in as much as that on 26.10.1994 13 nos. of

James Geete

trucks loaded with rice, garlic, Soyabin, Badam etc. which were illegally imported from Myanmar (Burma) were allowed to pass through his local jurisdiction to Imphal without taking any legal action which were ultimately seized by a team of CBI, Silchar Branch on 26.10.1994 and therefore it is alleged that the acts of the applicant is contravened to the provision of relevant Rule of Central Civil Services (Conduct) Rules, 1964.

The applicant after receipt of the Memorandum of Charge sheet dated 12.2.1998 submitted his reply dated 12.3.1998 praying for supply of relevant documents for furnishing adequate defence against the charges labeled against him. In this connection it may be stated that relied upon vital documents did not supply to the applicant for the reasons best known to the disciplinary authority and therefore the applicant could not submit his adequate reply/defence against the Memorandum of Charge Sheet dated 12.2.1998.

A copy of the Memorandum of charge sheet dated 12.2.1998, reply dated 12.3.1998 are annexed as Annexure 1 and 2 respectively.

4.4 That it is stated that the office of the Commissioner of Customs and Central Excise, Shillong appointed Sri A. Hussain as Inquiry Officer and Smti M. Synnah, Inspector as Presenting Officer vide Order No. 25 &

James Guilti

26/98 dated 15.9.1998 for conducting the enquiry into the charges initiated vide Memorandum dated 12.2.1998.

Copy of the order dated 15.9.1998 is annexed as **Annexure -3 (series)**.

4.5 That it is stated that the applicant was summoned to appear before the Inquiry Officer on 16.9.1999 at 11.00 A.M. in the Guwahati Division Office vide Confidential bearing No. C. No. II(8)1/Con/ACG/99/4374 dated 27.8.1999 to attend the said inquiry proceeding. The applicant accordingly participated in the common proceeding held on 16.9.1999. Be it stated that it was a common proceeding initiated with the same allegation against Superintendent Group B and 7 Inspectors including the applicant. However, the relevant documents which were relied upon by the Disciplinary Authority were not made available in the Inquiry Proceeding for Inspection of the same for the charged officials as required under the Rule and all the charged officials including the applicant denied the charges before the Inquiry Officer on a specific query.

A copy of the letter dated 27.8.1999 is annexed as **Annexure-4**.

4.6 That it is stated that the Inquiry Officer vide his letter bearing No. C No. V(30)27/Hqrs..AE/CE/ SH/98/ 6332-42 dated 9.12.1999 asked the applicant to inspect the relied upon documents which are available under the custody of the CBI, Silchar at the earliest for

James Gupte

submission of defence reply in connection with the inquiry proceeding initiated by the Memorandum dated 12.2.1998. It was further instructed to the applicant that the outcome of the Inspection of documents in the CBI office should be intimated within seven days to the Inquiry Officer for further necessary action. In terms of the aforesaid instructions the applicant visited the office of the CBI, Silchar on 4.1.2000 and prayed for inspection of the said relied upon documents to concerned authorities. However, it was informed to the applicant by the office of the CBI, Silchar that the relevant documents are not available in the office of the CBI, Silchar. The aforesaid position was informed by the applicant to the Inquiry Officer vide his letter dated 12.1.2000. In the said letter dated 12.1.2000 the applicant further stated that since the relied upon documents are not available either with the custody of the disciplinary authority or with the concerned office of the CBI as such charges are baseless and requested to drop the same and consider his promotion to the next higher grade as the said proceeding adversely affected his service prospect.

Copy of the letter dated 9.12.1999 and reply dated 12.1.2000 are annexed as **Annexure-5 & 6** respectively.

4.6 That it is stated that the subsequent enquiry proceeding held on 7.11.2000 at Guwahati and the applicant accordingly along with other charged official

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appeared in the said common enquiry proceeding on 7.11.2000. However, the Presenting Officer did not present in the said enquiry proceeding on 7.11.2000 along with the relied upon documents and on the other hand the CBI also failed to allow the applicant and other alleged co accused to inspect the relied upon documents or in other wards it can rightly be said that CBI also could not produce the relied upon relevant documents. This fact would be evident from the records and daily order sheet of the proceeding dated 7.11.2000. It is also pertinent to mention here that it was prayed before the inquiry officer on 7.11.2000 that in view of non availability of relied upon documents based on which the Memorandum of charge sheet was served upon the applicant may kindly be dropped.

However thereafter no progress was made on the part of the Inquiry Officer due to non availability of the relevant relied upon documents. It is ought to be mentioned here that no intimation was also given to the applicant thereafter regarding further continuation of the aforesaid proceeding. In the meanwhile one of the charged official Sri B.K.Saikia, Inspector approached the Hon'ble Central Administrative Tribunal, Guwahati Bench through O.A. No. 428 of 1999 (Sri B.K.Saikia Vs. Union of India & Ors.) questioning the legality and validity of the proceeding initiated against him on the similar charges by the Deputy Commissioner (P & V), Central Excise. However the said O.A. was disposed of

James Guilt.

by the Hon'ble Tribunal with the following observations and direction :

"As regards the other grievance of the applicant as to the maintainability and legitimacy of the proceeding, these aspects shall also be considered by the Disciplinary Authority and the applicant shall be free to raise any legal issue before the authority and the authority shall have to deal with the same as per law. Regarding the claim of the applicant for his due promotion both under the Assured Career Progression Scheme as well as regular promotion, we are of the view that this is a matter that concerns the administration and we hope the administration shall take necessary steps to that effect. It would also be open to the respondent authority to consider the case of the applicant for promotion if he is eligible under such scheme and the department may take necessary steps for utilizing the sealed cover procedure and/or for providing financial benefit under the Assured Career Progression Scheme irrespective of the disciplinary proceeding."

After the pronouncement of the aforesaid judgment said Sri B.K.Saikia, Inspector, alleged co-accused was

James Guita

exonerated from the same set of charges by the Additional Commissioner, (P & V), Customs and Central Excise, Shillong vide order No. 27/2002(CIU-Vig) dated 17.5.2002. Be it stated that Sri B. K.Saikia along with 6 others Inspectors including the applicant were implicated with the same set of article of charges, same list of documents and list of witnesses. Be it stated that enquiry proceeding was a common proceeding, therefore when Sri B. K.Saikia, Inspector was exonerated from the said common disciplinary proceeding, as such the applicant is also entitled to be exonerated from the aforesaid summary disciplinary proceeding. More so, in view of the fact that although the applicant/defence assistant participated in all the enquiry proceedings but the Presenting Officer could not even produce the relevant relied upon documents in any of the enquiry proceeding which is also specifically observed by the Inquiry Officer in the daily order sheet of the proceeding, therefore the aforesaid proceeding is liable to be set aside and quashed.

It is pertinent to mention here that Sri B.K.Saikia, Inspector of Central Excise also promoted to the cadre of Superintendent Group B with retrospective benefit vide Estt. order No. 138/2002 dated 23.9.2002 immediately after exoneration from the charges initiated under same and similar Memorandum of Charges dated 12.2.1998.

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A copy of the daily order sheet dated 7.11.2000, order dated 17.5.2002 and order of promotion dated 23.9.2002 are annexed as **Annexure-7, 8 and 9 respectively.**

4.7 That it is stated that the applicant vide his representation dated 17.12.2002 addressed to the Commissioner, Central Excise, NER, Shillong prayed for withdrawal/revocation of the Memorandum of Charge sheet dated 12.2.1998 and also prayed for consideration of his promotion to the grade of Superintendent Group B at least with effect from the date of promotion of his immediate junior. In the said representation the applicant inter alia stated in a nut shell that although the proceeding was initiated way back on 12.2.1998 and the enquiry proceeding was held on different dates but neither the Disciplinary Authority/Presenting Officer nor the CBI Authority could able to make available the relevant relied upon documents before the Inquiry Officer even after a specific direction passed by the Inquiry Officer. Therefore it appears that the Inquiry proceeding is initiated without any authentic documents and the same is also based on an unconfirmed fact and since no progress is made after the enquiry proceeding held on 7.11.2000 and since the Inquiry Officer has already submitted his report based on which co-accused Sri B.C. Saikia, Inspector has already been exonerated from the similar charges, therefore applicant is also entitled

James Ganta

to be exonerated from the same set of charges and the Inquiry Proceeding as well as Memorandum of Charge sheet are liable to be dropped. The applicant further requested to consider his promotion in the cadre of Superintendent Group B at least with effect from the date of promotion of his immediate juniors with all consequential service benefits including seniority and monetary benefit.

A copy of the representation dated 17.12.2002, is annexed as **Annexure- 10** respectively.

4.9 That it is stated that during the pendency of the disciplinary proceeding which was initiated way back on 12.2.1998 a large number of juniors were promoted to the post of Superintendent Group B as well as Assistant Commissioner. It is pertinent to mention here that the applicant belongs to Scheduled Tribe community and as such entitled to preferential treatment in the matter of promotion. In this connection it may be stated that one Smti Ninamani Phukan, Alok Chakraborty, H.K.Brahma, Smt. Melicia Synnah, Sri D.N.Doley all were juniors to the applicant and were promoted to the cadre of Superintendent Group B vide Establishment Order Nos. 156/1997 dated 8.7.1997, 238/1997 dated 8.12.1997, 92/1998 dated 26.6.1998 and again thereafter a large number of juniors of the applicant were promoted to the cadre of Superintendent Group B during the year 1998-2002.

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The applicant urge to produce the orders of promotion of his juniors between the period 1998 and 2002 before the Hon'ble Tribunal at the time of hearing of this application.

4.10 That it is stated that due to delay in disposal of the disciplinary proceeding initiated way back on 12.2.1998 and accordingly Inquiry held on different dates but no progress is made after the hearing held on 7.11.2000 and as a result of such delay the service prospect of the applicant has been adversely affected particularly in the matter of promotion to the cadre of Superintendent Group B. Be it stated that incident took place way back on 26.10.1994 and by this time 9 years have elapsed but the same is still pending with the Disciplinary Authority. In this connection it may be stated that the applicant participated in all the Inquiry Proceedings in terms of the direction of the Inquiry Officer and extended his best cooperation with the Disciplinary Authority but to no result. As such, the Memorandum of Charge Sheet dated 12.2.1998 as well the Enquiry Proceeding is liable to be set aside and quashed.

4.11 That your applicant being highly aggrieved for non finalisation of the disciplinary proceeding as stated above and also for denial of his promotion to the cadre of Superintendent Group B submitted several representations but to no result. In the compelling

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circumstances finding no other alternative approaching this Hon'ble Tribunal for setting aside and quashing the impugned Memorandum of Charge Sheet dated 12.2.1998 and the Inquiry Proceeding held in pursuant to the aforesaid Memorandum and also prayed for a direction upon the respondents to consider the promotion of the applicant to the cadre of Superintendent Group B with all consequential service benefits including monetary.

4.12 That it is stated that when the enquiry officer submitted his enquiry report way back on 6.7.2001 and more particularly when in the similar facts and circumstance Sri B.K.Saikia, Inspector alleged co accused is exonerated on the basis of the said Inquiry Report by the Disciplinary Authority there is no justification for further continuation of disciplinary proceeding against the applicant that too without any decision from the end of disciplinary authority. As such, the impugned Memorandum of Charge sheet dated 12.2.1998 as well as the inquiry proceeding are liable to be set aside and quashed.

4.14 That it is stated that Sri B.K.Saikia approached the Hon'ble Tribunal challenging the legality and validity of the impugned Memorandum of charge sheet dated 12.2.1998 through O.A. No. 428 of 1999 (Sri B.K.Saikia Vs. Union of India & Ors.) Central Excise. However the said O.A. was disposed of by this Hon'ble Tribunal and thereafter the Disciplinary Authority on examination of

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the entire fact situation as well as the enquiry report exonerated Sri B.K.Saikia, Inspector from the charges, as such the present applicant is also entitled to be exonerated from the charges labeled against him in the light of the order dated 17.5.2002 passed by the Deputy Commissioner (P & V), Customs and Central Excise, Shillong with all consequential service benefits including the promotion to the cadre of Assistant Commissioner as well as Deputy Commissioner with arrear monetary benefit including seniority at least with effect from the date of promotion of his immediate junior.

A copy of the judgment and order dated 18.1.2001 is annexed as annexed as **Annexure-11.**

4.15 That in the facts and circumstances stated above it is a fit case for the Hon'ble Tribunal to interfere with and to protect the rights and interests of the applicant by passing an appropriate order setting aside the impugned Memorandum of Charge sheet dated 12.2.1998 and the inquiry proceeding and further be pleased to direct the respondents to promote the applicant to the post of Superintendent Group B with all consequential service benefits including monetary.

4.16 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

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5.1 For that, the impugned memorandum of charge sheet dated 12.2.1998 has been issued not based on facts, and the same is baseless and bogus, as such the same liable to be set aside and quashed.

5.2 For that, the applicant participated in all the enquiry proceedings as and when called for but neither the Disciplinary Authority nor the CBI could able to produce the relevant relied upon documents indicated with the Memorandum of Charge sheet dated 12.2.1998 before the enquiry proceeding held on 16.9.1999 and also on 7.11.2000.

5.3 For that, in spite of repeated demands by the applicant as well as by the co accused for supply of relied upon documents the Disciplinary Authority as well as CBI miserably failed to supply the relied upon documents indicated in the Memorandum of charge sheet dated 12.2.1998.

5.4 For that, the inquiry officer has already submitted its inquiry report as indicated in the order 27.5.2002 passed by the Additional Commissioner (P & V), Customs and Central Excise, Shillong wherein it is specifically observed that the Presenting Officer as well as CBI totally failed to produce the relied upon documents before the enquiry proceeding and also was pleased to exonerate one of the co accused Sri B.K.Saikia, Inspector, Customs and Central Excise, from the same

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set of charges, as such applicant is entitled to be exonerated from the similar charges labeled against him vide Memorandum dated 12.2.1998.

- 5.5 For that, when the inquiry report has already been submitted before the Disciplinary Authority, as such it is obligatory on the part of the Disciplinary Authority to pass appropriate order in respect of the present applicant in the light of the order dated 27.5.2002 passed in the case of Sri B.K.Saikia, Inspector.
- 5.6 For that, due to delay in finalisation of the aforesaid Disciplinary Proceeding the service prospect of the applicant has already adversely affected particularly in the matter of promotion.
- 5.7 For that, Sri B.K.Saikia, Inspector, co-accused in the summary proceeding has already been exonerated vide order dated 27.5.2002 by the Additional Commissioner (P & V) after consideration of the report of the Enquiry Officer in the similar facts and circumstances, as such applicant is also entitled to be exonerated from the charges labeled against him vide Memorandum dated 12.2.1998.
- 5.8 For that, the applicant following the instructions of the competent authority visited the office of the SP, CBI, Silchar for inspection of the relied upon documents but the CBI authority could not able to furnish the same to the applicant.

Jamsa Gupte.

5.9 For that, a large number of juniors have already been promoted to the post of Superintendent Group B, in supersession of the claim of the present applicant on the alleged ground of pendency of departmental proceeding.

5.10 For that the enquiry proceeding in respect of the applicant and other co-accused was initiated way back in the month of February, 1998 but the same has not yet been concluded even after expiry of five years in spite of repeated representations submitted by the applicant and such inordinate delay in finalizing the departmental proceeding has caused irreparable loss and injury to the service career of the applicant.

5.11 For that, due to non consideration of promotion the applicant incurring huge financial loss for no fault of him each and every month as such it is a fit case for the Hon'ble Tribunal to interfere with to protect the rights and interests of the applicant.

5.12 For that, the applicant submitted several representations before the competent authority for redressal of his grievances but to no result.

5.13 For that, in any view of the matter the applicant is entitled to the relief as prayed for, more particularly in the light of the order already passed by the Additional Commissioner on 27.5.2002 exonerating one of

Jamesguiti.

34

the alleged co accused Sri B.K.Saikia, Inspector from the same set of charges.

6. Details of remedies exhausted.

That the applicant states that he has exhausted all the remedies available to him and there is no other alternative and efficacious remedy than to file this application.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit before any Court or any other authority or any other Bench of the Tribunal regarding the subject matter of this application nor any such application, Writ Petition or Suit is pending before any of them.

8. Relief(s) sought for:

Under the facts and circumstances stated above, the applicant humbly prays that Your Lordships be pleased to admit this application, call for the records of the case and issue notice to the respondents to show cause as to why the relief(s) sought for in this application shall not be granted and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following relief(s):

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8.1 That the Hon'ble Tribunal be pleased to set aside and quash the impugned Memorandum of Charge Sheet issued under letter No. C. No. II(10)A/2/CIU-Vig/98/61 dated 12.2.1998 (Annexure- 1)issued by the Commissioner, Central Excise, Shillong and the Inquiry Proceeding conducted in pursuance of the aforesaid Memorandum.

8.2 That the respondents be directed to promote the applicant to the post of Superintendent Group B with all consequential service benefits including arrear monetary benefits at least with effect from the date of promotion of his immediate juniors to the rank of Superintendent Group B.

8.3 Costs of the application.

8.4 Any other relief(s) to which the applicant is entitled as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for

During pendency of this application, the applicant prays for the following relief: -

9.1 That the Hon'ble Tribunal be pleased to observe that the pendency of this application shall not be a bar for the respondents to consider the claim of the applicant for promotion to the post of Superintendent Group B.

James Geetie

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

- i) I. P. O. No. : 76 605829
- ii) Date of Issue : 25.2.2003
- iii) Issued from : C.P.O. - ^{Chennai}
Chennai
- iv) Payable at : Chennai

12. List of enclosures.

As given in the index.

James Gintu.

VERIFICATION

I, Shri James Guite, serving as Inspector under the Commissionerate of Customs and Central Excise, Shillong, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the 22nd day of February, 2003.

A handwritten signature in black ink, appearing to read "James Guite".

Annexure-1

GOVERNMENT OF INDIA

MINISTRY OF FINANCE

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE
SHILLONG

C. No. II(10)A/2/CIU-VIG/98/146

Dated 12.2.98

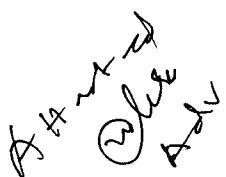
MEMORANDUM

Smti B.Thamar, Deputy Commissioner(P & V), proposes to hold an inquiry against Shri James Guite, Inspector under Rule 14 of the central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputation of misconduct or mis-behaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of the imputations of misconduct or misbehaviour in support of each article of charge is enclosed(Annexure-II). A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained are also enclosed (Annexure III and IV).

2. Shri James Guite, Inspector is directed to submit within 10 days of the receipt of this Memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3. He is informed that an inquiry will be held only in respect of those articles of charge as are not admitted. He should, therefore, specifically admit or deny each article of charge.

4. Shri James Guite, Inspector is further informed that if he does not submit his written statement of defence on or before the date specified in para 2 above, or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 or the orders/directions issued in



pursuance of the said Rule, the inquiring authority may hold the inquiry against him ex-parte.

5. Attention of **Shri James Guite, Inspector** is invited to Rule 20 of the Central Civil Services (Conduct) rules, 1964 under which no Government Servant shall bring or attempt to bring any political or outside influence to bear upon any superior authority to further his interests in respect of matters pertaining to his service under the Government. If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that **Shri James Guite, Inspector** is aware of such representation and that it has been made at his instance and action will be taken against him for violation of Rule 2 of the C.C.S. (Conduct)Rules, 1964.

6. The receipt of this Memorandum may be acknowledgement.

Enclo : As above

Sd/- B.Thamar 12.2.1998
DEPUTY COMMISSIONER
CENTRAL EXCISE :SHILLONG

To :
Shri James Guite
Inspector
Sonari Range.

Annexure-1(Contd)

ANNEXURE-I

Article of charges framed against Shri James Guite,
Inspector of Customs (Preventive).

That, Shri James Guite, while functioning as the Inspector of Customs (Preventive) at Customs Preventive Force, Moreh, during 26.10.94 failed to maintain devotion to his official duty and discharge of his official duty, in as much as he allowed to pass 13 Nos. of trucks loaded with Rice, Garlic, Soyabin, Badam etc. of Myanmar origin, without any check and without taking any check and without taking any action under Customs Acts and thereby, showed favour to the smugglers by abusing his official position as of Customs (Preventive), thereby causing financial loss to the Government.

The aforesaid acts of omission and commission on the part of said Shri James Guite, tantamount to violation of Rule 3 (1) of the Central Civil Service Conduct Rules, 1964.

Annexure-1 (Contd.)

ANNEXURE-II

Statement of imputation of misconduct in respect of support of article of charges framed against Shri James Guite, formerly Inspector of Customs Preventive Force, Moreh.

That Shri James Guite was posted as Inspector of Customs (Preventive) at Customs Preventive Force, Force, Moreh during 1994. On 26.10.1994 he was on duty at C.P.F. Moreh. His main duty was to collect intelligence about the smuggling activities of various individuals in the Customs areas, being member of Customs Preventive Force, Moreh and to seize the smuggled goods for taking suitable action under the customs acts.

That, Shri James Guite above while on duty on 26.10.94 failed to discharge his official duty with absolute integrity and devotion and thereby allowed to pass 13 Nos. of Trucks bearing the following nos. (i) MNA 2349 (ii) MNA-11165 (iii) MN 01-4124 (iv) MN 04-0286 (v) MNA-3428 (vi) MNA 2739 (viii) MNA 3165 (viii) AS 01 B 3949 (ix) MNA 3079 (x) MNA 5378 (xi) MN 01-3099 (xii) MN 01 4234 (xiii) MNA 2586 loaded with Rice Badam, Garlic, etc. of Myanmar origin to Imphal without taking any action under the Customs Acts & rules.

That the said 13 nos. of Trucks were seized by the CBI after crossing C.P.F. Pallel and detected transportation of smuggled goods like Rice, Badam, Garlic, etc. from Myanmar to India and the same were handed over to the Custom authority at Imphal.

That the Custom authority at Imphal registered 13 nos. of cases bearing case No. 118/CL/CUS/IMP/94 to Case No. 130/CL/CUS/IMP/94 on 28.10.94 and during adjudication it was established that the above item were smuggled from Myanmar via Moreh & Pallel. As a result the sealed goods were

confiscated, custom duties were realized ad released on charges of adequate redemption fine and personal penalty.

That, the aforesaid acts of omission and commissions on the part of Shri James Guite above, amounts to contravention of the Provisions of the 3 (1) of the CCS Conduct Rules, 1964.

ANNEXURE-III

Annexure-1(Contd)

List of documents by which the article of charge framed against **Shri James Guite, Inspector Customs (Preventive) Moreh** are proposed to be sustained.

1. Certified Xerox copy of the Memorandum prepared by Shri N.M.Singh, Dy. S.P.,CBI, Silchar Branch in connection with the surprise check of SIR Case No. 39/SIR/94-SLC of CBI Silchar Branch at Moreh forest Check Gate on 26.10.94 at 14.45 hrs. to 16.30 hrs.
2. 13 (Thirteen) vehicle challans which were found accompanied with the 13 Trucks during the time of Surprise checking which were reseized in connection with RC-7(A)/95-SLC. On production by Shri N.N.Singh, Dy. S.P. of CBI, Silchar Branch.
3. Copy of the letter for handing over of these documents to Addl. Collector Customs Preventive Division NER Imphal on 28.10.94.
4. (i) 3 Outgoing registers maintained at Moreh Small town Committee (having the particulars of goods lifted with veh. No. & date) w.e.f. 27.8.94 to 16.11.94.
(ii) 2 Outgoing vehicle entry Registers maintained at Moreh Small town Committee having date, vehicle No. time, signature of the drivers/conductors) w.e.f. 6.8.94 to 9.12.94.
5. Certified photocopies of Moreh to Imphal vehicles entries Register maintained at Police Check gate Moreh on dated 26.10.94.
6. Letter No. 11 (A)/CON/ACI/93/13 dt. 14.3.96 of the office of the Additional Commissioner, Customs Preventive NER, Imphal Manipur with the copy of the Adjudication order of Customs Case No. 118 to 130/CL/IMP/CUS/94 dt. 28.10.94.
7. Photocopies of Adjudication order No240/Adj/Addl./Commr /NER Imphal dt. 4.8.95 collected from Assistant Commissioner of Customs Preventive NER, Imphal.
8. Letter No. C. No. ii(39)CIU-VIG/20/95/209 dated 8.2.96 of Shri J.N. Ngitnela, Additional commissioner (P &V) Customs & Central Excise, Shillong is response to letter No. 3/7(A)/95-SLC/IP/1075 dated 29.11.95 of SP, CBI, SPE, Silchar Branch.
9. Attested copies of the inventory list, Provisional release of the goods and Trucks of Case No. 118 to 130/CL/CUS/IMP/94 dated 28.10.94 of Customs Preventive Division, Imphal.

Annexure-1(Contd.)
(ANNEXURE-IV)

List of witnesses by whom Article of charge framed against **Shri James Guite, Inspector Customs (Preventive) Moreh** proposed to be sustained :-

1. Shri N. Manithoi Singh, Dy.SP, CBI, Silchar Branch.
- will prove the seizure of 13 Nos. of Trucks loaded with Rice, Badam, Garlic, etc. on 26.10.94 at Forest Check Gate, Moreh which illegally imported from Myanmar via Moreh & Moreh Customs Preventive Force and handing over of the seized trucks and the illegally imported goods to the Custom Authority at Imphal.
2. Shri Md. Siraj Ahmed, Forester Gr. I, Forest Beat Office, Palle.
-
3. Shri Md. Sarauddin, Forester Gr. II Forest Beat Office, Moreh.
- both Sl. 2 & 3 were the seizure witnesses and they will corroborated the Statement of Shri N.M.Singh, Dy. SP, CBI, Silchar to prove the seizure of 13 Nos. of Trucks loaded with Rice, Badam, Garlic, etc. on 26.10.94.
4. Shri Jilkhotong Touthang, LDC, Moreh Small Town Committee
- will prove the passing of the said 13 Nos. of Trucks from Moreh towards Imphal on NH-39 passing through Moreh Small Town Committee check gate from the records he maintained at the said check gate on 26.10.94.
5. Shri Sanajaiba Singh, Inspector of Police, Moreh Police Staion
- will prove the passing of the said 13 Nos. of trucks with the goods mentioned above from Moreh towards Imphal along NH-39 on 26.10.94.
6. Shri G. Panmei, IRS, Asst. Commissioner, Customs Preventive Division, Imphal
- will prove the taking over of the report of seizure of 13 nos. of trucks loaded with Reice, Badam, Garlic, etc. along with the trucks and the goods seized by CBI on 26.10.94 and follow up of necessary legal actions.
7. Shri D.D. Ingti, Addl. Commissioner, Customs Preventive, NER, Imphal

- will prove that he had adjudicated the seizure Case Nos. 118/CL/CUS/IMP/94 to No. 130/CL/CUS/IMP/94 dated 28.10.94 and the imposition of Customs duty, redemption fine, and personal penalty etc. to the owners of the seized goods.

8. Shri J.N. Ngilneila, Addl. Commissioner (P &V), Customs & Central Excise, Shillong.

- will prove that during 26.1094 there was no land Customs stationed at Moreh but there was Customs Preventive Force at Moreh and Moreh. He will further prove that the Jurisdiction of the Customs Preventive Force at Moreh and Moreh.

To
The Deputy Commissioner (P & V)
Central Excise,
Shillong.

Sir,

Subject:- Memorandum on article of charge vide
C.No.II(10)A/4/CIU-VIG/98/146 dated
12.2.98

With due honour, I have to inform you that I have received the Memorandum cited above with due acknowledgement on 5/3/98, and have gone through the 2 paged Memorandum along with the Annexure I (one page), Annexure II (two page), Annexure III (one page), Annexure IV (one page).

In the Memorandum as well as in the enclosures no records of any kind in support of the charges were attached. I would be highly obliged if your good office would kindly supply me a comprehensive/exhaustive documents as mentioned in Annexure III and all the statements as mentioned in Annexure IV.

If any other records are relied upon in making ~~charges~~ the charges as in Annexure I and also any proof in making statement of Imputation in mis-conduct as in Annexure II may also be supplied to me.

Therefore, this prayer to enable me to admit or deny the charges as per your desired.

*Attached
Copy
JG*
Yours faithfully,

J. G. Guite

14/3/98
(JAMES GUITE)
Inspector,
Central Excise,
Sonari Range,
Sonari,
District-Sibsagar,
A S S A M.

Received

12/3/98

CIU-VIG Branch

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE
SHILLONG.

O R D E R No. 27/98
DATED SHILLONG THE 15th Sept' 98.

Whereas an inquiry under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965 is being held against Shri/Smti James Guite, Inspector, Central Excise, Sonari Range, Dist. Sibsagar, Assam....

And whereas the undersigned considers that an inquiring authority should be appointed to inquire into the Charges framed against the said Shri/Smti James Guite, Inspector.

Now, Therefore, the undersigned in exercise of the powers conferred by sub-rule (2) of the said rule, hereby appoints Shri/Smti A. Hussain, Assistant Commissioner, (Anti-Evasion) Customs & Central Excise, Shg. as the inquiring authority to inquire into the charges framed against the said Shri James Guite, Inspector.

Sd/- (B. THAMAR)
 DEPUTY COMMISSIONER(P&V)
CUSTOMS AND CENTRAL EXCISE:SHILLONG.

C.No. II(10)A/CIU-VIG/98/434-1,0 Dated:- 29.9.98

Copy forwarded for information and necessary action to :-

1. Shri/Smti James Guite, Inspector, Sonari Range.
2. Shri A. Hussain, A.C. (Anti-Evasion), Customs and Central Excise, Shg. He is hereby asked to conduct inquiry in accordance with the C.C.S. (CCA) Rules, 1965 and furnish the inquiry report within one month from the date of receipt of the order. He is also directed to acknowledge of the order.
3. Shri/Smti Melicia Synnah, Supdt. (Hars), Presenting Officer....
4. The Assistant Commissioner, Customs and Central Excise, Jorhat,

Copy meant for James Guite, Inspector....
 is enclosed for service under a dated receipt and the receipt so obtained may be forwarded to this office for record.

5. Gaurd file.

Recd on 25.9.98
 (B. THAMAR)
 DEPUTY COMMISSIONER(P&V)
CUSTOMS AND CENTRAL EXCISE:SHILLONG.

*Attached
 Shri
 A. Hussain*

OFFICE OF THE COMMISSIONER OF CUSTOMS AND CENTRAL EXCISE
SHILLONG.O R D E R No. 28/98
DATED, SHILLONG THE 15th Sept' 98

Whereas an Inquiry under Rule 14 of the C.C.S. (CCA) Rules, 1965 is being held against Shri/Smti James Guite, Inspector, Central Excise, Sonari Range, Dist-Sibsagar.....

And whereas the undersigned considers that a Presenting Officer should be appointed to present on behalf of the undersigned the case in support of the articles of Charge.

Now, therefore, the undersigned in exercise of the powers conferred by sub-rule (5) (c) of Rule 14 of the said rules, hereby appoints Shri/Smti Melicia Synnah, Supdt(Hars)..... as Presenting Officer.

act (B. THAMAR)
DEPUTY COMMISSIONER (P&V)
CUSTOMS AND CENTRAL EXCISE:SHILLONG.

C.No.II(10)A/4/CIU-VIG/98/441-445 Dated:- 29.9.98

Copy for information and necessary action to:-

1. Shri/Smti James Guite, Inspector, Sonari.....(Charged Officer.)
2. Shri/Smti A. Hussain, A.C.(A.E), C&CE, Shg....(Inquiry Officer).
3. Shri/Smti Melicia Synnah, Supdt(Hars).....(Presenting Officer).
He/She is directed to present the case before the case before the Inquiring Authority. Receipt. Receipt of the order and relative documents as per list enclosed may be returned to the undersigned when done with.
4. The Assistant Commissioner, Central Excise, Jorhat.....
Copy meant for Shri/Smti James Guite, Inspector..... is enclosed herewith for service under a dated receipt and the receipt so obtained may be forwarded to the undersigned for record.
5. Gaurd file.

Recd 29.9.98
(B. THAMAR)
DEPUTY COMMISSIONER(P&V)
CUSTOMS AND CENTRAL EXCISE:SHILLONG.

*Acted
M/S
Adv.*

OFFICE OF THE ASSISTANT COMMISSIONER OF CENTRAL EXCISE
GUWAHATI :: GUWAHATI DIVISION

Confidential

C.No. II(8)I/CON/ACG/99/ 4374

R.B.G.A.D.

Dated: 27/8/98

To,

✓ Shri James Gupte
Inspector, CEx.
Sonari Range,
Distt. Sibsagar, Assam

Subject:- DEPARTMENTAL ENQUIRY UNDER RULE 14 OF CCS (CCA)
RULES, 1965 AGAINST SHRI James Gupte, Inspector

Under Order No. 27/98, dtd. 15th September, '98 vide C.No. II(10)A/CIU-VIG/98/ dated 29.09.98 of the Commissioner/Deputy Commissioner (P&V), Customs & Central Excise, Shillong, a copy of which has been endorsed to you also, I have been appointed as the Inquiring Officer to enquire into the charge framed against you. I shall hold hearing in the case on dtd. 16.9.98 in my office at 11 A.M. You are, therefore, required to attend the proceedings for inspection of the relied upon documents on the appointed date, time and place, failing which the proceedings shall be held ex parte.

Instructions for getting Defence Assistant relieved will be issued if his particulars and willingness to work as such alongwith the particulars of Controlling Authority are received by me before 10.9.98.

While nominating a serving Government Servant as Defence Assistant, as also the retired Government Servant the instructions on the subject should be kept in view.

Seeed/8/98
(A.Hussain)

Assistant Commissioner

Central Excise

Guwahati Division.

*A.Hussain
27/8/98
A.D.*

GUWAHATI.

CONFIDENTIAL

C.NO.V(30) 27/Hqrs.AE/CE/SH/98/ (33V) AV

Date : 9.12.99

To

Sri James Guite,
Inspector,
Central Excise,
Sonari Range,
SIBSAGAR.

Subject : Departmental Enquiry under Rule 14 of CCS(CCA)
Rules, 1965 against Sri Subodh Dhar, Superintendent
and other Inspectors.

In continuation to this office letter No.II(8)1/
CON/ACG/99 dated 27.8.99, you are hereby asked to inspect
the relied upon documents reported to be in the custody
of the office of C.B.I., SPE, ABC Silchar, Silchar-788004
at the earliest for submission of your defence reply.

The outcome of the inspection may please be reported
to the undersigned within seven days of completion of the
inspection for further necessary action from this end.

Guwahati
(A. HUSSAIN)
ASSISTANT COMMISSIONER
CENTRAL EXCISE :: GUWAHATI.

C.NO.V(30) 27/Hqrs.AE/CE/SH/98/

Date : 9.12.99

Copy to -

1. The Superintendent of Police, CBI, SPE, ABC Silchar Branch, Silchar-788004. - For information and necessary action with reference to this office letter No.II(8)1/ CON/ACG/99 dated 27.8.99 on the above subject. He is also requested to allow the Charged Officer to inspect the relied upon documents under his custody. This is with reference to the direction of Joint Commissioner (P&V), Customs and Central Excise, Shillong under his C.NO.II(39)CIU-VIG/20/95/772 dated 25.11.99.
2. The Deputy Superintendent of Police, CBI, SPE, Imphal for information.
3. The Joint Commissioner (P&V), Customs and Central Excise, Shillong with reference to his order communicated under C.NO.II(39)CIU-VIG/20/95/772 dated 25.11.99.

Guwahati
(A. HUSSAIN)
ASSISTANT COMMISSIONER
CENTRAL EXCISE :: GUWAHATI.

*Attended
John
Adv.*

03642/33009
~~03642/33009~~

Dated. Sonari, the 12th. Jan. 2000.

To.

The Enquiry Officer/
The Assistant Commissioner.
Central Excise(Anti-Evasion)
Guwahati.

Sir.

Subject: Departmental Enquiry under Rule, 14
of CCS(CCA) Rules, 1965 against Shri.
Subodh Dhar, Superintendent and other
Inspectors. - Corrs. reg.

With due respect I, have the honour to state
the following few facts for your kind perusal and -
immediate remedial action.

That, as per your direction vide letter C.No.
V(30)27/Hqrs. AE/CE/SM/98/6332-42 dt. 9.12.99. I, personally
visited the Office of the CBI on dt. 4.1.2000 at around
1630hrs. and contacted Mr. Sharma, M. Superintendent of -
Police, CBI, SPM, ABC, Silchar, by submitting the copy of
your above mentioned letter through one of his subordinates
who later directed me to his chamber, no sooner had I,
entered in his chamber I requested him to show me the
relied upon documents for inspection as per your letter
but he filing back the copy of your letter towards me,
saying that no such record is available with us here.
As he was reluctant to discuss or listen anything from
me I, came out from his chamber.

Sir, as a matter of fact no legal provision
exist under Sec. 10 or the CCA/CCA Rules, 1965 to contact
any authority other than the disciplinary/Enquiry authority
for getting copy(ies) of document(s) relied upon in framing
charges by the Department. Forms of natural justice and
fair play do tend to suggest the charged officer already
overburdened with overwhelming pains should himself contact
the prosecution witness in hostile camp to get copy(ies)
from, which would amount to succumbing uncalled for pressure
to jeopardise my defence, which I, however, did it in obeisance
to your direction as per your letter mentioned above.

Therefore, under the circumstances may I presumed
Sir, that neither the Department nor the CBI authority
is in a position to produce the relied upon documents
in support of the disciplinary proceedings lodged against
me vide C.No.11(10)A/4/CEU-VIG/98/146 dt. 12.2.98 which
is the essential prerequisite to make meaningful progress
of the enquiry proceedings, in such situation the very
Memorandum of Charge stands unsupported by the relied
upon documents, which is not even in the hands of the
Department nor CBI, Silchar.

In view of the above I, pray before your honour
to drop the baseless charges and further mental -
harassment at an early date. Over and above I, would like
to place before you the inordinate delay in the proceedings
which is adversely affecting my service career in the
matter of my promotion to the next higher grade.

Prayed you will dispense with the proceedings
for ends of justice.

Yours faithfully,


JAMES GUPTE
INSPECTOR (JAMES GUPTE)
CENTRAL EXCISE
SONARI RANGE

Dated. Sonari, the 12th, Jan. 2000.

Copy forwarded for information to the Deputy -
Superintendent of Police, Central Bureau of
Investigations, SPE, ABC, Bilchar.

~~1241~~
(JAMES GUITE)
Inspector.
Central Excise, Sonari Range.



Daily proceedings
in the Case No -
7(A)95 - SLC dt.
10.6.95 -against
Shri.Subodh Dhar
& others.

Place - Guwahati.
Dt - 7/11/2000

In today's proceedings all the charged Officers
except S/Sri.Subodh Dhar & S.Sitithou appeared.

However, Sri.N.B.Dam Roy - appeared on behalf of
Sri.Dhar - Supdt.Sri.Dhar also overphone intimated
that he has not received the summon requiring him to
appear before the inquiry officer but confirmed to
have engaged Sri.Dam Roy as consultant for the case
on his behalf. He also informed that formal letter to ~~XXX~~
this effect will be sent onby Fax. Accordingly allowed. i

In the last hearing dt.16.9.99-The charged officers
urged for production of all the relied upon documents
and some additional documents for Inspections. But this
time also Presenting officer failed to appear with all
the documents as urged for by the charged officers.

Accordingly Hearing could not be held today also
in view of the above circumstances. However, the charged
officers as indicated above appeared. Sri.N.B.Dam Roy -
consultant also appeared on behalf of Sri.S.Dhar, Sri.
B.Saikia and M.Maring and requested to record their
submissions. In course of their submission all the officers
urged that the documents which are allow for inspections
and extracts obtained - closed examined by them and
found only one outgoing Register e.f.27/8/94 to 16.11.94
is found to be relevant in their case for submission
of defence reply but the vital pages which is very much
helpful & relevant to the present case under enquiry
are missing-. The pages no.17,18,23,24,29 & 32. They also
urged that although two different date are fixed by
the I.O.including the present one. The P.O.did not appear
with the relied upon documents. The C.B.I.also failed
to allow the inspection of the relied upon purported
to be lying with C.B.I.despite of the I.O's direction
to the C.B.I. The two outgoing vehicle entry Registers
maintained at Moreh Small Town Committee having dates
vehicle nos,time,signature of the driver,conductors
w.e.f. 6.8.94 to 9.12.94 which is very vital either
to prove charge sheet against the officers or to prove
innocence could neither be provided ~~by~~ by the Dept.
nor C.B.I.office.

All other documents mentioned in Annexure-3 of the
charge sheet though relied upon show only seizure formalities
& handing over the cases to the Customs Authority which
in no way go to prove any involvement of the officers
to form a prima facie offence against them. But still
the documents also could not be provided by the Dept&
C.B.I.office. Regarding the documents provided to the
charged officers-These cannot be accepted as documents
against the charge framed as contended. Since as for
them the Deptt. failed to get the documents admitted
as relied upon documents for the purpose of examination
or cross examination as per G.O.I.'s Instruction no.G.I.C.S.
D.P&A.R. O.M.No.134/7/75-AVD-I dt.11.6.76.

They further urged that considering all the circumstances
& submissions.the charges frame against all the officers
be dropped.

Sri.S.Das further went on to urge that during the period
of charge he was on E.L. & documents evidence will be submit-
ted.

Sri.B.K.Saikia-Inp.also submitted a xerox copy of his
diary for the relevant period which appears to have been
certified by Supdt(P)Customs Preventive-which shows that
on 26/10/94-he was in office on the date of detection of
the truck & seized there of.

The hearing adjourned for today

GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
MORRELOW COMPOUND, SHILLONG

Order No. 27/2002 (CUS/VIG)

Dated Shillong the 17th May, 2002

1. An appeal against this order, along with a copy of this order lies to the appellate authority within a period of Forty five days from the date on which a copy of the order appealed against was delivered to the appellant.
2. A copy of the appeal should be forwarded by the appellant to the authority, which made the order appealed against, and the fact of having done so should be clearly indicated in the appeal itself.

Whereas disciplinary proceedings was initiated against Shri Bikash Kumar Sallda Inspector Customs & Central Excise, under Rule 14 of CCS (CCA) Rules, 1965 vide Charge Memorandum communicated under C.No. II(10)A/3/CIU-VIG/98/142 dated 12.2.98 with the following article of charge.

ARTICLE OF CHARGES

That Shri Bikash Kumar Sallda while functioning as Inspector, Customs (Preventive) at Customs Preventive Force, Moreh, during 26.10.1994, failed to maintain devotion to duty and discharge of his official duty, in as much as he allowed in pass 13 numbers of trucks loaded with rice,

*After
Bikash
Sallda*

garlic, badam etc. of Myanmar origin, without any check and without taking any action under Customs Acts and thereby, showed favour to the smugglers by abusing his official position of Customs (Preventive), thereby causing financial loss to the Government.

The aforesaid acts of omission and commission on the part of said Shri Bikash Kumar Saikia tantamount to the violation of Rule 3 (I) of C.C.S. Conduct Rules, 1964.

STATEMENT OF IMPUTATION

That Shri Bikash Kumar Saikia was posted as Inspector of Customs (Preventive) of Customs Preventive Force, Moreh (Imphal) during 1994. On 26.10.94 he was on duty at C.P.F Moreh. His main duty was to collect intelligence about the smuggling activities of various individuals in the Customs areas, being member of Customs Preventive Force, Moreh and to seize the smuggled goods for taking suitable action under the Customs Act.

That Shri Bikash Kumar Saikia, Inspector above while on duty on 26.10.94 failed to discharge his duty with absolute integrity and devotion and thereby allowed to pass 13 nos. of trucks bearing the following Registration Nos. -(1) MNA-2349 (ii) MNA-1165 (iii) MN 01 4124 (iv) MN 04 0285 (v) MNA 3428 (vi) MNA 2739 (vii) MNA 3165 (viii) AS 01 B 3949 (ix) MNA 3079 (x) MNA 5378 (xi) MN 01 3093 (xii) MN 01 4234 (xiii) MNA 2586 loaded with rice badam etc. of Myanmar origin to Imphal without taking any action under the Customs Acts & Rules.

That the said 13 nos. of trucks were seized by the CBI after crossing CPF, Pallel and detected transportation of smuggled goods like Rice, Badam, Garlic etc from Myanmar to India and the same were handed over to the Customs authority at Imphal.

That the Custom authority at Imphal registered 13 nos. of cases bearing case No. 118/CL/CUS/IMP/94 on 28.10.94 and during adjudication it was established that the above item were smuggled from Myanmar via Moreh & Pallel. As a result the seized goods were confiscated, Custom duties were realized and released on charges of adequate redemption fine and personal penalty.

That the aforesaid acts of omission and commission on the part of shri Bikash Kumar Saikia, Inspector contravened the provision of Rule 3 (1) of the CCS Conduct Rules, 1964.

DISCUSSIONS AND FINDINGS

I have gone through the records of this case including the charge memorandum dated 12.2.98 the reply dated 26.2.98 of the charged officer and the inquiry report dated 6.7.01 submitted by the inquiry officer.

This is a case initiated by the C.B.I., following a surprise check by them at Pallel (Imphal) on 26.10.1994 which resulted in interception of 13 trucks with the smuggled goods like garlic, rice badam soyabean, Dhanla, etc. of foreign origin viz. Myanmar. These 13 trucks along with the seized goods were handed over to the Customs authority on 28.10.94. Shri Bikash Kumar Saikia, Insp, was one of the officer posted during the relevant period in Moreh, C.P.F., the station through which the above mentioned 13 trucks passed through. The Charged Memorandum No. II (10)A/3/CIU-VIG/98/142 dated 12.2.98 was issued to Shri B.K.Saikia, Insp, under Rule 14 for initiation of major penalty proceedings. In his reply to the charge sheet Shri B.K.Saikia, Insp, denied all the charges and stated that on the 26.10.1994 he did miscellaneous office works in the office and in support he submitted the Xerox copy of the XT-I Diary (page-57). The said Xerox Copy of the XT-I Diary was verified with the original Diary and it was found that there was no signature of the Controlling Officer showing the approval. Therefore, to find the truth an Inquiry Officer and a Presenting officer were appointed vide this Office Order No. 29/98 &30/98 both dated 15th Sept. '98.

The process of the Inquiry by the I.O. was disrupted for quite a long time, as because the C.B.I. failed to

produce some relevant documents. To meet the demand of natural justice the I.O. was instructed to complete the Inquiry based on the available documents. In the meantime the charged officer approached CAT with a prayer for directions to the concerned authorities for early completion of the inquiry.

The inquiry Officer in his report dated 6.7.2001 has opined that definite conclusion cannot be drawn as to the charges, framed against Shri B.K. Saikia, Insp., from non supply of vital and relevant documents by the Presenting Officer and by the department. I find that the following documents specified at Annexure III to the Charge Memorandum have not been submitted by the presenting officer during the inquiry. These documents are :

1. Certified Xerox copy of the memorandum prepared by Shri N.M. Singh, Dy. S.P., Silchar Branch in connection with the surprise check of SIR Case No. 39/SIR/94-sLC of CBI Silchar Branch at Pallel Forest Check Gate on 26.10.94 at 14.45 hrs. to 16.30 hrs.

2.13 (thirteen) vehicle challans which were found accompanied with the 13 Trucks during the time of surprise checking which were reseized in connection with RC-7(A)/95-SLC on production by Shri N.M.Singh, Dy. S.P., CBI, Silchar Branch.

3. Copy of the letter for handing over of these documents to Addl. Collector Customs Preventive Division, NER, Imphal on 28.10.94.

The documents mentioned at Sl. No. 1,2 & 3 of Annexure III to the charge sheet are, in my view, vital and relevant documents to prove the charges framed against Shri B.K. Saikia. For want of these documents I hold the view that the charges, as framed have not been proved.

O R D E R

In view of the findings above I hereby order exoneration of Shri B.K. Saikia, Insp, from the charges framed under the memorandum dated 12.2.1998.

Sd/-

(B. THAMAR)

CUSTOMS & CENTRAL EXCISE : SHILLONG



GOVERNMENT OF INDIA
OFFICE OF THE COMMISSIONER OF CENTRAL EXCISE
MORELLO COMPOUND, SHILLONG - 793 001

ESTABLISHMENT ORDER NO.138 /2002.

DATED SHILLONG THE 23RD SEPTEMBER 2002

Subject: Estt. Promotion, transfer and posting in the grade of Supdt. Gr.'B' - order regarding.

PART - I

PROMOTION

Sri B.K.Saikia, Inspector of Central Excise and Customs is hereby promoted to the grade of Superintendent Group 'B' in the scale of pay of Rs. 6500-200-10,500/- with effect from the date he assumes charge of the higher post at his place of posting with immediate effect and until further orders.

The officer promoted vide this order is hereby asked to exercise options within one month from the date of promotion as to whether his initial pay should be fixed in the higher post on the basis of FR22(I)(a) (1) straightway without any further review on accrual of increment in the pay scale of the lower post or his pay on promotion should be fixed initially in the manner as provided under FR22 (a) (1) which may be refixed under the provisions of FR 22(I) (a) (1) on the date of accrual of next increment in the scale of pay of lower post. Option once exercised shall be final.

In the event of refusal of promotion he would be debarred from promotion for a period of one year.

PART - II

TRANSFER AND POSTING

On promotion Sri Saikia is hereby retained at his present place of posting. His posting as Superintendent will be decided at a later date.

NOTE:

1. The seniority of Sri B.K.Saikia is fixed by placing him above Smt. S. J. Begum and below Sri Gangadhar Das in the seniority list of Superintendents.

Sd/-

(Z. TOCHHAWNG)
COMMISSIONER
CENTRAL EXCISE
SHILLONG

Dated:

23 SEP 2002

C.No. II(3)28/ET.III/2000/ 34789-798
Copy forwarded for information & necessary action to :-

1. The Joint Secretary (Admn.), Central Board of Excise & Customs, North Block, New Delhi 110 002.
2. The Chief Commissioner (EZ), Central Excise & Customs, 15/1, Strand Road, Customs House, Calcutta - 700 001.
3. The Commissioner of customs NER, Shillong.
4. The Commissioner (Appeals), Customs & Central Excise, Guwahati.
5. The Additional Commissioner (Tech.), Central Excise Hqrs. Office, Shillong.
6. The Dy./Asstt. Commissioner of Central Excise/Customs _____ Division. The copy meant for the concerned officer is enclosed.
7. The CAO/PAO, Central Excise & Customs, Hqrs. Office, Shillong.
8. Shri/Smt. B. K. Saikia for compliance.
9. Accounts I & II/ET I & II/Confdl. Br./CIU-cum-VIG Br. Of Hqrs. Office, Shillong.
10. The General Secretary, Gr.'B' /'C' Executive Officers' Association, Customs & Central Excise, Shillong.
11. Guard File.

ADDITIONAL COMMISSIONER (P&V)
CENTRAL EXCISE & CUSTOMS
SHILLONG.

13.9

Annexure-10

To

The Commissioner
Commissionerate of Central Excise,
NER, Shillong.

(Through Proper Channel)

Sub : Prayer for withdrawal of the Memorandum of Chargesheet issued under letter Dated 12.2.98 and further prayer for consideration of my promotion to the post of Inspector of Gr. B, at least with effect from the date of promotion of my immediate junior.

Respected Sir,

I like to draw your kind attention on the subject cited above and further beg to state that the undersigned joined as direct recruit Inspector during the year 1982 under the Commissionerate. My promotion to the post of Inspector Group B is due for long back however, my case was not considered for promotion although many of my juniors have already been promoted to the cadre of Inspector Group B namely, Kojtat (now expired), Smt. Nilamani Pukhan etc. It is pertinent to mention here that a disciplinary proceeding was initiated against me along with other officers/staff way back in the month of February, 1998, vide Memorandum issued under letter C. No. II(10)A/4/CIU-VIG/98/146 dated 12.02.98 wherein it is alleged that while the undersigned working as Inspector, Customs (Preventive) at Custom Preventive Force, Moreh during 26.10.1994, failed to maintain devotion to duty while discharging official duty, it is alleged that in as much as 13 Nos. of truck loaded with rice, garlic, badam etc. of Myanmar origin were allowed to pass without any check and without taking any action under (Custom's Act and thereby showed favour to the smugglers by abusing official position

as of Custom (Preventive) and as such financial loss is caused to Government and the aforesaid act of omission and commission is tantamount to the violation of Rule 3 (I) of CCS Conduct Rules, 1964.

After receipt of the aforesaid Memorandum of Charge sheet dated 12.2.98 the undersigned prayed for supply of the relevant documents mentioned in the aforesaid Memorandum which were not enclosed therewith vide my representation dated 12.3.1998.

However, inquiry Office as well as Presenting Officer were appointed vide order No. 27/98, 28/98 dated 15th September, 1998 respectively.

That Sir, vide confidential letter dated 27.8.99 the undersigned was summoned to attend the inquiry proceeding on 16.9.99 at Guwahati, accordingly I appeared before the inquiry proceeding held on 16.9.99. Be it stated that it was a common proceeding initiated with the same allegation against Inspector Group B and 7 Inspectors including the undersigned. However, the relevant documents which were relied upon by the Disciplinary Authority were not made available in the inquiry proceedings as required under the Rule and all the officers including the undersigned denied the charges before the inquiry officers.

It is pertinent to mention here that vide letter bearing C. No. V (30)27/Hqrs.AE/HS/98/6332-42, dated 9.12.99, the undersigned is asked to inspect the relied upon documents reported to be in the custody of the office of the C.B.I., S.P.E., ABC, Silchar, Silchar-788004 and it is further instructed that the outcome of the inspection may also be reported to the Assistant Commissioner, Central Excise, Guwahati. The undersigned accordingly visited the office of the SP CBI, Silchar on 4.1.2000 and prayed for inspection of the documents before the concerned authorities. However, it is informed by the SP CBI to me that the relevant documents are not available in the custody

of the SP CBI. The aforesaid position was intimated to the Assistant Commissioner, Guwahati vide my representation dated 12.1.2000. However, subsequent enquiry proceeding was held on 7.11.2000 and the undersigned also participated in the said proceeding at Guwahati along with other charged officials. However, the Presenting Officer did not appear in the said proceeding on 7.11.2000 along with the relied upon document and the CBI also failed to allow the inspection of the relied upon documents or in other words CBI also could not supply the relied upon documents. Non production of relied upon documents would be evident from the daily order sheet of the proceeding dated 7.11.2000. It is prayed before the Inquiry Officer that in view of non availability of relied upon documents based on which the Memorandum of Charge sheet was served upon me may kindly be dropped.

However, thereafter no progress is made on the part of the Inquiry Officer due to non-availability of relevant relied upon documents. It is pertinent to mention here that no intimation is also given to me regarding further continuation of the aforesaid proceeding. In the meanwhile one of the charged officials namely, Sri B.K.Saikia, Inspector, approached the learned Central Administrative Tribunal through Original Application No. 428/99 (B.K.Saikia vs. Union of India & Ors.) questioning the legality and validity of the proceeding initiated against him vide Memorandum dated 12.2.1998 by the Deputy Commissioner, P & V, Central Excise. The said Original Application was disposed by the learned CAT on 16.1.2001 with the following observation and direction :

"As regards the other grievance of the applicant as to the maintainability and legitimacy of the proceeding, these aspects shall also be considered by the Disciplinary Authority and the applicant shall be free to raise any legal issue before the authority and the authority shall have to deal with the same as per law. Regarding the claim of

the applicant for his due promotion both under the Assured Career Progression Scheme as well as regular promotion, we are of the view that this is a matter that concerns the administration and we hope the administration shall take necessary steps to that effect. It would also be open to the respondent authority to consider the case of the applicant for promotion if he is eligible under such scheme and the department may take necessary steps for utilizing the sealed cover procedure and/or for providing financial benefit under the Assured Career Progression Scheme irrespective of the disciplinary proceeding."

After the pronouncement of the aforesaid judgment said Sri B.K.Saikia, Inspector, was exonerated from the same set of charges by the Additional Commissioner, P & V, Customs and Central Excise, Shillong vide order No. 27/2002(CIU-Vig) dated 17.5.2002. Be it stated that Sri B. K.Saikia along with 6 others Inspectors including me were implicated with the same article of charges, same list of documents and witnesses, and the enquiry proceeding was a common proceeding, therefore when Sri B. K.Saikia, Inspector was exonerated from the said common disciplinary proceeding, as such the undersigned is also entitled to be exonerated from the aforesaid common disciplinary proceeding. More so, in view of the fact that although I have participated in all the enquiry proceeding but the Presenting Officer could not even produce the relevant relied upon documents in any of the enquiry proceeding which is also specifically observed by the Inquiry Officer in the daily order sheet of the proceeding.

It is also pertinent to mention here that Sri B.K.Saikia, Inspector of Central Excise, junior to me also promoted in the cadre of Inspector Group B with retrospective benefit vide Estt. Order no. 138/2002 dated

23.9.2002 immediately after exoneration from the charges initiated under Memorandum of charges dated 12.2.1998.

In the facts and circumstances stated above, it is most humbly requested to pass necessary order withdrawing/revoking/canceling the Memorandum of Charge sheet dated 12.2.1998 and be pleased to exonerate me from the aforesaid departmental proceeding in the light of the order passed in favour of Sri B.K.Saikia, Inspector and further be pleased to promote me in the cadre of Inspector Group B at least with effect from the date of promotion of my junior with all consequential benefits including seniority. Be it stated that the undersigned is incurring huge financial loss as well as non consideration of promotion is also causing to me further loss of promotion prospect. Moreover I am also suffering from mental agony, anxiety.

An early action in this regard is highly desired.

Date :17th Dec.2002

Yours faithfully,

(James Guite)
Inspector,
Customs Preventive Post,
Churachandpur

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.428 of 1999

Date of decision: This the 16th day of January 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Shri Bikash Kumar Saikia,
Inspector (Law),
Customs Division,
Guwahati.

.....Applicant
By Advocates Mr K.N. Choudhury, Mr P. Bhowmick and Mr B. Das.

- versus -

1. The Union of India, represented by
The Secretary to the Government of India,
Ministry of Finance,
New Delhi.
2. The Commissioner of Central Excise,
Shillong.
3. The Joint Commissioner (P & V),
Customs and Central Excise,
Shillong.
4. The Assistant Commissioner (Enquiry Officer),
Central Excise Division,
Guwahati.
5. The Superintendent (Head Quarter),
(Presenting Officer),
Central Excise Commissionerate,
Shillong.

By Advocate Mr B.S. Basumatary, Addl. C.G.S.C.Respondents

.....
ORDER (ORAL)

CHOWDHURY, J."(V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is directed against the legality and validity of the proceeding initiated by the respondents against the applicant vide Memorandum C.No.II(10)A/3/CTU-VIG/98/142 dated 12.2.1998 issued by the Deputy Commissioner (P & V), Central Excise, respondent No.3, as well as the continuance of the aforesaid proceeding since 1998.

Attest
W.M.D.

2. The applicant is presently working in the Customs and Central Excise Department as Inspector (Law) on and from 8.9.1992. The applicant who was serving as such at Dibrugarh ^{was posted in Imphal Division from} Imphal Division he was transferred to Moreh Customs (Preventive Force) (CPF). The applicant was accordingly serving at Moreh CPF from 21.8.1992 to 31.1.1995. The applicant was thereafter transferred to the Office of the Superintendent of Central Excise, Tangla Range. While serving at Tangla Range, the Assistant Collector (Preventive Division), Imphal vide letter C.No.II(9)1/Con/ACI/94/165 dated 21.4.1995 advised the applicant to submit his Resume of work for the period from 1.4.1994 to 31.3.1995. Pursuant to the aforesaid communication, the applicant submitted his Resume for the period in question to the Controlling Superintendent of the applicant vide letter dated 29.5.1995. While the applicant was so serving he was served with the impugned Memorandum dated 12.2.1998 indicating the decision of the respondents to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965. The substance of the imputation of misconduct or mis-behaviour on which the enquiry was proposed to be held alongwith the statement of imputation of misconduct or misbehaviour alongwith the list of documents as well as list of witnesses in support of the articles of charge were served upon the applicant. In the charge it was alleged that the applicant while functioning as Inspector, Customs (Preventive) at Customs Preventive Force, Moreh during 26.10.1994 failed to maintain devotion to duty and discharge of his official duty, in as much as he allowed to pass thirteen numbers of trucks loaded with rice, garlic, etc. of Myanmar origin, without any check and without taking any action under Customs Acts and thereby, showed favour to the smugglers by abusing his official position as of Customs (Preventive), thereby causing financial loss to the Government, which according to the Department amounted to violation of Rule 3(1) of CCS Conduct Rules, 1964. Alongwith the applicant six Inspectors and one Superintendent were also issued similar chargesheets. The applicant submitted his written statement of defence on 26.2.1998, denying the charges and questioned the legality and validity of the proceeding. The applicant, in this application, challenged the aforesaid proceeding and more particularly, the continuance of the disciplinary proceeding as arbitrary, discriminatory and unfair.

3. The respondents have submitted their written statement and denied and disputed the claim of the applicant.

4. Mr K.N. Choudhury, learned counsel for the applicant, firstly submitted that the proceeding initiated by the Deputy Commissioner was without jurisdiction, so much so that the Deputy Commissioner (P & V) of the Customs and Central Excise Department was not the authority to initiate the proceeding since the applicant at the relevant time was under the Customs Collectorate. He further submitted that the disciplinary proceeding itself was seemingly initiated at the instance of the CBI without exercising its own discretion. The learned counsel for the applicant, referring to some some of the documents submitted that the applicant, in fact, on the relevant date was on office duty and was not discharging any duty at the CPF gate. Lastly, Mr Choudhury submitted that the inordinate delay in the proceeding has caused injury to his career as the respondents are not taking any steps for considering his case properly.

5. Mr B.S. Basumatary, learned Addl. C.G.S.C., opposing the claim of Mr Choudhury submitted that the proceeding which is since continuing should be allowed to go into a logical conclusion. Whether the applicant was present in the particular gate on the relevant date or not is a "matter which can be considered, ^{in the continuation of all} relevant facts. Similarly, the Disciplinary Authority can go into the other questions raised by the applicant. When the learned counsel for the respondents was asked about the continuance of the disciplinary proceeding from 1998, whereas, as per the norms laid down by the department such proceedings are to be completed within six months, Mr Basumatary fairly submitted that any departmental proceeding requires to be disposed of at the earliest.

6. We have given our anxious consideration. Admittedly, the allegation pertains to an incident that took place in 1992. The disciplinary proceeding was initiated as far back as 12.2.1998. It does not help in keeping alive a disciplinary proceeding alive for long. Apart from demoralising.....

demoralising the employees, it also affects the administration and to a great extent negate the very purpose of holding the disciplinary proceeding. There is no dispute that such disciplinary proceeding requires to be completed at the earliest. From the minutes of the Inquiry Officer dated 7.11.2000, referred to by the learned counsel for the applicant, it appears that the proceeding was delayed due to non-production of some documents relevant in the proceeding. According to the applicant the charged officials, in fact, went to the CBI office for inspection of documents and the Superintendent of Police, Special Police Establishment informed that the documents were already sent to the Assistant Commissioner (HQ), Customs and Central Excise, Shillong on 2.7.1997 and to that effect the Superintendent of Police, CBI, SPE, Silchar also informed the applicant by communication dated 9.2.2000. Be that as it may, from the minutes of the proceeding it appears that some documents were not made available at least in the proceeding. As alluded earlier, the proceeding should not be kept alive for long. It should come to any end.

7. Considering all the aspects of the matter we accordingly direct the respondents to conclude the enquiry as expeditiously as possible at any rate within three months from the date of receipt of this order. The applicant is also directed to fully cooperate with the Inquiry Officer to complete the disciplinary proceeding within the period specified.

8. As regards the other grievance of the applicant as to the maintainability and legitimacy of the proceeding, these aspects shall also be considered by the Disciplinary Authority and the applicant shall be free to raise any legal issue before the authority and the authority shall have to deal with the same as per law. Regarding the claim of the applicant for his due promotion both under the Assured Career Progression Scheme as well as regular promotion, we are of the view that this is a matter that concerns the administration and we hope the administration shall take necessary steps to that effect. It would also be open to the respondent authority to consider the case of the applicant for promotion if he is eligible under such scheme and the department may take necessary steps

for.....

for utilising the sealed cover procedure and/or for providing financial benefit under the Assured Career Progression Scheme irrespective of the disciplinary proceeding.

9. Subject to the observations and directions made above, the application stands allowed. There shall, however, be no order as to costs.

Sd-

- Vice-Chairman

Sd -

Member (A)

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प्रतिलिपि

A. K. Jena

Document Officer (d. 20/11/2001).

राष्ट्रीय अधिकारी (आयोग शास्त्र,
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकारी
निवासी (बंडुली, उत्तराखण्ड)

प्राप्तांकी - आयोगीक, दिनांक - 20/11/2001

20/11/2001