

51/100
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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Proposal. date- 22/7/2004

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SECTION OFFICER (Judl.)

(SEE RULE - 4)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI

ORDER SHEET

Original Application No : 18/03
Misc. Petition No.
Contempt Petition No.
Review Application No.

Applicant(s):

Subodh Dhar

- Vs. -

Respondent(s):

W.O. I 905

Advocate for the Applicant(s): M. Chanda, G.N. Chakraborty

Advocate for the Respondent(s): Page S.K. Gosh

Notes of the Registry	Date	Order of the Tribunal
This application is in form, but not in time. Condonation Petition is filed / no. 1 C.F. filed / no. 1 C.F. deposited for Registry vide JPO/B/NOT/27/1/03. Dated 27/1/03.	5.2.2003	<p>Present : The Hon'ble Mr. Justice D.N. Chowdhury, Vice-Chairman.</p> <p>The Hon'ble Mr. S.K. Hajra, Administrative Member.</p> <p>Heard Mr. M.Chanda, learned counsel for the applicant.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>List on 6.3.2003 for admission.</p> <p><i>Sub Member</i></p>
Notice prepared and sent to D/S for serving the respondent No 1 to 4 by Regd. A.M. 13/2/03	6.3.2003	<p>Notice did not get today. The case is adjourned to 20/3/2003.</p> <p><i>Sub Member</i></p>

(25)

20.3.2003

The notices already served on the respondents. Mr. A. Deb Roy, learned Sr. C.G.C. appearing on behalf of the respondent stated that the respondents were sent with the O.A. and accordingly he prayed for little accommodation for obtaining necessary instruction on the matter.

Mr. M. Chanda, learned counsel for the applicant stated that the subject matter of this case is covered by earlier decision of the Tribunal by which the respondents were directed to conclude the departmental ~~xxx~~ proceeding pending since 1998.

Considering the prayer made by Mr. A. Deb Roy, learned Sr. C.G.C. further three weeks time is allowed to the respondents for submitting its reply and instruction.

Put up again on 10.4.2003 for admission and disposal.

Vice-Chairman

bb

10.4.2003

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

No reply so far filed by the respondents. The application is admitted. Call for the records.

Put up again on 9.5.2003 to enable the respondents to place connected records and also file written statement, if any.

No written statement has been filed.

By
8.5.03

mb

9.5.03

Vice-Chairman

List alongwith O.A. 36/2003 for hearing on 16.6.03. The respondents may file written statement, if any, before that date.

S. Or
Member

pg

No written statement has been filed.

By
18.6.03.

Vice-Chairman

19.6.2003

Copy of the
Judgment has been
sent to the Office
for issuing the
same to the
applicant as well
as to the C.G.S.C.
85

M

M

16.6.2003 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.

Member

Vice-Chairman

bb

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. / ~~XXX~~ Nos. 18 & 36 of 2003.

DATE OF DECISION 16.6.2003.....
LAW OF INDIA

Sri Subodh Dhar. & Sri. James. Guite. APPLICANT(S).

Mr. M. Chanda, G. N. Chakraborty & S. K. Ghosh in O.A. ADVOCATE FOR THE
18/03 & Mr. M. Chanda & G. N. Chakraborty in O.A. APPLICANT(S).
36/03.

- VERSUS -

Union of India & Others. RESPONDENT(S).

Mr. A. Deb Roy, Sr. C. G. S. C. ADVOCATE FOR THE
RESPONDENT(S).

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

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

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Vice-Chairman.



CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

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.

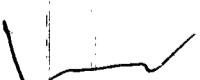
THE HON'BLE MR. R. K. UPADHYAYA, ADMINISTRATIVE MEMBER.

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

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.

O R D E R

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

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 the drafted written statement. Mr.Deb Roy stated that 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 February, 1998. 26.10.1994. The disciplinary proceeding is going on since / 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 authority have kept the pot boiling and 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.



(R.K.UPADHYAYA)
ADMINISTRATIVE MEMBER



(D.N.CHOWDHURY)
VICE CHAIRMAN

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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL:::GUWAHATI BENCH:::

GUWAHATI

O.A. NO. 18/2003

Sri Subodh Dhar

- Versus -

Union of India & Others

List of Dates and Synopsis of the Original Application
are as under :

1977 - Appointed as Inspector in Customs and Central
Excise under the Shillong Commissionerate,
Shillong.

1990 - Promoted to the post of Superintendent with
retrospective effect 22-4-1988.

13/21.1.98 - That a Memorandum of Chargesheet issued under
Rule 14 of CCS (CCA) Rules 1965 against the
applicant levelling certain allegations
that took place at Pallel in the State of
Manipur on 16-10- 1994 while applicant worked
as Superintendent in the Customs Preventive
Force, where number of trucks loaded with
rice, Garlic, Soyabin, Badam etc., which
were illegally imported from Mayanmar (Burma)
were allowed to pass through his local
jurisdiction to Imphal without taking any
legal action which were ultimately ceased
by a team of CBI, Silchar Branch on 26-10-94
and as such is contravened to the Provisions
of Rules of CCS (Conduct) 1964.

Filing by the
Applicant through
Advocate Sree S. D. Chatterjee

(2)

23-1-98 - That the Applicant submitted representation praying for supply of relevant documents for furnishing adequate defence against the charges levelled against him. But the relied upon document were not supplied to the applicant by the Disciplinary Authority.

27-3-98 - That the Applicant vide his reply dated 27-3-98 categorically denied the charges and further prayed for supply of the relevant documents.

15-9-98 - That the Disciplinary Authority appointed Inquiry Officer and Presenting Officer vide order dated 15-9-98.

16-9-98 - That the Applicant again prayed for supply of the relied upon/relevant documents. However, Disciplinary Authority/I.O. instructed the applicant to attend Office of the S.P., C.B.I. at Silchar for inspection of documents.

5-1-2000 - That the applicant visited the Office of the Superintendent of Police, CBI, Silchar as per instruction for inspection of documents, however, it was informed by the office of the Superintendent of Police, CBI, Silchar that relevant documents have already been sent to the Asstt. Commissioner, in the Shillong Commissionerate.

✓
(3)

16-9-99 - That it is stated that a common proceeding was drawn up with the same allegation initiated against the Applicant alongwith seven other Inspectors, and the Inquiry proceeding held on 16-9-99, the applicant alongwith the other officers appeared in the said proceeding and denied the alleged charges before the Inquiry Officer. It is pertinent to mention here that the relied upon documents could not be produced by the Disciplinary Authority on 16.9.99.

7-11-2000 - That the inquiry proceeding again held on 7.11.2000. The defence assistant of the applicant alongwith other co-accused appeared before the Inquiry Officer, however, Presenting Officer did not present in the said inquiry proceeding alongwith the relied upon documents. It is pertinent to mention here that the applicant could not appear on 7.11.2000 before the Inquiry Officer due to non-receipt of summon. No progress is made thereafter of the aforesaid proceeding.

It is learnt that Inquiry Officer submitted his inquiry report to the Disciplinary Authority wherein it is stated that the Presenting Officer failed to produce the relied upon documents as repeatedly prayed by the charged officials.

16.1.2001

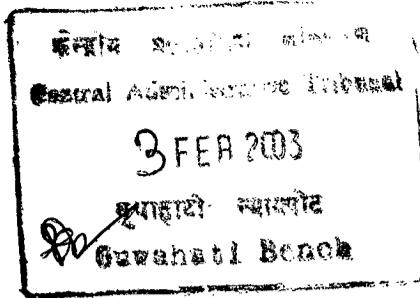
- That it is stated that one of the alleged co-accused Sri B.K. Saikia, Inspector approached this Hon'ble Tribunal through Original Application No. 428/99 for quashing and setting aside the similar set of charges initiated vide Memorandum dated 12.2.98 alongwith prayer for consideration of promotion to the cadre of Superintendent Group 'B'. The said application was disposed of by this Hon'ble Tribunal on 16.1.2001 directing to conclude the inquiry as expeditiously as possible at any rate within a period of three months from the date of receipt of the order.

17.5.2002

- That the Disciplinary Authority on consideration of the inquiry report and mainly due to non production of documents exonerated Sri B.K. Saikia, Inspector, the alleged co-accused from the charges.

Prayer

- 1) To set aside and quash the charge sheet dated 13/21.1.1998 and inquiry proceeding.
- 2) To direct the Respondents to promote the applicant to the post of Assistant Commissioner as well as to the post of Deputy Commissioner with all consequential service benefit including monetary benefit at least from the date of promotion of the applicant's immediate junior.



**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH**

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

Title of the case : O. A. No. 18 /2003

Sri Subodh Dhar : **Applicant**

- Versus -

Union of India & Others: **Respondents.**

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Filed by

Sujithkumar

Advocate

Date : 3.01.2003

Subodh Dhar

*Filed by the applicant
through Advocate
Sujith Ghosh on 3-2-03.*

15
 Filed by Sri Subodh Dhar
 So, Subodh Dhar
 through his attorney, Adm. 32/02

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 GUWAHATI BENCH: GUWAHATI

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

O. A. No. 18 /2003

BETWEEN

Sri Subodh Dhar
 Son of Late Aswini Kumar Dhar
 Superintendent (Group B)
 Office of the Assistant Commissioner,
 Central Excise,
 Silchar Division, Circuit House Road,
 Silchar.

...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.

Subodh Dhar

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.

(Notice of the respondent no. 4 may kindly be served through the Commissioner, 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 13/21.1.1998 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 Assistant Commissioner as well as to the post of Deputy Commissioner.

Subodh Dhar

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.

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 in the year 1977 under the then Customs and central Excise Collectorate, Shillong (now redesignated as Comissionerate). The applicant thereafter promoted to the post of Superintendent in the year 1990 with retrospective effect from 22.4.1988. The applicant is presently working as Superintendent and posted in the office of the Assistant Commissioner, Central Excise, Silchar Division, Silchar.
- 4.3 That your applicant while posted at Silchar received a Memorandum of Charge Sheet vide Memorandum bearing No.

Subodh Dhar

C No.II(10)A/2/CIU-Vig/98/61 dated 13/21.1.1998 relating to certain allegations took place at Pallel on 26.10.1994 wherein it is alleged that while the applicant working as Superintendent in the Customs Preventive Force at Pallel, 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 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. It is also alleged in the statement of imputation of misconduct that while such illegal activities took place on 26.10.1994 the applicant was available in his official duty at Pallel.

The applicant after receipt of the Memorandum of Charge sheet dated 13/21.1.1998 submitted a representation dated 23.1.1998 praying for supply of relevant documents for furnishing adequate defence against the charges labeled against him. In this connection it may be stated that although a few copies of documents were supplied to him but most of the relied

Subodh Dhall

upon vital documents did not supply to the applicant for the reasons best known to the disciplinary authority. However, the applicant denied all the charges vide his reply dated 27.3.1998 and also again prayed for supply of the relevant documents as stated above.

A copy of the Memorandum of charge sheet dated 13/21.1.1998, representation dated 23.1.1998 and 27.3.1998 and annexed as **Annexure 1,2 and 3** 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, Superintendent as Presenting Officer vide Order No. 25 & 26/98 dated 15.9.1998 for conducting the enquiry into the charges initiated vide Memorandum dated 13/21.1.1998.
- 4.5 That it is stated that the applicant on several occasions submitted representation before the concerned authorities demanding supply of the relevant documents, one of such representation is dated 16.9.1998. However he was instructed on different occasions by the Disciplinary Authority and Inquiry Officer to visit the office of the CBI, Silchar for inspection of relevant documents in connection with the inquiry proceeding initiated by the Memorandum dated 13/21.1.1998. In terms of the aforesaid instructions

Subodh Dutt

the applicant visited the office of the CBI, Silchar on two occasions for inspection of the documents. However, it was informed to the applicant by the office of the CBI, Silchar that the relevant documents has already been sent to the Assistant Commissioner, office of the Commissionerate of Central Excise and Customs, Shillong and it was also made clear to the applicant no document is available with the office of the CBI, Silchar. The aforesaid fact would be evident from the representation/letter of the applicant submitted to the C.B.I., Silchar on 27.12.1999, 28.12.1999, 29.12.1999, 3.1.2000, 4.1.2000 and this fact would also be evident from the letter No. DPSIL 2000-00590 RC 07A 95 Sil dated 9.12.2000 of S.P., C.B.I., Silchar addressed to Sri B.K.Saikia, Inspector. The matter was accordingly informed to the Inquiry Officer vide letter dated 5.1.2000.

4.6 That it is stated that the first enquiry proceeding held on 16.9.1999 and the applicant in response to the summon of the enquiry proceeding appeared before the inquiry officer on 16.9.1999 at Guwahati. Be it stated that it was a common proceeding with the same allegation initiated against the applicant along with 7 other Inspectors. However the relevant documents which were relied upon by the Disciplinary Authority were not made available in the enquiry proceeding as required under the rule and all the officers including the applicant denied the alleged charges before the inquiry

Subodh Dhow

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officer. The subsequent inquiry proceeding was held on 7.11.2000 at Guwahati but unfortunately the applicant could not appear before the enquiry proceeding on 7.11.2000 due to non receipt of summon. However, his defence assistant Sri N.B. Dam Roy appeared on his behalf in the enquiry proceeding held on 7.11.2000. It is pertinent to mention here that 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 co accused to inspect the relied upon documents or in other wards it can be rightly 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 documents based on which the Memorandum of charge sheet was served upon the applicant may kindly be dropped. A letter was also written to the Inquiry Officer on 27.12.2000.

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

Subodh Dhole

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 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

Subodh Deka

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 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 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 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 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, therefore the aforesaid proceeding is liable to be quashed.

It is pertinent to mention here that Sri B.K.Saikia, Inspector of Central Excise also promoted

Subodh Baral

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 Memorandum of Charges dated 12.2.1998.

A copy of the letter dated 27.12.2000 is annexed as **Annexure-3A**.

4.7 That it is relevant to mention here that the applicant was asked to discharge his duty in the Division Headquarter at Imphal, following the verbal order of the authority of the Divisional office of Imphal with effect from 27.10.1994 to 30.10.1994. However the same was confirmed in writing vide order bearing letter No. C. No. II(39)4/ET/ACI/92/5061 dated 27.10.1994. Be it stated that as per the direction of A.C., Imphal, the present applicant left Pallel at 13.30 hrs. on 26.10.1994 for Headquarter office, Imphal and arrived at Imphal at 14.30 hrs. and met Assistant Commissioner and Additional Commissioner in the Division office, Imphal. In this connection it may be stated that the Assistant Commissioner directed the applicant to attend Division Office and to look after the work of the Divisional Preventive Force. The surprise check was conducted by C.B.I at 14.45 hrs. to 16-30 hrs. (Annex-III). As such the applicant had no involvement or link with the alleged incident or charges labeled against him through memorandum dated 13/21.1.1998. The aforesaid fact would be evident from the diary

Sukesh Dhot

maintained by the present applicant at the relevant point of time and on that score alone the impugned memorandum of charge sheet dated 13/21.1.1998 as well as the enquiry proceeding are liable to be set aside and quashed.

It is further submitted that as per rule, Inspectors of Customs and Central Excise are empowered to go for Seizure under Section 110 of Customs Act, 1962 and as such no direction is necessary from the office of the Superintendent or from the end of the Superintendent. Since the applicant was not available at the time of alleged incidents and the allegation also not supported by any authentic documents as relied upon by the Disciplinary Authority, the Memorandum of charge sheet dated 13/21.1.1998 and the enquiry proceeding conducted by the Inquiry Officer are liable to be set aside and quashed.

A copy of the letter dated 27.10.1994 is annexed herewith as **Annexure-3B**.

4.8 That it is stated that the applicant vide his representation dated 5.1.2000 addressed to the Inquiry Officer requesting the inquiry officer to drop the charges in view of the fact that neither the departmental side nor the CBI could able to produce the relevant relied upon documents before the enquiry proceeding. The applicant again submitted representation on 29.3.2000 for expeditious hearing of

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the inquiry proceeding and also for fixing of a next date of hearing. It is further stated in the said representation that the applicant has suffered irreparable loss and injury in the matter of promotion which is adversely affected his prospect in service career because of the prolong delay in finalising the disciplinary proceeding. It is pointed out in the said representation that the Assistant Commissioner, Customs and Central Excise, Shillong in his letter dated 11.3.1998 specifically stated that other than the documents mentioned in para 1-4 were not available with the department and also instructed the applicant to contact SP, CBI, Silchar for relied upon documents. It is evident from the above correspondences that the department did not have all the relied upon documents before framing the charge sheet. Obviously then the charges, were framed against the applicant on the basis of incomplete documents, unconfirmed fact and without proper enquiry by responsible departmental officer. Moreover when the applicant visited the office of the SP, CBI, Silchar, who informed him that no document is available in the custody of the SP, CBI, Silchar and as a result the aforesaid proceeding was delayed for a more than five years six months. Similar prayer for expeditious hearing is also made by the applicant to the Commissioner, Central Excise, Shillong vide his representation dated 10.12.1999.

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Copy of the representation dated 5.1.2000, 29.3.2000 and 10.12.1999 are annexed as Annexure 4, 5 and 6 respectively.

4.9 That it is stated that during the pendency of the disciplinary proceeding which was initiated way back on 13/21.1.1998 a large number of juniors were promoted to the post of Assistant Commissioner as well as Deputy Commissioner. It is pertinent to mention here that the applicant belongs to Scheduled Caste community and as such entitled to preferential treatment in the matter of promotion. In this connection it may be stated that one Sri Rama Kanta Das (SC), junior to the applicant along with Biswajit Sarkar, Subir Kumar Chakraborty, S.P.Chakraborty, P.S. Purkayastha-I who were working as Superintendent Group B were promoted on ad hoc basis to officiate in the grade of Assistant Commissioner, Customs and Central Excise in the pay scale of Rs. 8000-13500 notionally with effect from 8.9.1997 i.e. from the date of promotion of Sri A.S. Kharvandikan who is immediate junior of the above named officials vide Office Order No. 156/2001 dated 31.12.2001. Again a large number of juniors were promoted in the cadre of Assistant Commissioner of Customs and Central Excise vide Office Order No. 149/2002 dated 1.10.2002 on ad hoc basis. It would be evident from the aforesaid promotion order that the incumbents who were placed at serial No. 1 to 93 are juniors to the present applicant in the cadre of

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Superintendent Group B. It is ought to be mentioned here that said Sri Rama Kanta Das, respondent no. 4 again promoted to the post of Deputy Commissioner of Customs and Central Excise, in the pay scale of Rs. 10,000-15200 on ad hoc basis vide office order no. 181 of 2002 dated 12.11.2002 in compliance with the order dated 8.7.2002 passed by the Hon'ble CAT, Madras Bench in the case of IC & CSE Association & Ors. Vs. Union of India and Ors. but promotion of the applicant has been denied both in the cadre of Assistant Commissioner as well as in the cadre of Deputy Commissioner due to pendency of the disciplinary proceeding initiated by the Memorandum dated 13/21.1.1998. It is needless to mention here that as a result of non consideration of his promotion in the cadre of Assistant Commissioner as well as in the cadre of Deputy Commissioner incurring huge financial loss as well loss in the matter of promotion prospect in his future service career. The applicant as an abundant caution impleaded Sri Rama Kanta Das presently working as Deputy Commissioner (on ad hoc basis) as Respondent No. 4. It is also submitted that subsequently a large number of Superintendents nearly 600 have been promoted to the cadre of Assistant commissioner, however the order of promotion of the subsequent promotees could not be obtained by the applicant in spite of his best efforts.

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Copies of the promotion order dated 31.12.2001, 1.10.2002 and 12.11.2002 are annexed as Annexure 7, 8 and 9 respectively.

4.10 That your applicant further begs to state that all India Seniority List of Superintendent Group B promoted/appointed up to 31.12.1992 has been published by the Government of India, Ministry of Finance, Department of Revenue on 18.6.2001 wherein the name of the applicant has been shown at serial No. 46 whereas the name of Sri Rama Kanta Das is shown at serial No. 49.

A copy of the Extract of seniority list dated 18.6.2001 is annexed hereto as Annexure-10.

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 Assistant Commissioner as well as Deputy Commissioner submitted several representations on 4.1.2002, 18.1.2002, 17.5.2002, 29.5.2002, 7.6.2002, 21.6.2002, 16.9.2002, 7.11.2002, and 26.11.2002 addressed to the Commissioner, Central Excise, Shillong as well as to Chairman, Central Board of Excise and Customs, North Block, New Delhi but to no result.

Copy of the some of the representations dated 7.6.2002, 16.9.2002 and 26.11.2002 are annexed as Annexure-11,12 and 13 respectively.

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4.12 That it is stated that vide order no. 27/2002 dated 17.5.2002 the Additional Commissioner (P & V), Customs and Central Excise, Shillong, the Disciplinary Authority exonerated Sri B.K.Saikia, Inspector from the same set of charges labeled against him vide Memorandum dated 12.2.1998. In the said order of the Disciplinary Authority it is specifically admitted that the inquiry officer in his report dated 6.7.2001 has opined that definite conclusion cannot be drawn as to the charges framed against Sri B.K.Saikia, Inspector for non supply of vital and relevant documents by the Presenting Officer and by the Department. It is also stated that in the order dated 17.5.2002 that none of the documents specified at Annexure-3 to the Charge Memorandum have not been submitted by the Presenting Officer during the inquiry and finally held that the charges framed against Sri B.K.Saikia has not been proved and accordingly Sri B.K.Saikia is exonerated from the charges. The same fact situation is also involved in the instant case of the applicant. A mere reading of the daily order sheet dated 7.11.2000 will make it abundantly clear that similar fact situation is involved in the instant case of the applicant which is specifically admitted by the Inquiry Officer in the order sheet of the enquiry proceeding dated 7.11.2000. It is stated in the order sheet dated 7.11.2000 that neither the Presenting Officer nor the CBI could able to produce any relevant documents to substantiate the

charges labeled against the applicant and the co accused.

In view of the above facts and circumstances the impugned Memorandum dated 13/21.1.1998 as well as the inquiry proceeding are liable to be set aside and quashed.

17-5-2000
A copy of the order dated 17.5.2000 is annexed as
Annexure-14.

4.13 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 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 13/21.1.1998 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 16.1.2001 is annexed as annexed as **Annexure-15.**

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 13/21.1.1998 and the inquiry proceeding and further be pleased to direct the respondents to promote the applicant to the post of Assistant Commissioner as well as to the post of Deputy Commissioner with all consequential service benefits.

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

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

5.1 For that, the impugned memorandum of charge sheet dated 13/21.1.1998 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 the enquiry proceeding 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 13/21.1.1998 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 13/21.1.1998.

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

set of charges, as such applicant is entitled to be exonerated from the similar charges labeled against him vide Memorandum dated 13/21.1.1998.

- 5.5 For that, when the inquiry report has already been submitted before the enquiry officer, 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, on the day of alleged incident indicated in the Memorandum dated 21.1.1998 the present applicant in fact left for Divisional Headquarter Office, Imphal which would be evident from the records as well as from the diary maintained by the applicant at the relevant point of time, as such implication of the present applicant in the instant proceeding that too without based on records is contrary to law.
- 5.7 For that, the Inspectors who were working at the relevant point of time at Pallel and Moreh, empowered with the power of seizure independently under Section 110 of Customs Act, 1962, as such question of permission from the office of the Superintendent of Pallel did not arise.
- 5.8 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

Subash Dhar

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 13/21.1.1998.

5.9 For that, the applicant following the instructions of the competent authority visited the office of the SP, CBI, Silchar on several dates for inspection of the relied upon documents but the CBI authority could not able to furnish the same to the applicant.

5.10 For that, a large number of juniors including Sri Rama Kanta Das, respondent No.4 have already been promoted to the post of Assistant Commissioner as well as to the post of Deputy Commissioner, in supersession of the claim of the present applicant on the alleged ground of pendency of departmental proceeding.

5.11 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.

5.12 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

Subodh Dutt

the Hon'ble Tribunal to interfere with to protect the rights and interests of the applicant.

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

5.14 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 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:

Subodh Dhar

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):

- 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 13/21.1.1998 (Annexure- /) 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 Assistant Commissioner as well as to the post of Deputy Commissioner 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 Assistant Commissioner as well as to the rank of Deputy Commissioner.
- 8.3 Costs of the application.

Subash Dhar

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 Assistant Commissioner as well as to the post of Deputy Commissioner.

10.

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I. P. O. No.	:	7G 60 5355
ii) Date of Issue	:	27.1.03
iii) Issued from	:	Gurwakarhi
iv) Payable at	:	Gurwakarhi

12. List of enclosures.

As given in the index.

Subodh Shah

VERIFICATION

I, Sri Subodh Dhar, Son of Late Aswini Kumar Dhar, aged about 49 years, working as Superintendent (Group B), Office of the Assistant, Commissioner, Central Excise, Silchar Division, Circuit House Road, Silchar, 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 1st day of February, 2003.

Subodh Dhar

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/98/61

Dated 21.1.98

MEMORANDUM

Smti L.R. Mithran, Commissioner, Central Excise proposes to hold an inquiry against Shri Subodh Dhar, Superintendent 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 Subodh Dhar, Superintendent 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 Subodh Dhar, Superintendent 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

certified to be true copy
 Sujitkosh
 Advocate

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

5. Attention of **Shri Subodh Dhar, Superintendent** 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 Subodh Dhar, Superintendent** 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/- L.R.Mithran
3.1.1998
COMMISSIONER
CENTRAL EXCISE :SHILLONG

To
Shri Subodh Dhar
Superintendent
Central Excise
Silchar Division

Annexure-1(Contd)**ANNEXURE-I****Article of charges framed against Shri Subodh Dhar, Former Superintendent of Customs Preventive Force, Pallel, Manipur.**

That, Shri Subodh Dhar, while functioning as the Superintendent of Customs Preventive Force, Pallel, Manipur during 26.10.94 failed to maintain absolute integrity and devotion to his official duty in respect of the Supervision of the functioning of the officials under his control in as much as that on 26.10.94, 13 Nos. of trucks loaded with Rice, Garlic, Soyabin, Badam etc. which were illegally imported from Myanmar (Burma), were allowed to pass through his office gate and his office local jurisdiction to Imphal, without taking any legal action, which were ultimately seized by a tem of CBI, Silchar Branch after crossing his office gate on 26.10.94

That the aforesaid acts of Shri Subodh Dhar, the then Supdt. Customs Preventive Force, Pallel, Manipur contravned the provision of Rule 3 (1) (i) and 3 (2) (1) of the Central Civil Service Conduct Rules, 1964.

Annexure-1 (Contd.)

ANNEXURE-II

Statement of imputation of misconduct in respect of the article of charge framed against Shri Subodh Dhar, former Superintendent of Customs Preventive Force, Pallel, Manipur.

That Shri Subodh Dhar was posted at Customs Preventive Force, Pallel during 26.10.94 and he was at his station on 26.10.94. Under him, six(6) Inspectors were posted to combat the smuggling activities in his office jurisdiction particularly the part of NH-39 (Moreh to Pallel) on which various vehicles including trucks and buses were plying carrying smuggled goods from Myanmar (Burma).

That, the office of the Customs Preventive Force, Pallel is stationed just at the side of the NH-39 at Pallel and very close to the Police Check Gate of Pallel. All the vehicles on both sides, i.e. from Imphal to Moreh and Moreh to Imphal were stopped at the Police Gate and both the Customs and the Police used to check the vehicles with a view to detect smuggled goods particularly.

That Shri Subodh Dhar above, failed to give proper and adequate supervision to the Staffs under his control and authority to have proper checking of the vehicles passing through the office gate and through the customs area.

That, as a result of his lack of supervision, he and his subordinate staffs at Customs Preventive Force, Pallel has allowed 13 Nos. of truck loaded with smuggled goods, like Rice, Badam, garlic etc. through their gate and area which the CBI had seize on 26.10.94 after crossing the CPF office, Pallel and had handed over to the Customs Authority at Imphal on 28.10.94.

That, the Customs Authority at Imphal registered 13 Nos. of Cases being Case Nos. 118/CL/CUS/IMP/94 to 130/CL/CUS/IMP/94 on 28.10.94 and the adjudication

True copy
Savitosh
Advocate

proceedings were taken up. In the said proceedings, it had been established that the seized items were smuggled goods transported from Moreh via Pallel for Imphal. As a result, the items were confiscated and finally released in redemption after charging Customs duty, redemption fine, penalty, etc.

That, the aforesaid acts of omission and commissions on the part of Shri Subodh Dhar above, amounts to contravention of the Provisions of the 3 (2) (i) and 3 (1) (1) of the CCS Conduct Rules, 1964.

ANNEXURE-III

Annexure-1(Contd)

List of documents by which the article of charge framed against Shri Subodh Dhar, former Supdt. Customs Preventive Pallel 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 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.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 No. 240/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. Ngithela, Additional commissioner (P &V) of 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 Subodh Dhar, former Supdt. Of Customs Preventive,
Pallel 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, Pallel which illegally imported from Myanmar via Moreh & Pallel 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, Pallel.
 - 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

4X

- 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 Pallel. He will further prove that the Jurisdiction of the Customs Preventive Force at Moreh and Pallel.

Annexure-2

To
The Commissioner,
Customs & Central Excise,
Shillong

Madam,

Sub : Disciplinary Proceedings against Shri Subodh Dhar,
Superintendent under Rule 14 of the Central Civil
Service (C.C.A.) Rules, 1965-Prayer for supply of
copies of documents relied upon by the Department for
submission of written statement of defence.

Kindly refer to your memorandum dated 13.1.98
communicated vide C. No. II (10)A/2/CIU-VIG/98/61 dated
21.1.1998.

Most humbly ad respectfully I crave leave to approach
your good office to provide me with copies of the documents
as per Annexure-A which were relied upon by the Department
in framing charge under the memorandum of charge dated
13.1.1998 as referred to above.

On getting these copies I shall submit my written
statement of my defence within 10 (10) days of the receipt
after due study of the documents relied upon.

Yours faithfully,
Sd/- 23.1.98
(S.DHAR)
CENTRAL EXCISE KARIMGANJ RANGE
(ON LEAVE AT SILCHAR)

True copy
Bijitkesh
Advocate

Annexure-3

To
The Commissioner
Central Excise
SHILLONG

Sir,

Subject : Disciplinary proceedings against Shri Subodh Dhar, Superintendent, Central Excise under Rule 14 of CCS(CCA) Rules 1965 as per Memorandum of charges under C. No. II(10)A/2/CIU-VIG/98/61 dated 21.1.98 - Prayer for supply of copies still not supplied for meaningful justice.

Reference : (i) Memorandum of charges of commissioner, Central Excise, Shillong Under C.No. II (10)A /2/CIU-VIG/98/61 dated 21.1.98.

(ii) C. No. II(10)A/2/CIU-VIG/98/194 dated 13.3.98 of the Assistant Commissioner(Hqrs.) Customs & Central Excise, Shillong.

In inviting your kind attention to the subject matter and reference as captioned above I place below the following for favour of your kind consideration.

1. That the department very clearly in Annexure III to the impugned Memorandum of charge bearing No. II (10)A/2/CIU-VIG/98/61 dated 21.1.98 made out list of documents by which the article of charges framed against Shri Subodh Dhar, former Superintendent, Customs Preventive, Pallel are proposed to be sustained. Accordingly, in order to submit my written statement of defence I said Subodh Dhar, under my self-contained letter dated 23.1.98 prayed for copies of the listed documents with the sole exception of document under Sl. No. 8 of the ANNEXURE-III ibid for my due study for preparation and submission of written statement of defence as called for in para 2 of the Memorandum of charges.

True copy
Sujit Singh
Advocate

2. That the Department under Assistant Collector (Hqrs.) Shillong's letter as quoted under 'reference-II' above did not provide me with the copies of the listed documents as at Sl. Nos. 1,2,3,5 & 7 of the Annexure-III to the Memorandum ibid which also figured in Annexure 'A' to my letter dated 23.1.98 in the same chronological order as in the Department's Annexure ibid.
3. That documents as figured in 9,10.,11, & 12 were sought for as they were made prosecution witness in Annexure-IV to the Memorandum of charges. Any document having bearing upon these witness is relevant.
4. That there is, as a matter of fact, no legal provision under Rule 10 of the CCS(CCA) Rules, 1965 to contact any authority other than the Disciplinary Authority or Enquiry Authority (Where appointed) for getting copies of the documents relied up in framing charges by the Department.

In the instant case the C.B.I related documents which the Department figured in ANNEXURE-III under Sl. Nos. 1 & 2 are none-the-less Prosecution documents. Norms of Natural justice and fair play do not tend to suggest that the Charged Officer already burdened with anxiety and overwhelmed with pangs would amount to succumbing to uncalled for pressure to jeopardize my defence.

5. That being thus deprived of natural justice to go through the documents relied upon at the very initial stage I find myself in a truncated position. In such circumstances I am constrained to submit below my partial written statement of defence in the midst of above explained odds & impediments for your kind consideration.

"I deny the charge framed against me on the basis of part of the documents so far supplied by the

5)

Department with my absolute reservation to submit, additional defence statement if copies of other documents as relied upon by the Department as specifically wanted by me vide my letter dated 23.1.1998 are provided for refutation of charges so far as they might relate to these documents which as stated herein above were not yet provided to me even though rules provide for the same.”

I most humbly and respectfully pray for reasonable opportunity of getting justice & fair play.

Yours faithfully,

Sd/- 27.3.98
(SUBODH DHAR)
SUPERINTENDENT
CENTRAL EXCISE,
KARIMGANJ RANGE

26

62

1. Anwar Hussain, IRS
Assistant Commissioner,
Central Excise Guwahati Division,
(Inquiry Officer)

SUB :- Chargesheet memo C.No.II(10)A/2/CIU-VIC/98/61
dated 21.01.98 against Shri S.Dhar, Superintendent
Customs & Central Excise - C/R.

Sir,

With highest esteem I beg leave of your judicious authority to submit the following for favour of your kind consideration and necessary action so that I am not subjected to any further torture for no fault of mine with incomplete and inadequate document to spell out the gamut of the incident that took place on 26.10.94.

1. That on receipt of the chargesheet memorandum vide C.No.II(10)A/2/CIU-VIC/98/6 dated 21.01.98 without any relied upon document, I prayed to the Commissioner of Central Excise Shillong in my letter dated 23.01.98 with a list of documents as Annexure "A" to provide me with the documents for submission of my defence statement.

2. That Assistant Commissioner(MORS) vide her letter C.No.II(10)A/2/CIU-VIC/98/194 dated 11.03.98 provided me with the following documents namely -

i) Copies of out going Register maintained at Moreh small town committee w.e.f. 27.08.94 to 16.11.94.

ii) Copies of outgoing of vehicle entry Register maintained at Moreh small town Committee w.e.f. 6.9.94 to 9.12.94.

Against these two Registers I have received 2(two) bundles of xeroxed papers (1) from 30.04.94 to 9.11.94 and (2) from 06.08.94 to 09.11.94 without any title and particulars to understood what these xeroxed papers stand for in relation to which register and where and by whom these were maintained. Some pages meant for six different dates were also missing.

True copy

Syam Bishash
Advocate

Concl., p/

iii) Copy of letter No. B (A): Con/ACI/93/13 dated 14.03.96 of Additional Commissioner Imphal with copies of Adjudication Order No.118 to 130/CI/IMP/CUS/94 dated 28.10.96 listed against Sl.No.6 of the relied upon documents; (b) Inspector Shri (a) N.S.K. Singh, (c) Bishnu Singh, (d) Bishnu Singh and

iv) Copy of letter C.No.II(39)CIU-VIG/20/95/209 dated Sl. No.08.02.96 listed in Sl.8 of the relied upon document. C.P. which were seized by the investigating registrar contained the following book of P.D. in that letter dated 14.03.98. It was also directed by A.C. (Hqrs) to contact S.P., CBI Silchar for the remaining documents.

These 2(two) registers will confirm the same. That means out of 9 (nine) relied upon documents, only 2(two) letters against Sl.No.6 and 8, some unidentified incomplete xeroxed papers in two bunches said to be copies of Sl.No.4(1) and 4(2) have been provided.

Establishing that Sl.No.4(1) contains 3 (three) registers and Sl.No.4(ii) contains 2(two) registers. From these 2(two) bundles of xerox paper it is at all absurd to infer which 2(two) registers out of these 5(five) registers these papers represent.

That these incomplete documents prove that the department did not have all the relied upon documents before framing the chargesheet against me.

Obviously then the charges, were framed against me on the basis of incomplete documents, unconfirmed fact and without proper enquiry by the responsible departmental Officer.

Therefore, this baseless chargesheet deserves to be dropped at the initial stage. Sl. No. II(39)1/100/C/95/4365 dated 23.1.98, Sl. No. II(39)1/100/C/95/4365 dated 16.09.99 and the C.M. 1. 1999, for to appear with me not to my presence.

That I reiterated my prayer for the relied upon and the relevant documents on 23.1.98, 16.09.99 and finally on 28.9.99 with the list as Annexure 'A' (copy enclosed) for my defence.

Documents in Annexure 'A' above listed against Sl.No.7(i) (ii), (iii) and (iv) are copies of statement of the Officers who have been listed as witnesses in Annexure IV of the charge memo. But these statements have been relied upon in Annexure III of the charge sheet.

Documents listed under Sl.No.8(i) and 8(ii) are the copies of diaries of myself and the Inspectors S/ Shri (a) W.S.K. Singh, (b) P. Robensing (c) Shehlimmeng Sitalhow (d) Bijando Singh and (e) K.M. Merring. was given to the C.B.I. also.

Sl.No.8(iii) is the incoming register maintained at Pallel CPF which were seized by CBI. The Sl.No.9 is the office order book of Pallel CPF for the relevant period.

Point blank told me that all the documents have been sent to

C. (Hons.) Customs & Central Excise, Shillong on 02.01.99 and These 2(two) registers will confirm as to which officer was on gate duty and who has entered the number of the trucks in the incoming register which though have not been relied upon but would prove my effective control over my staff. on 27.12.99, 28.12.99, 29.12.99, 05.01.2000 and finally on 04.01.2000 on which

It is astonishing that without ascertaining and articulating the writing on these registers haphazardly 3(three) Officers have been left out and 2(two) Officers have been charged and I have been charged with lack of control.

gave a written certificate to Smt. R.K. Seikia Inspector

The vehicle register and the order book will justify how negligently and mindlessly the chargesheet has been framed on false allegation of lack of supervision of the Officers under me, failure of maintaining absolute integrity and devotion to duty while functioning as the Superintendent of Pallel Prev. Post. Officer on 03.01.2000 enclosing all the documents in (a) above.

This is why the documents sought for are unavoidable and essential for my defence, which also P.O. failed to turn up with the relevant documents.

5. As the documents sought for submitted through my defence dated 27.03.99 to appear for preliminary inquiry on 16.09.99 was given to the P.O. and the C.B.I. officer to appear with the documents and provide me with the same. But C.B.I. Officer did not turn up and the P.O. could not give any other document than I have already received from the A.C. Hqrs. on 11.03.98. (copy enclosed as Annexure 'A').

I submitted a letter to the I.O. with a list of documents as Annexure 'A' to provide me with for my defence. Copy of the same has also been enclosed herewith.

These documents listed in Annexure (iii) of the application for preliminary dated 21.01.98 and other relevant records desired for my defence during the

Contd. P/4.

6. That vide letter C.No.II(8)1/CONF/SEC/99/6332-92 dated 09.12.99 the Inquiry Officer directed me to appear before C.B.I. Officers for the documents lying with them. A copy of the same was given to the C.B.I. also. Immediately vide my letter dated 21.12.99, 23.12.99, I requested the C.B.I. Officers to provide me with the relied upon documents lying with them to which the C.B.I. point blank told me that all the documents have been sent to A.C. (Hqrs.) Customs & Central Excise, Shillong on 02.07.97 and no other documents are lying with them. The C.B.I. Officer directed me to contact the concerned Officer on 27.12.99. I contacted the concerned Officer on 27.12.99, 28.12.99, 29.12.99, 03.01.2000 and finally on 04.01.2000 on which Dy.S.P. of C.B.I. told me that they do not have any further record concerning the case and declined to give me a certificate to this effect. However S.P. C.B.I. vide his letter No.DPSIL 2000 00590 RCO 7495 SIL dated 09.12.2000 gave a written certificate to Sri B.K.Saikia Inspector stating that all these documents had been sent he speed post to A.C. (Hqrs.), Customs on 02.07.97. Copy of the letter was also given to the Inquiry Officer.

Informing all these, I have written a letter to the Inquiry Officer on 05.01.2000 enclosing all the documents in 6(six) sheets.

7. That the Inquiry Officer held inquiry on 07.11.2000 during which also P.O. failed to turn up with the relevant documents. On the date of inquiry I submitted through my defence assistant that the documents provided were incomplete and the same cannot be accepted as evidence in the chargesheet against me since these documents were not presented before the Inquiry Officer and the defence legally under the provisions of Rule 14(14) of C.C.S. (C.C.A) Rules 65 R/W G.I.C.S. Dept. of Personal and AROM No.134/7/75- AVDI dated 11.06.76 (copy enclosed as Annexure 'B').

8. That the authority will be convinced that neither the department nor the C.B.I. Officers could provide me with the relied upon documents listed in Annexure(iii) of the chargesheet memorandum dated 21.01.98 and other relevant records demanded for my defence during the inquiry on 07.11.2000.

22

Again (Inquiry Officer
against Corporation)

16.09.99, 207.11.2000 by the department and 10.12.99 to 04.01.2000
by the C.B.I. Officers at Silchar Local Corporation, Assam 1933 (P)
SLI 694 (IP), 1933 Lai 1C/73.

9. That in fact no defence is at all called for where prosecution failed to get the documents admitted as evidence before the inquiry officer under the settled rules and instructions mentioned as these were lying with neither the department nor the C.B.I. officers. In the charges were framed hirulelessly without proper documents and according process of law of inquiry.

The failure of the prosecution prompts me to submit this letter before the judicious inquiry authority to appreciate the factual position and legal stand of the unfounded allegation brought against me and urge upon the authority to drop the charges as these deserve to be dropped considering the legal authority submitted hereunder.

10. That departmental inquiry held under Rule 14 of C.C.S. (C.C.A.) 1965 is conducted strictly in terms of Article 311 of the Constitution of India. Article 311(2) ibid guarantees a reasonable opportunity to a public servant. If reasonable opportunity is not given to a delinquent officer before or at the time of inquiry and he is prejudicial in raising his defence, properly the proceedings are liable to be quashed. The foregoing paras would prove that by not giving the relied upon and other relevant records reasonable opportunity has been denied to me.

Copy Case relied in Ramanatha Pillai Vs. State of Kerala (1974) 1974 AIR 11973 SC 2641. 1974(1) SLR 225. Ram Subhag Vs. Union of India (1983) 4 SLR 139 (Patna) (DB)

11. That thus Rule 14(1) of C.C.S. (C.C.A) Rules 1965 is not mere formality. It is mandatory provision. This rule gives an opportunity to a government servant to scrutinise all the prosecution evidence which is likely to be produced against him and further gives him an opportunity to prepare his defence after looking into the other records which are lying in possession with the government.

Non-compliance with the provision of this rule will amount to denial of proper opportunity to the charged officer to defend his case - as shown in the foregoing paras. All the required records were not supplied to me to defend my case.

(2)

6

SHERI A. Hussain (Inquiry Officer),
Assistant Commissioner, Central Excise
Case Reference - S.D.Bharadwaj Vs. VOI 1982 (2) SLJ 515 : 1983
(VALIAT)
(T) SLR 32 (HP) H.L.Sethi Vs. Municipal Corporation, Simla 1982 (2)
SLJ 694 (HP) 1983 Lan-IC 73.

Sub:- Disciplinary proceedings - Section 12.

12. That in such circumstances it is decided in consultation with the Ministry of Law that the disciplinary authority can drop charges at the initial stage when the charges were framed mindlessly without proper documents and observing process of law of inquiry as per instruction contained in instruction No. CI. MHA.O.M.No. 110/2/2779/est(x) dated the 12th March 1981 and D.No. 110/2/82-supply of EST(A) dated the 18th December 1982 (Copy enclosed as Annexure-e). Annexure III of the letter.

The documents listed in Annexure III of the memorandum of charges are supplied to Annexure III of the memorandum of charges II/1/2/2000 dated 21-01-93.

Yours faithfully,

b) Enclosures above.

are thought as they have been made prosecution with the Annexure IV of the memorandum of charges.

c) The documents figured in Sl. No. 8(i) to 0 (1 SUPERINTENDENT OF CUSTOMS AND CENTRAL EXCISE) are also required for submission of the documents.

I shall be extremely thankful if the required documents are supplied to me at your earliest.

Enclo:- 1 (one) Copy to the Commissioner, Central Excise, Shillong for favour of his kind consideration. faithfully,

(S. DHAR)
SUPERINTENDENT (T) CUSTOMS AND CENTRAL EXCISE
CENTRAL EXCISE
SILCHAR.

12.2000

Annexure-3A

OFFICE OF THE ADDITIONAL COLLECTOR, COLLECTORATE OF
CUSTOMS PREVENTIVE (NER) IMPHAL

O R D E R

Imphal dated the 27th Oct. '94

Shri S.Dhar, Superintendent, C.P.F. Pallel will hold additional charge of Imphal Customs Preventive Force with effect from 27.10.94 to 30.10.94 vice Shri A.V.Duha, Superintendent, Customs Preventive force, Imphal who is on leave.

Sd/-
(G.PANMEI)
ASSISTANT COLLECTOR

C. No. II(39)4/ET/ACI/92/5061

Dated :- 27.10.94

Copy for information to :-

1. The Additional collector, Customs Preventive (NER), Imphal.
2. Shri S.Dhar, Superintendent, Customs Preventive Force, Pallel.
3. Shri A.V.Duha, Superintendent, Customs Preventive Force, Imphal.

Sd/-
(G.PANMEI)
ASSISTANT COLLECTOR

True copy
Rajkishore
Advocate

Annexure-4

To
 Mr. A. Hussain, IRS, (Inquiry Officer)
 Assistant Commissioner, Central Excise,
 Guwahati.

Sir,

Sub : **Departmental enquiry under Rule 14 of CCS(CCA)
 Rules 1965 against Sri Subodh Dhar, Superintendent
 and other Inspectors - C/R.**

Kindly refer to your letter C.
 No.II(8)1/Conf./ACG/99/6332-42 dated 9.12.99.

In the context of above, I have the honour to place the following for your kind information.

1. That Sir, on 21.12.99 I visited S.P., C.B.I. Office, Silchar and contacted Mr. Sharma, Dy. S.P., CBI, Silchar (In-Charge of the S.P., CBI office) and submitted a written prayer along with copy of your above mentioned letter (Copy enclosed) and requested him to allow me to inspect the relied upon documents. But he did not produce any documents. He told me to contact next day i.e. 22.12.99 over telephone.
2. That Sir, on 22.12.99 I contacted over telephone and told me that he could not trace out any documents in connection with the instant case. He also told me that they are trying to locate the related documents.
3. That Sir, on 23.12.99 I have visited CBI office and contacted Mr. Sharma, Dy. S.P., CBI, Silchar and submitted a written prayer for allowing me to inspect the documents and provide me the copies of the same and also requested if no such documents are available with them in that case a certificate may be issued to the effect that the documents as prayed for are not available (Copy enclosed). During discussion he told that no such documents are available. Accordingly I requested him to issue a certificate regarding non availability of documents so that I can inform Inquiry

True copy
 S. S. Dhar
 Advocate

Officer. Then he told me to contact him on next Monday i.e. on 27.12.99.

4. That Sir, on 27.12.99, I visited C.B.I. Office and came to know that he is on tour. I contacted C.B.I. office over telephone on 28.12.99 and 29.12.99 and came to know that he is on tour. Again on 3.1.2000 I contacted over telephone and came to know that he is not available in the office.
5. That Sir, on 4.1.2000 I contacted over telephone to Mr. Sharma, Dy. S.P., CBI. He told me that no record is available, then I requested him to give a certificate to the effect that no records are available but he refused. Again at about 4.30 P.M. I sought appointment but he did not allow.
6. That Sir, from the letter of the Assistant Commissioner (Hqr), Customs & Central Excise, Shillong communicated vide C. No. II(10)A/2/CIU-VIG/98/194 dated 11.3.99 (Copy enclosed), hearing dated 16.9.99, your letter dated 9.12.99 and above mentioned facts I understand neither the Disciplinary Authority nor Enquiry Authority nor C.B.I are in the possession of the relied upon documents and other related documents which is essential pre-requisite to make meaningful progress of the enquiry proceedings. In the face of such a situation the very memorandum of charges stand unsupported by the relied upon documents.

Under the circumstances you are requested to drop the charges as the relied upon documents basing which instant charges was framed could not be made available to me in spite of sincere and repeated efforts by me.

Enclo : 6 Sheets

Yours faithfully,

Sd/- 5.1.2000

(S.DHAR)

SUPERINTENDENT (TECH)
CENTRAL EXCISE :SILCHAR

Annexure-5

To
 Mr. A. Hussain, I.R.S.
 (inquiry Officer)
 Assistant Commissioner
 Central Excise,
 Guwahati.

Sir,

Sub : Prayer for expedite Departmental enquiry under Rule 14 of CCS(CCA) Rules 1965 against Sri Subodh Dhar, Superintendent and others Inspectors and fixing of date for next hearing.

I have the honour to invite your kind attention to the last para of yourself written note dated 16.9.99 o the departmental proceeding which read as under -

“Sri Dhar has submitted a letter dated 16.9.99 urging upon me to submit him certain documents, the list of which is permitted thereon considered by him as relied upon documents. Accordingly I have taken a note of it for further action.”

Thereafter vide your letter No. II(8)1/Conf./ACG/99/6332-42 dated 9.12.99 I was directed to inspect the relied upon documents from the office of the S.P., C.B.I., Silchar.

Even though a s a charged officer rules and procedures do not warrant to go directly to the CBI who is one of the prosecution witness during the course of departmental enquiry with the meaning of Rule 14 of CCS (CCA) Rules 1965. However, I complied with your order and approach CBI several times where from no relied upon documents could be inspected and procured. In this context my detailed report dated 5.1.2000 to you would speak for itself for your convenience a copy of the same is enclosed once again.

As a follow up measure to my action as above efforts were made by you to seek a confirmation as to whether the CBI, has allowed me to inspect the records addressed to S.P., CBI, ABC, Silchar Branch with a copy to me

*True copy
 Sujitkash
 Advocate*

communicated vide your letter C. No. II(8)1/Con/ACG/99/288-91 dated 11.1.2000.

From the letter No. DPSIL 2000/00590/RC07A95SIL dated 9.2.2000 addressed to (1) Sri B.K.Saikia, Inspector (2) Sri K.M.Maring, Inspector charged officers in the instant case with a copy to you and Assistant Commissioner (Hqr), Shillong (Photocopy enclosed) it transpires that the CBI, Silchar mentioned that the required documents had already been sent to Assistant Commissioner (Hqrs), customs & Central Excise, Shillong on 2.7.1997 which is much before the date of first hearing on 16.9.1999.

However, it is on record that the Assistant Commissioner (Hqr) Customs & Central Excise, Shillong under his letter No. II(10)A/2/CIU-VIG/98/194 dated 11.3.98 addressed to me clearly stated that other than the documents as mentioned para 1-4 were not available with the department and a direction was given to me to contact the S.P., CBI, SPE, Silchar for all other required documents (Copy enclosed).

Thus from the above the transparent position that comes out is that the relied upon documents and other related documents as prayed for were not supplied to me other than the documents mentioned in the Assistant Commissioner (Hqr.)'s letter dated 11.3.98 in spite of several request.

Apart from such non supply of relied upon documents and other related documents, I contact with CBI, Silchar as per your specific order also could not advance inspection of such documents at the office of the S.P., CBI, SPE, Silchar by the charged officers which has already been reported to you. Now that S.P., CBI, Silchar has specifically stated that the relied upon documents are not lying with them. I submit that it is high time that, a date of next hearing should be fixed as per Rules and procedures to meet the ends of justice. This is all the more so that long 5 years and 6 months have already passed from the date of incidence, i.e. in the year 1994.

It is my earnest prayer for an early response to my prayer. In this context, I like to inform you that the unusual delay in finalisation of the proceedings is adversely effecting my service career in the matter of deputation to other organization and my promotion to the next higher grade.

Enclo :

Yours faithfully,

Sd/- 29.3.2000

(S.DHAR)

SUPERINTENDENT (TECH)

CENTRAL EXCISE :SILCHAR

Annexure-6

To

The Commissioner
Central Excise,
Shillong

(Through the assistant commissioner, Central Excise,
Silchar)

Sir,

Sub : **Disciplinary proceedings against Sri Subodh Dhar, former Superintendent of Customs Preventive Force, Pallel Manipur (Presently posted as Superintendent (Tech), Central Excise, Silchar) as per Memorandum of charges under Hqr. Office C. No. II(10A/2/CIU-VIG/98/61 dated 21.1.98 - Prayer for early finalisation of the proceeding.**

In the context of above, I like to place the following for favour of your kind information and consideration.

1. That Sir, the cause of action of the enquiry proceedings on an incidents, dates back more than 5 (five) years and as the situation stands now, there has been stalemate in the progress of Inquiry.
2. That Sir, up till this day, even after the repeated prayer as, on record, the Department has failed to provide me with vital documents which has been relied upon and other related documents.
3. That Sir, from the letter of Assistant Commissioner (Hqr), Customs & Central Excise, Shillong communicated vide C. No. II(10)A/2/CIU-VIG/98/194 dated 11.3.99 (Copy enclosed) and during the last hearing on 16.9.99 I have understand that the disciplinary authority is not in the possession of the relied upon documents and other related documents which is the essentials prerequisites to make meaningful progress of the enquiry proceedings.
4. That sir, it is settled law that if enquiry proceedings unnecessarily lengthen due to no fault of the charged party then in such case it infringes the principle of natural justice and on that ground proceedings needs to be quashed.

True copy
S. J. Shashik
Adv.

5. That Sir, I have submitted option for Air Customs Superintendent at Chhatrapati Shivaji International Airport, Mumbai, but I was not given chance to appear in the interview. I think due to instant baseless proceedings I have been deprived from the same.
6. That Sir, I am going to complete 24 (Twenty Four) years of service in the department and 10 (Ten) years of service as Superintendent.

It is not out of place to mention here that I am a Scheduled Caste Member and I am expecting my promotion any time to the next higher grade.

Under the circumstances it is my earnest prayer before your honour to drop the baseless charges framed against me immediately so that am not deprived from getting promotion to next higher grade.

For this act of your kindness, I shall remain ever grateful to your honour.

Yours faithfully,

Sd/- 10.12.1999

(S.DHAR)

SUPERINTENDENT (TECH)
CENTRAL EXCISE :SILCHAR

Copy to the General Secretary, Group "B" Officers Association, Customs & Central Excise, Shillong. He is requested to take up the matter with the appropriate authority to drop the baseless charges framed against me so that I am not deprived from getting promotion to the next higher grade.

Yours faithfully,

Sd/- 10.12.1999

(S.DHAR)

SUPERINTENDENT (TECH)
CENTRAL EXCISE :SILCHAR

Annexure-7

16

F. No. A 37012/8/2001-ADMN
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 DEPARTMENT OF REVENUE

New Delhi 31st Dec. 2001

OFFICE ORDER NO. 156/2001

Subject : Promotion and postings/transfers in the grade of Assistant Commissioner of Customs & Central Excise (Junior Time Scale).

The President is pleased to order the following Supdt. Of Central Excise, Shillong be promoted purely on ad hoc basis to officiate in the grade of Asstt. Commissioner of customs & Central Excise in the pay scale of Rs. 8,000-275-13,500/- notionally w.e.f. 08.09.97 in compliance with the Hon'ble CAT, Guwahati Bench's order date 08.02.2001 in O.A. No. 237/99.

S/Shri

1. Biswajit Sarkar
2. Subir Kumar Chakraborty
3. S.P.Chakraborty
4. P.S. Purkayastha-I
5. Rama Kanta Das (SC)

2. The above officers are also granted promotion to the grade of Asstt. Commissioner of Customs & central Excise on an ad hoc basis notionally w.e.f. 08.09.97 i.e. from the date their immediate junior viz. Shri A.S. Kharvandikan had been promoted. They are also granted the consequential benefits of fixation of pay and increments in the higher grade. However, they would not be entitled to the arrears of pay and allowances.

3. The above promotion to the grade of Asstt. Commissioner of Customs & Central Excise have been made on purely ad hoc basis for a limited period of 6 months. Besides, the above promotion does not confer on the officer so promoted any claim for continued officiation in the grade of Asstt. Commissioner and the period of such service will not count for seniority or as qualifying service of further promotions.

Sd/-
 (K. KIPGEN)
 UNDER SECRETARY TO THE GOVT. OF INDIA

*True copy
 Sujit Ghosh
 Adv.*

b7X

Copy forwarded to :

1. The Officers concerned
2. All Chief Commsr/DGs of Cus. & C.Ex/DG(Audit)
3. PS to FM/MOSr/RS/FS/Secy(Exp)/Secy (EA)/Chairman EC/All Members
CBEC/JS(Admn)/DG(Vig)/DS(Ad.II)/DS(AD V)/Dir (Pub.).
4. Pr. CCA, A.G., C.R.Building, J.P. Estate, New delhi.
5. AS(A)/JS(Hqrs)/JS/PA/Dir(HFU)
6. All Head of Department under CBEC
7. SO(P)/AD.V/Hindi Section
8. The Secretary, IRS, (C & CE) Officers Association, Delhi.
9. Office Order folder/Spare copies.
10. The Web Site Manager, Dte of Systems Delhi.

Sd/-

(K. KIPGEN)

UNDER SECRETARY TO THE GOVT. OF INDIA

The transfers and posting orders in respect of S/Shri B.C. Mahay & Jagadish Chander issued vide Office Order No. 58/2001 dated 02.06.2001 and in respect of Sh. Vinay Kumar Singh issued vide Officer Order No. 129/2001 dated 30.10.2001 are kept in abeyance till 31.3.2002. The transfer order in respect of Shri H.C. Verma issued vide officer order No. 129/2001 dated 30.10.2001 is hereby cancelled.

Sd/-

(K. KIPGEN)

UNDER SECRETARY TO THE GOVT. OF INDIA

Copy forwarded to :

1. The Officers concerned
2. PS to FM/MOSr/RS/FS/Secy(Exp)/Secy (EA)/Chairman EC/All Members CBEC/JS(Admn)/DG(Vig)/DS(Ad.II)/DS(AD V).
3. All Chief Commsr/DGs of Cus. & C.Ex/DG(Audit)
4. Pr. CCA, A.G., C.R.Building, J.P. Estate, New Delhi.
5. AS(A)/JS(Hqrs)/JS/PA/Dir(HFU)
6. All Head of Department under CBEC
7. Office Order folder/Spare copies.
10. The Web Site Manager, Dte of Systems Delhi.

Sd/-

(K. KIPGEN)

UNDER SECRETARY TO THE GOVT. OF INDIA

Annexure-8

F. No. A 37012/8/2001-AD.II
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 DEPARTMENT OF REVENUE

New Delhi 1st October 2002

OFFICE ORDER NO. 149/2002

Subject : Promotion, postings & transfers of Officers in the grade of Assistant Commissioner (JTS) - regarding.

The following officers in the grade of Superintendent of Central Excise are promoted on purely ad hoc basis to officiate in the grade of Asstt. Commissioner of Customs & Central Excise in the pay scale of Rs. 8000-275-13500/- with effect from the date(s) they assume charge of the higher post and until further orders.

SUPDTS OF CENTRAL EXCISE, GROUP 'B')

S. No	Name of the Officer S/Shri	Commissionerate
1	S.K.Khandewal	NC, Gwalior
2	Hawa Singh	Jaipur
3	K. Ugravara Prasad	Vizag
4	Dasari Paul	Guntur
5	K. Venkateswarulu	Vizag
6	G. Balaveeraiah	Mumbai
7	P. Narasimha Rao	Guntur
8	D. ramaswamy	Vizag
9	Y.C. Victor Babu	Hyderabad
10	K. Devender Rao	Hyderabad
11	S.Thulasiram	Guntur
12	S.Pallepogu	Hyderabad
13	V.R.Gyneshwar	Vizag
14	B. Prasada Rao	Vizag
15	Y.Krishna Kumari	Vizag
16	M.K.Gopinanthan	Cochin
17	Unnikrishnan Kasthoonii	Cochin
18	Marisiddaiah	Bangalore
19	M. Bhaskaran	Bangalore
20	B.T. Vibhute	Bangalore
21	C.S.Krishnappa	Managalore
22	A.S.Rayannaryar	Bangalore
23	R. Bhaskaran	Chennai
24	F.C. Mathew	Cochin

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25	G.A.Das	Cochin
26	D.R.Sharma	Chandigarh
27	R.K.Anand	Delhi
28	K.R.Raman	Chennai
29	L.Srikumar	Madurai
30	S.Padmanabhan	Trichy
31	A.Jagannathan	Madurai
32	C.Anandan	Coinbatore
33	R.Boopalan	Trichy
34	S S Maingi	Chandigarh
35	S.N.Mithrani	Delhi
36	S.Udayakumar	Chennai
37	V.P.Velusamy	Coimbatore
38	M.Manimaran	Coimbatore
39	K.Natarajan-II	Chennai
40	P.Jacob	Coimbatore
41	D.Alaganambi	Chennai
42	V.Sivasubramanian	Madurai
43	S.Muthuswamy-II	Coimbatore
44	D.Samuel Surendra	Trichy
45	A.Rajendran-II	Chennai
46	G.S.Ganoo	Mumbai
47	N.Y. Phadtare	Mumbai
48	P.C.Phadke	Mumbai
49	A.M.Bangali	Mumbai
50	Haripada Ghosh	Calcutta
51	J.Dutta	Bolpur
52	S.Ganguly	Calcutta
53	S.K.Talukdar	Calcutta
54	A.K.Piplai	Calcutta
55	Jitendra Nath Saha	Bolpur
56	J.M.Bhaita	Chandigarh
57	Gurbachan Singh	Chandigarh
58	Sham Lal Kaura	Chandigarh
59	Kartar Singh	Chandigarh
60	Kewal Krishan Gupta	Chandigarh
61	Sohan Singh	Chandigarh
62	Baru Ram	Chandigarh
63	B.C.Patel	Ahemedabad
64	D.K. Chavda	Ahmedabad
65	K.R.Sengal	Ahmedabad
66	V.C.Parmar	Ahmedabad
67	D.V.Rathod	Ahmedabad
68	R.L.Parmar	68 Vadodara
69	P.V.Chavda	Surat
70	R.M.Bhagat	Ahemadabad
71	J.V.Parmar	Ahemadabad
72	B.C.Makwana	Ahemadabad
73	T.N.Waghela	Ahemadabad
74	M.S.Parmar	Ahemadabad
75	M.R. Mayavanshi	Ahemadabad
76	D.R.Gohil	Ahemadabad
77	C.N.Patel	Surat

78	C.N.Vankar	Vadodara
79	Shaukat Ali	Patna
80	S.N.Lal Das	Patna
81	Anand Kishore Prasad	Patna
82	Y.P.Azad	Patna
83	B.K.Saxena	Mumbai
84	D.K.Sinha	Patna
85	N.C.Barla	Ahemadabad
86	Vicent Soreng	Patna
87	Ram Sagar Ram	Patna
88	Ram Pravesh das	Patna
89	Bimal Bhangra	Patna
90	J.D.Asari	Ahemadabad
91	M.M.Vasava	Ahemadabad
92	B.R.Trikha	Chandigarh
93	Naresh Kumar	Chandigarh

2. The above promotions to the grade of Assistant Commissioner have been made on purely ad hoc basis for a limited period of six months. Besides, the above promotions do not confer on the officers so promoted any claim for continued officiation in the grade of Assistant Commissioner and the period of such service will not count for seniority or as qualifying service for further promotions.

3. The promotions would be subject to outcome of the pending Court/CAT proceedings in C.P. No. 107/2001 in O.A. Nos. 485/99 & 556/99 in CAT, Mumbai CWP No. 1324/2002 in Bombay High court, O.A. Nos. 29/2002 & 525/2002 in CAT, Mumbai O.A. No. 1127/2002 before CAT, Principal Bench, CWP No. 15764/2002 in Madras High Court etc.

4. The promotions orders of Superintendents of Customs (Prev.) and Customs Appraisers shall be issued separately.

F.No.A.35012/6/2000 -Ad.II
 Government of India
 Ministry of Finance
 Department of Revenue

New Delhi 12th November 2002

OFFICE ORDER NO. 181/2002

Subject: - Ad-hoc promotion to the grade of Deputy Commissioner of Customs & Central Excise - regarding.

1. The President is pleased to order that the officers mentioned at S.No. 1 to S.No. 27 of Annexure-I, S.No. 1 to S.No. 43 of Annexure-II, S.No. 1 to S.No. 25 of Annexure-III and S.No. 1 to S.No. 92 of Annexure-IV in the grade of Assistant Commissioner (Grade-VI) of the IC&CES be promoted to officiated on purely ad-hoc basis in the grade of Deputy Commissioner of Customs & Central Excise (Grade-V) of the service in the scale of pay of Rs. 10,000-325-15,200/- with immediate effect.
2. The above promotions have been made in compliance with the order dated 08.07.2002 passed by the Hon'ble CAT, Madras Bench in the case of IC&CES association & Others Vs. Union of India & Others.
3. The above promotions do not confer on the officers so promoted any claim for continued officiation in the grade of Deputy Commissioner of Customs & Central Excise and the period of such service will not count for seniority/confirmation or as qualifying service or as for further promotions.

(K.Kipgen)
 Under Secretary to the Government of India

ANNEXURE-I

DIRECT RECRUIT ASSISTANT COMMISSIONERS

S.No	Name of the officer & Date of Birth
1.	Binoy Kumar 15.08.67
2.	Sunil Singh Katlyar 10.11.69
3.	Vinod Kumar Gahlout 06.01.72
4.	Manoj Kumar Rajak 01.04.68

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5. Ms. Limatula 22.11.68
6. Suresh Nandanwar 30.06.72
7. Ms. Amrita Singh 09.07.71
8. Arvind Madhavan 19.08.72
9. Jeetesh Nagori 04.05.75
10. Suresh Babu Bodduluri 12.06.70
11. Sameer Chitkara 01.10.73
12. Ms. N. Minu 24.07.73
13. Dinesh Kumar Gupta 28.01.71
14. Nillesh Kumar Gupta 11.10.71
15. Smt. Monika Batra 10.08.73
16. Amandeep Singh 20.02.71
17. Amitesh 24.12.72
18. Shallesh Kumar 02.01.70
19. Basistha Prasad 06.01.67
20. K. Ramakrishnan 15.04.69
21. K. Balamurugan 25.04.70
22. Ajay 15.05.67
23. Dhavale Satish Sitaran 15.11.68
24. Rajesh Kumar Verma 13.04.69
25. Vinay Kumar Singh 01.07.69
26. Pulapaka Anand Kumar 01.08.66
27. Bachhu Singh Meena 02.04.69

ANNEXURE-II

ASSTT. COMMISSIONER PROMOTED FROM THE GRADE OF CUSTOMS APPRAISER.

S.No	Name of the officer & Date of Birth
1.	Anurag Bakshi 01.08.59
2.	H.R.Garg 06.05.56
3.	G.S. Purohit 10.02.59
4.	Anil Kumar Singh 15.01.56
5.	S.N. Ojha 23.06.61
6.	Om Prakash 20.08.54
7.	J.F.X.Ferrao 15.12.48
8.	V.Murugesan 13.05.48
9.	P.D.Roy 26.02.44
10.	A.R.C.Riberio 16.01.46
11.	K. Rajendran 02.10.49
12.	R. Balagurunathan 05.01.46
13.	S.Eswara Sharma 01.07.48
14.	T.Hanumanta Rao 04.03.52

16. Amarjit Singh 12.03.55
17. Alit Kumar Chaltopadhyay 02.03.49
18. P.V. George 11.12.49

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R.K. Nalr 26.06.46
 U.Rajkumaran 26.06.43
 K.A. Thomas 17.04.47
 S.S. Pawar 15.07.43
 K.K.G. Nalr 04.03.45
 4. N.V.B. Nalr 05.06.46
 25. P.V. Reddy 21.03.47
 26. K.B. Bhatt 24.05.56
 27. A.K. Goswami 13.07.56
 28. P.Kalalchelvan 05.06.56
 29. M.Chandra Bose 09.05.58
 30. L.B. Yadav 01.01.59
 31. P. Viswanathan 11.02.50
 32. T.S.A. Pillai 11.01.51
 33. N. Sreeramchandran 22.02.50
 34. Nagendra Kumar Mishra 24.01.59
 35. Kamala Shankar Mishra 05.06.59
 36. Binod Kumar Choubey 09.08.60
 37. A.C. Pushkarna 09.10.60
 38. J.N. Das 21.02.50
 39. Virendra Kumar 05.04.61
 40. S. Kankalah 07.02.53
 41. M.K. Mondal 28.03.47
 42. Sahi Ram Meena 14.07.59
 43. A.K. Mandal 16.10.48

ANNEXURE-III

ASSTT. COMMISSIONERS PROMOTED FROM THE GRADE OF SUPDT. OF CUSTOMS (PREVENTIVE).

S.No	Name of the officer & Date of Birth
1.	S.T. Wadile 17.10.45
2.	P.S. Rajput 15.11.51
3.	G.S. Salvi 28.10.47
4.	R.N. Pathak 08.07.46
5.	K.P.R. Nalr 23.05.44
6.	D. John 16.05.43
7.	P.V.P. Desai 02.10.44
8.	N.M. Vengurlekar 15.08.49
9.	P. Krishnamurthy 01.06.44
10.	N.V. Perumallah 07.09.44

24
11. P.K. Chakraborty 07.12.42
12. M. Shaikh 30.09.45
13. K.M. Samuel 05.05.43
14. V.H. Bhatija 03.01.47
15. M.Y. Patel 03.06.48
16. L.R. Nayak 10.05.47
17. M.V.P. Desal 17.01.44
18. J.S.P.L. Fernandez 10.04.47
19. Shalkh. Hussain 03.04.43
20. M. Kalshak Babu 13.05.43
21. R. Vishnudas 30.04.51
22. A. George 07.11.43
23. Ganesh Kachua 01.08.47
24. H.D. Rathod 07.04.51
25. M. Rajayyan 18.08.47

ANNEXURE-IV

ASSTT. COMMISSIONER PROMOTED FROM THE GRADE OF SUPDT OF CENTRAL EXCISE.

S.No	Name of the officer & Date of Birth
1.	B.C. Sahoo 20.07.50
2.	R. Vittal Vivekanandan 05.10.47
3.	R. Karunakaran-I 14.06.50
4.	N. Sasidharan 08.10.51
5.	N.P. Agarwal 16.10.50
6.	M. Jayaraman 22.10.50
7.	K. Kandasamy 10.04.48
8.	K. Rajagopal 13.08.44
9.	V. Gandhi 03.06.45
10.	Ms. Manjli Kaur 15.08.43
11.	M. Haja Mohldeen 02.06.49
12.	M.C. Asthana 02.03.44
13.	S.D.V. Rajkumar 18.06.49
14.	R. Narayanan 14.01.50
15.	Ram Pratap 05.07.56
16.	B.G. Koli 01.06.49
17.	M. Kadar Batcha 15.03.44
18.	P.T. Kamble 14.01.50
19.	Pratap Singh 20.11.45
20.	R. Swaminathan 02.04.49
21.	S. Syed Yaseen 29.05.50
22.	N.V. Udaykumar 31.08.49
23.	M.N. Das 20.09.46

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24. N. Duraiapp 23.03.47
25. V. Ramakrishnan 24.11.50
26. C.D. Damodaran 28.01.44
27. P.A. Gangadharan 24.06.51
28. J.C.S. Rajput 25.04.49
29. H.S. Shirsat 23.01.50
30. I.P.C.K. Nair 01.04.44
31. S.C. Gupta 24.07.52
32. B.L. Sharma 01.06.49
33. A.A. Kapse 24.10.49
34. V.M. Basheer Ahmed 28.03.49
35. L.S. Vanchangwng 28.12.51
36. H.C. Verma 27.03.53
37. V. Raja Ram 29.09.51
38. John Jacob 13.04.50
39. M.K. Saseendran 18.03.49
40. J.A. Samuel Joyson 16.07.50
41. R. Ramalingam 20.06.49
42. R. Sellamuthu 06.05.43
43. D. Babu Rangaswamy 02.02.51
44. G.P. Ponnurajendran 25.02.49
45. A. Iqbal 22.07.49
46. Prabhat Singh 01.11.49
47. M.A. Damodran 26.01.43
48. T.D. Bodade 09.06.46
49. N.G. Moone 31.05.49
50. A.V. Kamble 20.05.45
51. S. Sridharan 29.05.50
52. M. Doralswamy 04.05.49
53. R. Muthuswamy 05.04.50
54. Bijoy Kumar Roy 24.10.51
55. Tara Chand 15.04.46
56. Nirupam Kar 01.01.51
57. N.K. Bhattacharjee 30.11.50
58. R.K. Baldya 01.04.49
59. Jagdish Chandra 02.02.49
60. P.R. Vijayan 07.05.49
61. Dimbewar Borah 01.01.50
62. Biswajit Sarkar 01.11.55
63. Subir Kr. Chakraborty 03.12.52 — Switop
64. S.P. Chakraborty 07.08.50 — D. bameri
65. P.S. Purkayastha-I 14.07.53 — D. alvi
66. Rama Kant Das 01.01.54 — D. ghasi
67. A.M. Tilak 26.09.50
68. R.K. Chakraborty 20.04.51
69. J.K. Paul 01.02.50
70. Debaprasad Das 15.02.52
71. Mrinal Kant Chanda 01.05.50

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72. Gopinath Dutta 04.09.50
73. G.S. Arekar 29.01.50
74. Anjan Kumar Pandit 01.03.49
75. V.S. Gaur 09.06.52
76. D.V. Sharma 14.01.50
77. B.L. Malhotra 04.08.44
78. D.K. Soni 26.10.54
79. Smt. Mary Anthony Mallickal 13.06.47
80. A.K. Roy 01.09.45 — Silguri
81. B.R. Deb Roy 08.03.53
82. Nazarul Islam 01.09.51
83. Dinesh Chandra 02.04.43
84. Tridibeshwar Nath 23.12.53 X
85. S.C. Pushkarna 07.03.50
86. O.P. Bhatia 03.11.42
87. Vinod Kumar 15.12.48
88. Md. A. Hussain 11.09.51 — Gauhati
89. M.C. Hazarika 01.04.46 — Dibrugarh
90. R.K. Mittal 21.09.54
91. L.S. Bist 10.01.56
92. R.C. Agarwal 18.12.44

(1) S.K. Das — Tegmu

(2) Bhupjal — Jorhat —

(3) H. Subhababu — Silchar.

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Annexure-10

NO. 038 P.1

MOST IMMEDIATE
COURT MATTER

F.No.A23010/3/97 Ad.1113
 GOVERNMENT OF INDIA
 MINISTRY OF FINANCE
 DEPARTMENT OF REVENUE

New Delhi, Dated the June 18, 2001

Subject : All India Seniority List of Superintendents of Central Excise, Group 'B' promoted / appointed upto 31.12.1992 - Corrections therein in respect of Shillong Commissionerate - regarding

Consequent upon revision of seniority position of Superintendents of Central Excise, Group 'B' in the Commissionerate's seniority list by the Commissioner of Central Excise, Shillong, in the light of implementation of CAT, Guwahati Bench's order dated 8.2.2001 in O.A. No.237/1999, the all India seniority list of Superintendents of Central Excise, Group 'B' appointed / promoted from 1.1.1986 to 31.12.1992 is amended as under :-

Sr. No.	Exis- ting Posi- tion	Revised Position	Name/ UOB Category	Date of appl. as Supdt/ Deemed date as appl./ date of appl. as Inspector	Commi- ssioneer- ate	Remarks
1	2	3	4	5	6	7
1.	489	462.1	M.K.CHAKRABORTY 01.03.40	24.04.87 02.08.72	SHILLO- NG	PROMOT- ED/A.C.
2.	572	462.2	PROBIR KR. BOL 01.05.30	24.04.87 02.08.72	SHILLO- NG	RETIRED
3.	591	462.3	D.K. BHATTACHARJEE 01.02.36	24.04.87 02.08.72	SHILLO- NG	RETIRED
4.	592	462.4	P.SHARMA 01.08.39	24.04.87 02.08.72	SHILLO- NG	RETIRED
5.	593	462.5	G.C.CHATTERJEE 01.11.39	24.04.87 02.08.72	SHILLO- NG	RETIRED

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6.	595	462.6	M.L. DEY 01.10.42	24.04.07 03.08.72	SHILLO- NG	PRO.101 ED A.C.
7.	611	462.7	P.K. DEB 02.01.40	24.04.87 02.08.72	SHILLO- NG	PROMOT- ED A.C.
8.	917	462.8	B.RANJAN DAS 01.10.35	24.04.07 03.08.72	SHILLO- NG	RETIRED
9.	736	462.9	LALIT KR. HAZARIKA 01.03.35	24.04.87 04.08.72	SHILLO- NG	RETIRED
10.	744	462.10	A.C. BORA (ST) 01.12.41	24.04.87 02.08.72	SHILLO- NG	PROMOT- ED A.C.
11.	851	462.11	B.K. ROY 24.10.51	24.04.87 29.09.75	SHILLO- NG	PROMOT- ED A.C.
12.	866	462.12	N.KAR 01.01.51	24.04.87 29.09.75	SHILLO- NG	PROMOT- ED A.C.
13.	-----	462.13	MS. ANUPAMA DEVI 15.09.36	24.04.87 08.09.75	SHILLO- NG	RETIRED
14.	867	462.14	N.K. BHATTACHARJEE 30.11.51	24.04.07 26.09.75	SHILLO- NG	PROMOT- ED A.C.
15.	918	462.15	D.M. BANERJEE 16.08.41	24.04.07 01.10.75	SHILLO- NG	PROMOT- ED A.C.
16.	-----	462.16	SWARAJ KR. ROY 31.07.33	24.04.07 29.09.75	SHILLO- NG	RETIRED
17.	938	462.17	R.K. CHAKRABORTY 20.10.51	24.04.07 23.09.75	SHILLO- NG	PROMOT- ED A.C.
18.	939	462.18	J.K. PAUL 30.01.50	24.04.87 15.10.75	SHILLO- NG	PROMOT- ED A.C.
19.	940	462.19	D.P. DAS 15.02.52	24.04.87 22.09.75	SHILLO- NG	PROMOT- ED A.C.

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NO. 038 P. 4

34.	1068	907.8	ANJAN KANTI ROY 01.09.45	22.04.88 20.10.75	SHILLO- NG	PROMO- ED A.C.
35.	1131	907.9	SMT. P.R.GHOSH 06.04.40	22.04.88 29.09.75	SHILLO- NG	RETIRE
36.	-----	907.10	S.C.H.DEB.NATH 01.05.34	22.04.88 19.09.75	SHILLO- NG	RETIRE
37.	-----	907.11	KSHITISH CH.DAS 04.11.41	22.04.88 25.09.75	SHILLO- NG	RETIRE
38.	1861	907.12	SAMIR CH. ADHIKARY 18.05.40	22.04.88 24.07.75	SHILLO- NG	RETIRE
39.	1860	907.13	L.S.VANCHHAWNG (ST) 28.12.51	22.04.88 22.07.76	SHILLO- NG	PROMO- ED A.C.
40.	1708	907.14	BISWAJIT SARKAR 01.11.55	22.04.88 02.08.76	SHILLO- NG	
41.	1755	907.15	SUBIR KR. CHAKRABORTY 03.12.52	22.04.88 24.07.76	SHILLO- NG	
42.	1756	907.16	S.P.CHAKRABORTY 05.08.50	22.04.88 28.07.76	SHILLO- NG	
43.	1757	907.17	P.S.PURKAYASTHA-I 14.11.75	22.04.88 02.06.10	SHILLO- NG	
44.	1167	907.18	ASANTA BORAH (ST) 01.05.46	22.04.88 29.07.76	SHILLO- NG	PROMOT- ED A.C.
45.	1218	907.19	SUJAN KR. DAS (SC) 02.02.53	22.04.88 20.01.77	SHILLO- NG	PROMO- TED A.C.
46.	2197	907.20	SUBODH DHAR (SC) 27.06.54	22.04.88 17.09.77	SHILLO- NG	
47.	2200	907.21				

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20.	941	462.20	M.K. CHANDA 01.05.50	24.04.07 10.09.75	SHILLO- NG 1	PRÓMOT- ED A.C.
21.	942	462.21	G. DUTTA 04.09.50	24.04.07 18.09.75	SHILLO- NG	PROMOT- ED A.C.
22.	1067	462.22	K.B. BHUJEL 31.01.50	24.04.07 25.09.75	SHILLO- NG	PROMOT- ED A.C.
23.	869	462.23	R.C. SUKLABAIDYA (SC) 01.10.40	24.04.07 05.11.76	SHILLO- NG	EXPIRED
24.	870	462.24	RANJIT KR. BAIDYA (SC) 01.04.49	24.04.07 26.07.76	SHILLO- NG	PROMOT- ED A.C.
25.	1168	462.25	M.C.HAZARIKA (SC) 01.04.46	24.04.07 26.10.76	SHILLO- NG	PROMOT- ED A.C.
26.	1219	462.26	H.SUKLABAIDYA(SC) 09.03.46	24.04.07 26.07.76	SHILLO- NG	PROMOT- ED A.C.
27.	916	907.1	DIMBESWAR BORAH 01.01.50	22.04.00 01.10.75	SHILLO- NG	PROMOT- ED A.C.
28.	1069	907.2	B.R.DEB ROY 08.03.53	22.04.08 01.10.75	SHILLO- NG	PROMOT- ED A.C.
29.	1070	907.3	NAZRUL ISLAM 01.09.51	22.04.08 23.09.75	SHILLO- NG	PROMOT- ED A.C.
30.	961	907.4	A.K.PANDIT 01.03.49	22.04.00 27.09.75	SHILLO- NG	PROMOT- ED A.C.
31.	1084	907.5	T.NATH 25.12.53	22.04.08 23.09.75	SHILLO- NG	PROMOT- ED A.C.
32.	1147	907.6	MD.A.HUSSAIN 11.09.51	22.04.00 22.09.75	SHILLO- NG	PROMOT- ED A.C.
33.	962	907.7	D.K.DEB CHOWDHURY 01.04.39	22.04.08 13.09.75	SHILLO- NG	EXPIRED

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O/O DR. COMM., C. EX. GIV. Y. 5

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48.	1221	907.22	GOPAL CH. SARKAR (SC) 22.11.39	22.04.08 ----- 23.11.78	SHILLO- NG	RETIRED
49.	2208	907.23	RAMA KANTA DAS (SC) 01.01.54	22.04.08 ----- 03.10.78	SHILLO- NG	Presented
50.	1707	1813.1	R.K. LASKAR (SC) 01.10.38	29.08.09 ----- 24.12.73	SHILLO- NG	RETIRED
51.	1758	1813.2	RANJIT KR. DUITA-I 10.08.51	29.08.09 ----- 26.07.76	SHILLO- NG	
52.	1827	1813.3	INDRAJIT GUHA 07.05.56	29.08.09 ----- 27.07.76	SHILLO- NG	
53.	1853	1813.4	A.HORE 31.07.53	29.08.09 ----- 23.07.76	SHILLO- NG	
54.	1863	1813.5	A.DASGUPTA 12.01.55	29.08.09 ----- 26.07.76	SHILLO- NG	
55.	1864	1813.6	B.B. ADHIKARI 22.11.53	29.08.09 ----- 26.07.76	SHILLO- NG	
56.	2194	1813.7	GOPENDRA CH. 01.01.47	29.08.09 ----- 30.11.76	SHILLO- NG	
57.	1900	1813.8	P.K. DAS-I 01.03.55	29.08.09 ----- 02.00.76	SHILLO- NG	
58.	2150	1813.9	R.K. GOSWAMI 07.06.54	29.08.09 ----- 23.07.76	SHILLO- NG	
59.	2151	1813.10	BIDYUT RN. DEB 28.08.52	29.08.09 ----- 24.07.76	SHILLO- NG	EXPIRED
60.	2195	1813.11	N. BHATTACHARJEE 15.05.51	29.08.09 ----- 17.11.76	SHILLO- NG	
61.	2242	1813.12	A.K. SHARMA 21.01.54	29.08.09 ----- 20.07.76	SHILLO- NG	

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62.	2243	1013.13	HEMEN GOSWAMI 01.01.55	29.00.00 24.07.76	SIMILLO- ING
63.	2251	1013.14	A.B.DUTTA 01.07.55	29.00.00 21.07.76	SIMILLO- ING
64.	2252	1013.15	P.K. BHATTACHARJI 01.04.44	29.00.00 29.1.76	SIMILLO- ING
65.	2253	1013.16	S. K. DUBE	28.00.00 30.07.76	SIMILLO- ING
66.	2402	1813.17	L.K. 11.07.52	29.00.00 02.08.76	SIMILLO- ING
67.	2642	1813.18	S. PAUL 05.04.51	08.00.00 07.76	SIMILLO- ING
68.	2412	1813.19	G. DASGUPTA 01.02.41	29.00.00 01.11.76	SIMILLO- ING RETIRE
69.	124	1813.20	M.S. M. S. 31.03.39	29.00.00 01.11.76	SIMILLO- ING RETIRE
70.	3265	1813.21	M. NARAYAN MURTHY (S1) 24.02.44	29.00.00 30.09.76	SIMILLO- ING
71.	2196	1813.22	AGHILIP SULTAN (SC) 01.10.42	29.00.00 12.12.76	SIMILLO- ING
72.	3266	1813.23	A.P. S. S. 29.07.47	29.00.00 22.06.76	SIMILLO- ING
73.	4073	1813.24	C. T. DOLLAH BANDHAN 20.11.40	29.00.00 30.09.76	SIMILLO- ING
74.	09	2222.1	K. C. MOKHARI 20.09.53	09.00.00 31.07.76	110
75.	2111	2211.2	M. CHAKRABORTY 19.12.51	09.00.00 26.07.76	110

(6)

83

To,

The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi.

Sir,

Subject:- Disciplinary Proceedings against Sri S.Dhar,
Superintendent, Central Excise, under Rule
14 of the Central Civil Service (CCS) Rules,
1965 - Prayer for early decision of the case.

Most humbly and respectfully I crave to leave approach
your honour that, a memorandum of charges was framed against me
vide order dt.13.01.98 of the Commissioner, Central Excise, Shillong
communicated vide C.No.II(10)A/2/CIU-VIG/98/61 dt.21.01.98 on an
incident of 26.10.94 with the charge of lack of supervision of the
functioning of the officials under me. An enquiry was conducted
against me and other Inspectors. The Inquiry Officer has submitted
his report long back.

More than 7 years has been passed from the date of
incident but no decision has been received by me till date.

I would like to mention here that Sri B.K. Saikia,
Inspector, who was also charge sheeted on the same incidents vide
charge memorandum communicated under C.No.II(10)A/3/CIU-VIG/98/142
dt. 12.02.98 has been exonerated from the charges framed against
him vide order no.27/2002 (CIU-VIZ) dt.17th May 2002 on the ground
that, for want of some documents charges framed against him have
not been proved (copy enclosed). The same ground is applicable in
my case as the relied upon documents are same in both the cases.

It would not be out of place to mention here that I
have been deprived from due promotion to the grade of Assistant
Commissioner and my junior Sri Rama Kanta Das has been promoted
vide Ministry's Order No.156/2001 dt.31.12.2001.

Contd... p/2.

True copy
Sujit Ghosh
Adv.

Under the circumstances your honour is cordially requested to look into the matter and take necessary action for early decision of the case against me in the light of Order No. 27/2002 dt. 17.5.2002 as the ground mentioned in the said order is applicable in my case also.

For this act of your kindness I shall remain ever grateful to you.

Yours faithfully,

Enclo:- 4(four)sheets.

SUBODH DHAR
(SUBODH DHAR)
SUPERINTENDENT
CENTRAL EXCISE, SILCHAR DIVISION
(SHILLONG CENTRAL EXCISE COMMISSIONERATE).

Copy to the:-

1. Member (P & V),
Central Board of Excise and Customs, :- necessary action please.
North Block, New Delhi - 01.

For information and

2. Chief Commissioner,
Customs & Central Excise,
East Zone,
KOLKATA

:- - do -

3. Commissioner (N.E.R.)
Central Excise,
SHILLONG.

:- - do -

SUBODH DHAR
(SUBODH DHAR)
SUPERINTENDENT
CENTRAL EXCISE, SILCHAR DIVISION
(SHILLONG CENTRAL EXCISE COMMISSIONERATE)

(39)

85

To

The Chairman,
Central Board of Excise & Customs,
North Block,
New Delhi- 110 001.

Sir,

Subject : Disciplinary proceedings against Sri Subodh Dhar, Superintendent, Central Excise, under Rule-14 of the Central Civil Services (CCA) Rules, 1965 - Prayer for early decision of the case.

Kindly refer to my letter dated 7.6.2002 and 21.6.2002 on the above mentioned subject.

With highest esteem I beg leave of your judicious authority to submit the following for favour of your kind consideration and necessary action so that I am not subjected to any further torture for no fault of mine.

That Sir, a memorandum of charges was framed against me by the Commissioner, Central Excise, Shillong on an incident of 26.10.94 vide memorandum of charges C.NO. II(10)A/2/CIU-VIG/98/61 dated 21.01.98 with the charge "lack of supervision of the functioning of the officials under me". An enquiry was conducted against me and other Inspectors and the Inquiry Officer has submitted his report long back.

On the basis of enquiry report submitted by Mr. A. Hussain, Assistant Commissioner, Central Excise, Gauhati, Sri B. K. Saikia, Inspector, who was also chargesheeted on the same incident vide charge memorandum communicated under C.NO. II(10)A/3/CIU-VIG/98/142 dated 12.2.98 has been exonerated from the charges framed against him vide Order No. 27/2002 (CIU-VIG) dated 17.5.2002 on the ground that, "for want of some documents charges framed against him have not been proved". (Copy enclosed). The same ground is applicable in my case as the relied upon documents are same in both the cases. In fact, it is a common case as the charges were framed on a common incident of 26.10.94

True copy

Sujit Singh
Adv.

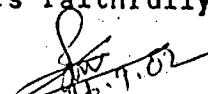
Contd.P/2-

I would like to mention here that I have been deprived from my due promotion to the grade of Assistant Commissioner and my junior Sri Raimakanta Das has been promoted vide Ministry's Order No. 156/2001 dated 31.12.2001.

Under the circumstances your honour is once again cordially requested to look into the matter and take necessary action for early decision of the case against me in the light of Order No. 27/2002 dated 17.5.2002 of the Office of the Commissioner, Central Excise, Shillong as the ground mentioned in the said order is applicable in my case also.

For this act of your kindness I shall ever remain grateful to you.

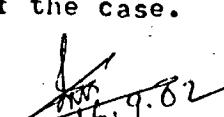
Yours faithfully,


(SUBODH DHAR)
Superintendent,
Central Excise, Silchar,
C. R. Building,
Circuit House, Road,
Silchar-788001,
District-Cachar, Assam.

Copy to the :-

1. Member (P & V), Central Board of Excise and Customs, North Block, New Delhi-110 001. His honour is cordially requested to look into the matter and take necessary action for early decision of the case.
2. Director General of Vigilance, Customs & Central Excise, 11th Floor, C.R.Building, I.P.Estate, New Delhi - 110002. His honour is cordially requested to look into the matter and take necessary action for early decision of the case.
3. Chief Commissioner, Customs & Central Excise, East Zone, Kolkata. His honour is cordially requested to look into the matter and take necessary action for early decision of the case.
4. Commissioner (NER), Central Excise, Shillong. His honour is cordially requested to look into the matter and take necessary action for early decision of the case.

P/C.


(SUBODH DHAR)
Superintendent,
Central Excise, Silchar
C. R. Building,
Circuit House Road,
Silchar-788001,
District-Cachar, Assam.

(u)

8X

To

The Chairman,
 Central Board of Excise & Customs,
 North Block,
New Delhi - 110001.

Sir,

Subject :- Memorandum of charges framed against
 Sri Subodh Dhar, Superintendent, Central
 Excise, by Commissioner, Central Excise,
 Shillong vide C.NO. II(10)A/2/CIU-VIG/98/
 61 dated 21.1.98 on an incident of 26.10.94
 - Prayer for early decision of the case.

Kindly refer to my prayer dated 7.6.2002, 21.6.2002 and
 16.9.2002.

Most humbly and respectfully I crave to leave approach
 your honour that more than 8 (eight) years have been passed
 from the date of incident, on the basis of which the above
 mentioned memorandum of charges was framed against me but no
 decision has been received by me till date inspite of several
 requests.

On the basis of enquiry report submitted by Mr. A.Hussain,
 Assistant Commissioner, Central Excise, Gauhati, Sri B.K.Saikia,
 Inspector, who was also chargesheeted on the same incident has
 been exonerated from the charges framed against him vide Order
 No. 27/2002 (CIU-VIG) dated 17.5.2002 on the ground that "for
 want of some documents charges framed against him have not been
 proved" (copy enclosed). The same ground is applicable in my
 case also as the relied upon documents are same in both the
 cases. In fact, it is a common case as the charges were framed
 on a common incident of 26.10.94 and a common enquiry was
 conducted.

I would like to mention here that I have been deprived
 from due promotion to the grade of Assistant Commissioner and
 so many junior officers has been promoted vide Ministry's
 Order No. 156/2001 dated 31.12.2001 & 149/2002 dated 1.10.2002.
 Even my junior Sri Rama Kanta Das has been promoted in the grade
 of Deputy Commissioner vide Order No. 181/2002 dated 12.11.2002.

Under the circumstances your honour is once again
 cordially requested to look into the matter and take necessary
 action for early decision of the case against me in the light

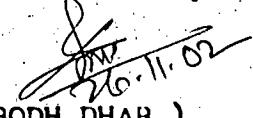
True copy
 Sujit Singh
 (Dhr)

Contd....P/2-

of Order No. 27/2002 dated 17.5.2002 of the Office of the Commissioner, Central Excise, Shillong so that I can get my promotion with effect from the date the junior Sri Rama Kanta Das was promoted and prevent me from any further harrasment and mental torture.

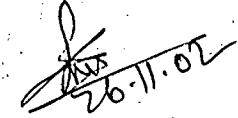
For this act of your kindness I shall ever remain grateful to you.

Yours faithfully,


(SUBODH DHAR)
Superintendent,
Central Excise, Silchar,
C. R. Building,
Circuit House Road,
Silchar - 788001,
District-Cachar,
ASSAM

Copy to the :-

1. Member (P&V), Central Board of Excise and Customs, North Block, New Delhi - 110001. His honour is cordially requested to look into the matter and take necessary action for early decision of the case so that I can get my due promotion at an early date.
2. Director General of Vigilance, Customs & Central Excise, 11th Floor, C.R.Building, I.P.Estate, New Delhi - 110002. His honour is cordially requested to look into the matter and take necessary action for early decision of the case so that I can get my due promotion at an early date.
3. Chief Commissioner, Customs & Central Excise, East Zone, Kolkota. His honour is cordially requested to look into the matter and take necessary action for early decision of the case so that I can get my due promotion at an early date.
4. Commissioner, Central Excise, Shillong/Gauhati. His honour is cordially requested to look into the matter and take necessary action for early dicision of the case so that I can get my due promotion at an early date.


(SUBODH DHAR)
Superintendent,
Central Excise, Silchar,
C. R. Building,
Circuit House Road,
Silchar - 788001,
District-Cachar,
ASSAM.

Annexure-14

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

Order No. 27/2002 (CUS/VIG)

Dated Shillong the ^{17th} ~~20~~th May, 2002 A.D.

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, 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.

*True up
Bikash
Order 1*

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 Pallei 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.

ORDER

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

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 16 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.

True copy
Bijitbesh
Ahr.

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 at Imphal Division. From} ~~was posted at Imphal Division. From~~ ^{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.

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 on the evaluation of the 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 the earliest 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)

TRUE COPY

प्रतिलिपि

A. K. Jain

Section Officer (J) 20/11/2001,

राष्ट्रीय अधिकारी (न्यायिक शाखा)

Central Administrative Tribunal

न्यायिक प्रशासनिक अधिकारी

न्युयार्क अधिकारी, अमेरिका

प्राकाशी न्यायिक अधिकारी

20/11/2001