

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

23.01.2014

OA No. 534/2012 with MA 291/00004/2014

Mr. Amit Mathur, Counsel for applicant.
Mr. D.C. Sharma, Counsel for respondents.


Heard. The OA as well as MA are disposed of by a separate order.


(G. George Paracken)
Judicial Member

ahq

Date - 23-01-2014

Order pronounced today in the open court
by the aforesaid Bench.


23/01/14
As. C.O

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

ORIGINAL APPLICATION NO. 534/2012
With
MISC APPLICATION NO. 291/00004/2014

Jaipur, the 23rd day of January, 2014

CORAM:

HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER

Dinesh Kumar Bangad son of Shri Purshottam Das Bangad, aged around 46 years, resident of Mauji Colony, Malviya Nagar, Jaipur. Presently working as Assistant Commissioner, Custom Commissionerate, Jaipur (Rajasthan).

... Applicant

(By Advocate: Mr. Amit Mathur)

Versus

1. Union of India through its Secretary, Ministry of Finance, Department of Revenue (North Block), New Delhi.
2. The Member (P&V), Central Board of Excise and Custom, Ministry of Finance, Department of Revenue (North Block), New Delhi.

... Respondents

(By Advocate: Mr. D.C. Sharma)

ORDER

PER HON'BLE MR. G. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant is aggrieved by the impugned order dated 27.06.2012, imposing upon him the penalty of reduction to a lower stage in the time scale of pay by one stage for a period of three years without cumulative effect and not adversely affecting his pension.

2. The brief facts of the case are that vide Memorandum dated 01.05.2003, the applicant was proceeded under Rule 16 of the CCS



(CCA) Rules, 1965. The statement of imputation or misbehaviour on which action was proposed to be taken was as under:-

“Shri D.K. Bangard, Appraiser was holding additional charge of Inland Container Depot, Sanganer, Jaipur, during the period April, 1994 to October, 1994 while posted as Appraiser Customs, Air Cargo Complex, Jaipur.

M/s Vibhuti Export, Jaipur presented the following five Shipping Bills for export of Reclaimed Lube Oil (RLO) during the above mentioned period. Shri D.K. Bangard, Appraiser assessed the value of each consignment shown in the Shipping Bills and accordingly the consignments under these Shipping Bills were exported. The said exports were done to fulfill the export obligation in terms of the conditions laid down under Advance Licence issued by the office of Jt. DGFT, Jaipur.

Sl. No.	Description of goods	Shipping Bill No.	Date of Export	Advance Licence No.	Value shown (in Rs.)	Quantity exported (in Kgs.)
1.	RLO	300	29.3.94	2277827	9,41,227	6000
2.	-do-	301	29.3.94	1535023	9,17,087	6240
3.	-do-	302	29.3.94	1535024	9,77,852	6960
4.	-do-	878	27.8.94	1535024	3,72,091	3620
5.	-do-	879	27.8.94	1535022	13,28,996	9720


The said exporter was required to export Reclaimed Lube Oil (RLO) in barrels of 44 British Gallons capacity (equivalent to 200 Kgs. Approximately) each barrel as per export obligation in terms of Advance Licence mentioned above. The said exporter exported the required number of barrels, however, each barrel was found to contain net 20 Kgs of RLO only as worked out on the basis of the above mentioned Shipping Bills.

Shri D.K. Bangard, Appraiser assessed the value of the consignments under above referred Shipping Bills treating each barrel of RLO containing 44 British Gallons equivalent to 200 Kgs. Approximately. However consignments exported were found to contain 20 Kgs. in each barrel. Therefore, the assessment done by him resulted into evasion of duty to the tune of Rs.29,88,629/- by the exporter and consequent loss to the Government exchequer.

Shri D.K. Bangard, Appraiser was duty bound to assess the value of export consignment and to verify the correctness of all material particulars declared by the exporter in the Shipping Bills and other related documents. He was responsible for the correct valuation of the export consignments, which he failed to comply. Therefore, he failed to maintain utmost devotion to duty and acted in a manner unbecoming of a Government servant. He also failed to supervise effectively the work of his subordinates who examined the export consignments.”


3. The applicant submitted his reply to the aforesaid Memorandum on 08.05.2013. He denied all the allegations leveled against him. According to him, the export quantity was correctly shown and endorsed in all the relevant record submitted alongwith Shipping Bills at the time of export. The said fact has also been admitted in the

Memo. Therefore, there is no suppression of facts at the time of processing the export documents. He had also submitted that it is incorrect to say that he had processed the Shipping Bills treating each barrel of RLO containing 44 British Gallons. He has reiterated that each barrel was treated as 20 Kg of capacity at the time of export. The said facts can be verified from the photocopies of the documents. Since the advance Licences was of quantity based category, exporter was required to export quantity of RLO as per advance Licences, whereas the quantity of RLO exported was much less than the quantity to be exported. Therefore, the condition laid down in the advance licences was not fulfilled. The said fact was endorsed by office of the Joint Director General of Foreign Trade, Jaipur, vide letter F. No. JPR/Adv/103/AM93/C DGFT/RAJ/2814 dated 20.10.1994. Since the export obligation was not fulfilled by the exporter, question of evasion of duty or loss to Government Exchequer does not arise. Further he has stated that assessment made on higher side resulted into no loss of revenue to Government, when the export obligation was not fulfilled. As far as value was concerned for the purpose of imports, the quantity and value were equivalent shall be the limiting factor. Similarly export obligation shall have to be discharged by exporting the prescribed quantity to earn minimum foreign exchange equivalent to US Dollar indicated in the export obligation. He has also denied that he had failed to comply with the correct valuation of export consignment. According to him, the documents submitted before him at the time of export of the goods were correctly assessed by him. He adhered to all the instructions/orders issued by the department from time to time for proper assessment of the goods. He maintained



absolute integrity and had not done anything while holding additional charge at Sanganer ICD, Jaipur of unbecoming of a Government servant. Accordingly to him, he had effectively supervised the work of his subordinates and nothing adverse was ever noticed by his superiors during his tenure of posting at ICD, Jaipur. He, therefore, requested to drop the memo issued to him and to exonerate him from all the charges leveled in the aforesaid memo.

4. According to the learned counsel for the applicant, after the aforesaid reply was submitted by the applicant, the respondents have not taken any further action in the matter. Therefore, the applicant was under bonafide belief that the matter was closed and he was exonerated in the matter. However vide impugned order dated 27.06.2012 (Annexure A/1), the applicant was imposed a penalty of reduction to a lower stage in the time scale of pay by one stage for a period of 3 years without cumulative effect and not adversely affecting his pension. The applicant has challenged the aforesaid order on various grounds. According to him, the similar charges have been leveled against two other officers namely, Shri Rajan Suri, Additional Commissioner and Shri Sanjeev Singhal, Inspector. However, Shri Rajan Suri, Additional Commissioner, assailed the matter before the Principal Bench of the Central Administrative Tribunal by filing OA No. 1931/2003. The same was quashed vide order dated 13.11.2003. In the case of Sanjeev Singhal also, charge memo and the penalty was quashed & set aside by the Jaipur Bench of the Central Administrative Tribunal (OA No. 172/2009 decided on 14.05.2010).



5. The learned counsel for the applicant stated that Memorandum of charge was issued on 01.05.2003 after delay of nine year after the alleged incidents have occurred in the year 1994. The applicant has filed his reply to the said Memo on 08.05.2003. However, the Disciplinary Authority took another ten years to pass the impugned order dated 27.06.2012. He has also submitted that the respondents have not explained as to why this delay has taken place in issuing the charge sheet and passing the impugned penalty order. According to him, the delay has caused great prejudice to the applicant. In this regard, the learned counsel for the applicant has relied upon the judgments of the Apex Court in the following cases of:-

1. The State of Madhya Pradesh vs. Bani Singh & Another
1990 Supp (1) SCC 738
2. State of Andhra Pradesh vs. N. Radhakishan
1998 (4) SCC 154
3. P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board
2005 (6) SCC 636.


6. The learned counsel for the applicant has also submitted that the charge sheet was issued to the applicant without any application of mind by the Disciplinary Authority but it was on the extraneous consideration i.e. advice given by the Central Vigilance Commission.

7. The respondents have filed their reply. According to them, the delay occurred in issuing the charge sheet as well as passing the impugned order of punishment can be ascribed to many justifiable reasons. According to them, the case of the applicant was under investigation of CBI and after receipt of CBI's report during the year 2001, the mater has been examined and an advice of CVC has been




sought by the Department. The CVC OM No. 99/CEX/177 dated 06.01.2003 has advised initiation of minor penalty proceedings against the officers involved in the case including the applicant. On receipt of the CVC's advice, action was initiated against the applicant and the charge sheet was issued to the applicant. On merit, they have submitted that the applicant was holding the additional charge of ICD, Sanganer, Jaipur during the relevant period from April, 1994 to October, 1994. M/s Vibhuti Export, Jaipur presented the five shipping bills as mentioned in the Memorandum dated 01.05.2003 (Annexure A/3). However, the exports had been made to fulfill the export obligation in terms of the conditions laid down under advance licence issued by the office of Joint DGFT, Jaipur. The exporter was required to export Reclaimed Iuge Oil in barrels of 44 British gallons (equivalent to 200 Kg. approximately each barrel). Though the exporter exported required number of barrels, but each barrel was found to contain net 20 kgs. of RLO only. Therefore, the assessment done by the applicant, the then Appraiser resulted evasion of duty to the tune of Rs.29,88,629/-. As regards CBI's FR, it was submitted that CBI was investigating and handling the case separately at their own with regard to prosecution. As regards to other persons, the departmental proceedings are separately dealt with under the advice of the CVC.

8. I have heard the learned counsel for the applicant Mr. Amit Mathur and the learned counsel for the respondents Mr. D.C. Sharma. It is seen that the alleged incident had occurred in the year 1994. However, Memorandum of Charge Sheet was issued only on 01.05.2003. The reason given by the respondents is that the matter



was being examined by the Central Vigilance Commission. It was only on 16.05.2012, the CVC advised the respondents to initiate disciplinary proceedings against the applicant. Accordingly, they have initiated penalty order against the order vide Memo dated 01.05.2003. However, there is no explanation on the part of the respondents as to why the Disciplinary Authority took ten years for passing the impugned order after the applicant has submitted his representation way back on 01.05.2003. In proceedings under Rule 16 of the CCS (CCA) Rules, 1965, the delinquent employee is given only an opportunity to reply to the show cause while under Rule 14 of the CCS (CCA) Rules, 1965, the delinquent employee has sufficient opportunity to produce the defence witnesses in his support and also to cross examine the prosecution witnesses. The proceeding under Rule 16 of CCS (CCA) Rules, 1965 being a summary proceedings, it has to be completed within the shortest possible time to avoid any undue hardship and prejudice to the employee. To keep an employee with the fear of imposing penalty for long years is not only unfair but it is also harsh. In the present case, the reply to the memorandum has been furnished by the applicant without any delay but it has not acted upon by the Disciplinary Authority for a long period of time. Naturally, the applicant was under the impression that the respondents have accepted his reply. The respondents have also not given any reason as to why such inordinate delay has occurred in passing the impugned order dated 27.06.2012. Further, it is seen, that alongwith the applicant, respondents have issued similar charge sheets to his colleagues, namely, Shri Rajan Suri the then Additional Commissioner and Shri Sanjeev Singhal, the then Inspector. In both these cases, the Principal



Bench and the Jaipur Bench of the Tribunal has quashed and set aside the impugned Memorandum of charge sheet and the order of punishment on the ground of inordinate delay.

9. In view of the above facts, I do not find any merit in the contention of the respondents. The applicant cannot be treated differently from the other two persons to whom similar charges were issued by the respondents. Accordingly, the Memorandum of charge dated 01.05.2003 (Annexure A/3) and impugned order of punishment dated 27.06.2012 (Annexure A/1) are quashed and set aside. Consequently, the MA No. 291/00004/2014 seeking interim relief has become infructuous and it is also disposed of accordingly.



(G. GEORGE PARACKEN)
JUDICIAL MEMBER

AHQ