

Open Court

Central Administrative Tribunal, Allahabad Bench,
Allahabad

Original Application No.330/01447/2017

This the 28th day of March, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)
Hon'ble Dr. Mrutyunjay Sarangi, Member (A)

Pankaj Mishra son of late Shrikant Mishra resident of 164, Sant Hussain Nagar Colony, Mohanpur, Pipraich Road, District- Gorakhpur.

By Advocate: Sri S. Narain

Versus

- i) Union of India through Secretary (Revenue) New Delhi.
- ii) Chief Commissioner of Customs (Preventive Zone, Patna) 4th Floor C.R. Building, Birchand Patel Path, Patna.
- iii) Chief Commissioner of Customs (Preventive U.P. and Uttrakhand) 5th and 11th Floor Kendri Bhawan, Sector H, Aliganj, Lucknow.
- iv) Commissioner, Customs, Central Excise and Service Tax, Allahabad.
- v) Presenting Officer (Rajendra Kumar) Deputy Commissioner, Central Excise and Service Tax, Division Varanasi.

Respondents

By Advocate: **Sri L.P. Tiwari**

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

By this O.A., the applicant prays for the following reliefs:-

- a) To issue an order or direction in the suitable nature quashing the entire enquiry proceedings including the charge sheet dated 23.11.2012 (Annexure 1 with compilation 2), punishment order dated

22.9.2016 (Annexure 1 with compilation I) and the rejection of appeal by the appellate authority dated 15.5.2017 (Annexure -17 with compilation 1).

ii) To issue an order or direction in the suitable nature directing the respondent No. 2 to restore the applicant in the position which existed before the passing of the impugned order dated 22.9.2016 along with the salary increments and mandatory Annual career progression (MACP) as and when it accrued.

iii) Issue any other suitable writ order or direction which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

iv) Award the cost of this original application to the applicant.

2. The brief facts emerging from the O.A. are that the applicant is presently posted as Superintendent , Custom Preventive Division, Gorakhpur.

2.1 A charge sheet was issued on 23.11.2012 which was received by the applicant on 5.12.2012. Bare perusal of charge sheet disclose that the matter relates to 28.7.2001 when the applicant was posted as Inspector at L.C.S. Sonauli.

2.2 The applicant wrote a letter on 14.12.2012 and questioned the genuineness of the shipping bills attached with the charge sheet and demanded original bills and in reply to the same, the Assistant

Commissioner , Central Excise provided the photo copy of the bills duly attested.

2.3 Applicant again wrote a letter to the enquiry officer and requested to provide the authenticated/ certified copy of the bills. The presenting officer provided documents of 94 sheets including the free shipping bills having stamped as attested from photocopy.

2.4 Proceeding report dated 24.9.2013 shows that the applicant did not confirm his signature on the shipping bills. The applicant submitted the final reply to the enquiry officer and enquiry officer submitted enquiry report and found that Article I and II are not proved and Article III and IV are proved.

2.5 Applicant submitted his final representation on 23.3.2016 and after a long gap of 17 years, punishment order was passed on 22.9.2016 imposing the punishment of reducing by the two stages the basic pay of the applicant for a period of two years and he will not earn increment of pay during such period.

2.6 Applicant preferred an appeal against the order of punishment on 3.3.2017 but the appellate authority rejected the appeal as time barred. Rejecting the appeal on the technical ground of delay is unsustainable as the delay condonation application had very relevant and satisfactory ground.

3. With the consent of both the parties, head Sri S. Narain counsel for applicant and Sri L.P. Tiwari counsel for respondents.

4. Counsel for applicant has also filed Supplementary Affidavit and submitted that at the time of passing of impugned order dated 22.6.2016, the father of applicant was battling for his life and ultimately passed away. By means of letter dated 9.11.2016 addressed to the appellate authority, applicant prayed for extending the time allowed to him for filing appeal but the same was turned down by means of letter dated 28.11.2016. The applicant has finally submit his appeal through proper channel on 3.3.2017 with some delay along with condonation of delay application. The applicant's appeal dated 3.3.2017 was forwarded by the Dy. Commissioner, Custom (P) Division Gorakhpr vide letter dated 6.3.2017 to the office of Commissioner of Custom (P) U.P. and Uttrakhand, Lucknow and the same was returned with the remark that since it was made beyond the prescribed limitation of 45 days, it may be filed by the officer directly to the Chief Commissioner, Customs (P) Zone Patna under Copy to the Commissioner's Office, Lucknow. It is further submitted that under the provision of Rule 25 of the CCS (CCA) Rules, Appellate authority has discretionary power to entertain the appeal even after expiry of the normally prescribed period of 45

days, if it is satisfied that the applicant had sufficient cause for not preferring the appeal in time. Lastly, counsel for applicant prayed that in the interest of justice this Tribunal be pleased to quash and set aside the appellate order dated 15.5.2017 and remit the matter to the Appellate authority with direction to decide and dispose of the applicant's appeal on merits after affording him personal hearing.

5. Considering the facts and circumstances of the case, we feel that no useful purpose will be served in keeping this O.A. pending and O.A. can be disposed of with direction to the appellate authority to decide the applicant's appeal on merit treating it to be within limitation within time framed.

6. Accordingly, O.A. is disposed of with direction to the appellate authority to decide the applicant's appeal on merit treating it to be within limitation by passing a reasoned and speaking order within a period of three months from the date of receipt of certified copy of this order and decision so taken be communicated to the applicant. It is made clear that we have not entered into the merit of the case. No order as to costs.

(Dr. Mrutyunjay Sarangi)
Member (A)

(Justice Dinesh Gupta)
Member (J)

HLS/-

