

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH: NEW DELHI**

**O.A No.4573/2014**

**New Delhi this the 26<sup>th</sup> day of April, 2016**

**Hon'ble Mr. Justice M. S. Sullar, Member (J)**

**Hon'ble Mr. K. N. Shrivastava, Member (A)**

B.B. Goel  
S/o Late Shri R.N.L. Goel,  
Aged 58 years,  
Superintendent,  
Customs and Central Excise, Delhi-II,  
R/o A-33-E, DDA, Munirka,  
New Delhi-110067. ... Applicant

(Argued by: Shri Sachin Chauhan, Advocate)

Versus

1. Commissioner of Central Excise,  
Delhi-II,  
C.R. Building, I.P. Estate,  
New Delhi-110109.
2. Union of India  
Through Secretary (Revenue)  
Ministry of Finance,  
Department of Revenue,  
North Block, New Delhi. ..Respondents

(By Advocate: Shri Rajeev Kumar)

**ORDER (ORAL)**

**Justice M.S. Sullar, Member (J)**

The contour of the facts and material, culminating in the commencement and relevant for disposal of instant Original Application (OA) and emanating from the record is that, applicant, B.B. Goel, while working as Superintendent of Customs in Inland Container Depot (ACTL), Ballabhgarh, (Haryana), illegally passed the fictitious bills and committed

grave misconduct. The matter was investigated by Delhi Zonal Unit of Directorate of Revenue Intelligence (DRI). It revealed that 10 (ten) firms, (mentioned there in the Statement of Imputation) exported, over-valued and sub-standard/cheap quality goods in about 200-225 containers, declaring the goods as Alloy Steel Forgings (Machined), to fictitious firms with the sole purpose of fraudulently availing Duty Entitlement Pass Book (DEPB) benefits on higher side. All these fictitious firms were controlled by Shri Vinod Kumar Garg and Shri Narsi Das Garg who obtained the undue DEPB benefits in excess of Rs.10 crores in connivance of applicant in respect of fraudulent export made from their various firms/companies at ATCL, Ballabhgarh, Faridabad by wrongful means and caused corresponding wrongful pecuniary loss to the exchequer.

2. During the course of the investigation carried out by the DRI, it further revealed that, apart from the involvement of exporting firms mentioned above, Shri B.B. Goel (applicant), who was then working as Superintendent of Customs, Export Shed, Inland Container Depot (ACTL), Ballabhgarh (Haryana), has colluded/connived with three of the aforesaid firms, namely M/s. Bulldex Metals, 541, 1<sup>st</sup> floor, Double storey New Rajinder Nagar, New Delhi, M/s. Brightwell Enterprises, 541, 1<sup>st</sup> floor, Double storey New Rajinder Nagar, New Delhi and M/s National Steel Products

Company, D-83, West Patel Nagar, New Delhi who defrauded the exchequer **to the tune of Rs. 10.82 crores by fraudulent availment of DEPB. Shri B.B. Goel, Superintendent, had given final approval for processing of 32 Shipping Bills** out of the total Shipping Bills submitted by these firms and allowed consignments to be “let exported” even after seeing the samples in many cases. Shri B.B. Goel allowed the said three exporters to avail undue DEPB benefits **to the tune of Rs.2.48 crores** in respect of the sub-standard goods covered by the 32 shipping bills detailed as per Annexure-III (E-1) out of a total undue benefit of **Rs.10.82 crores** availed by the said three firms. Though these shipping bills were brought before him many a times, i.e. during processing and before allowing “let export”, he failed to detect the quality and value of the goods exported. DRI investigations suggest that there was a monetary consideration for this failure. In this manner, the applicant was stated to have committed grave misconduct.

3. As a consequence thereof, he was served with the following impugned Memorandum and Articles of Charge:-

“Article-I

Shri B.B. Goel, while posted as Superintendent of Customs, Inland Container Depot (ACTL), Ballabgarh (Haryana) during the period from April 2002 to February 2003 and while holding charge of processing of shipping bills and examination of export consignments in the Export Shed, failed to detect the over valuation of export goods with respect to export by M/s. Buildex Metals, 541, 1 “Floor, Double Storey New Rajinder Nagar, New Delhi, M/s. Brightwell Enterprises, 541, 1” Floor, Double Storey New Rajinder Nagar, New Delhi and M/s National Steel Products

Company, D-83, West Patel Nagar, New Delhi and allowed them to avail undue Duty Entitlement Pass Book (DEPB) benefits to the tune of about Rs. 2.48 Crores at the cost of Government exchequer. He allowed final processing of shipping bills and the consignments to be "let exported". Shri B.B. Goel, the then Superintendent of Customs, Inland Container Depot (ACTL), Ballabgarh (Haryana), did not alert/supervise the subordinate staff i.e. Inspectors concerned, who were working under his direct supervision, to verify the genuineness of the export products in terms of description, quality, and value or to order for specific examination thereof. He, therefore, failed to ensure the integrity and devotion of duty of his subordinates dealing with the aforesaid shipping bills. Shri B.B. Goel, Superintendent, cleared consignments for export even after seeing the samples personally. Shri B.B. Goel, as the then Superintendent, Export Shed failed both in his capacity as a supervising officer and as an assessing/examining officer. He, thus, failed to maintain absolute integrity and has shown gross negligence, lack of devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3(1) (i), (ii) and (iii) and Rule 3 (2) (i) and (ii) of the Central Civil Services (Conduct) Rules, 1964 and rendered himself liable for action under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965.

#### Article-II

Shri B.B. Goel, the then Superintendent, facilitated the Customs clearance of cheap quality export consignments of the firms controlled by Shri Vinod Kumar Garg and managed by Shri Mudit Kumar Tiwari, for pecuniary gain. Shri B.B. Goel used to receive Rs.5,000/- to Rs.7,000/- per container for Customs clearance of export consignments of Shri Vinod Kumar Garg. Shri B.B. Goel, Superintendent, thus, failed to maintain absolute integrity and has shown gross negligence, lack of devotion to duty and acted in a manner unbecoming of a Govt. servant and thereby contravened the provisions of Rule 3(1) (i), (ii) and (iii) and Rule 3 (2) (i) and (ii) of the Central Civil Services (Conduct) Rules, 1964 and rendered himself liable for action under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965."

4. In pursuance thereof, applicant was asked to submit his written statement of defence. He submitted his reply denying the allegations levelled against him. He did not allow the enquiry to proceed smoothly and filed OA No.3649/2014 in which it was contended on his behalf that the impugned charge sheet was issued after a delay of 11

years and the subject matter of this case has been considered by the various authorities like adjudicating authority under the Customs Act, 1962 and CBI. However, the departmental enquiry was initiated against him at the instance of CVO. The contentions were refuted by counsel for the respondents. Vide order dated 11.11.2014 (Annexure A-11) by this Tribunal, the OA was disposed of being premature. However, the Disciplinary Authority(DA) was directed to consider the submission made by the applicant in his representation and to take a decision as to whether DA would like to continue with the disciplinary proceedings initiated against the applicant under Rule 14 of the Central Civil Services (Classification Control and Appeal) Rules, 1965 [hereinafter referred to as CCS(CCA) Rules] or not.

5. Strangely-enough, instead of filing the representation in pursuance of the said order and participating in and allowing the enquiry to proceed smoothly, the applicant straightaway has jumped to file the instant 2<sup>nd</sup> fresh OA on the same very grounds which he had pleaded in the previous OA. The vague excuse projected by the applicant for not filing the representation is that, 'since Disciplinary Authority has appointed an Enquiry Officer (EO) and Presenting Officer (PO) vide orders dated 20.11.2014 (Annexure A-12 Colly), there is no scope for the applicant to get any relief from the respondents' (para 4.18 of the OA).

6. The case(grounds) set-up by the applicant, in brief, insofar as relevant is that the impugned Memorandum has been issued on the basis of presumptions, assumptions & surmises without any material and cogent or tangible evidence, after lapse of period of 11 years. The Commissioner of Central Excise (Adjudication) also did not find the allegations to be true and exonerated the defaulters. It was also submitted that the CBI too has submitted the cancellation report and cleared the accused. The department has not relied upon any oral evidence in the list of witnesses.

7. According to the applicant, the Memorandum depicts complete non-application of mind on the part of the Disciplinary Authority who has chosen to act under instructions of CVO as the departmental enquiry was initiated on the basis of the advice of CVC. The initiation of departmental proceedings, serving of Memorandum and Articles of Charge are alleged to be arbitrary and illegal.

8. On the basis of the aforesaid allegations, the applicant has filed the present OA claiming the following reliefs:-

RELIEF

“(a) Set aside and quash the impugned Memorandum C.No.VIII(Vig)I&V/09/05/14 dated 03.09.2014 and quash the proceedings initiated against the applicant there under.

(b) Allow consequential relief.

(c) Pass such other or further order(s) in the favour of the applicant as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of the instant case and in the interest of justice”.

### INTERIM RELIEF

“In view of the facts and circumstances of the case and in the interest of justice, the applicant most respectfully prays that this Hon’ble Tribunal may graciously be pleased to stay the proceedings under Rule 14 of the CCS (CCA) Rules, 1965 till the disposal of the present Original Application pending before the Hon’ble Tribunal and pass such other or further order(s) in the favour of the applicant as this Hon’ble Tribunal may deem fit and proper in facts and circumstances of the instant case and in the interest of justice”.

9. The contesting respondents refuted the claim of the applicant and denied all the allegations contained in the OA and prayed for its dismissal, which need not be mentioned in detail at this stage.

10. Controverting the allegations contained in the reply of the respondents and reiterating the grounds contained in the OA, the applicant filed his rejoinder. That is how we are seized of the matter.

11. Having heard the learned counsel for the parties & having gone through the record with their valuable assistance and considering the entire matter, we are of the firm view that there is no merit and the instant OA and it deserves to be dismissed for the reasons mentioned herein below.

12. What cannot possibly be disputed here is that the applicant had earlier filed OA No.3549/2014 which was disposed of vide order dated 11.11.2014 (Annexure A-11) by a coordinate bench of this Tribunal. The operative part of the said order is as under:-

“4. Learned counsel for the applicant has submitted that the impugned charge-sheet was issued after a delay of 11 years and the subject matter of this case has been considered by various authorities like Adjudicating Authority under Customs Act, CBI and disciplinary authority who recommended for dropping the abovementioned charges. However, it is only at the instance of CVO, the impugned Memorandum of Article of charges has been issued to him. Learned counsel for the applicant has also pointed out that in the case of co-delinquent, Shri Bamim Tari, the Guwahati Bench of this Tribunal has entertained the OA 040/0000247/2014 filed by him against the chargesheet issued to him and the notices were issued to the respondents vide Order dated 24.7.2014 and as an interim measure, the operation of the impugned order dated 5/7.3.2014 therein was stayed.

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6. We considered the submissions made by learned counsel for the applicant. In our considered view, this case is pre-mature as the Disciplinary Authority has issued to the applicant a show-cause notice to explain as to why disciplinary proceedings should not be initiated against him under Rule 14 of the CCS (CCA) Rules and he has also given his defence as to why such an inquiry should not be held against him. We are, therefore, of the considered view that it is for the disciplinary authority to take a decision in the matter. Consequently we, therefore, dispose of this OA with direction to the respondents to consider the submissions made by the applicant in his representations and to take a decision as to whether they would like to continue with the disciplinary proceedings initiated against the applicant under Rule 14 of the CCS (CCA) Rules as proposed by them in the aforesaid Memorandum”.

13. Now in the present OA, the main grounds pleaded and urged on behalf of the applicant which require adjudication are (i) the pointed charge sheet has been issued after a delay of 11 years, (ii) subject matter of the enquiry has been considered by various authorities like adjudicating authority under Customs Act, CBI and Disciplinary Authority who recommended for dropping the charges, and (iii) the Disciplinary Authority initiated enquiry only on the basis of advice of CVC.

14. Meaning thereby, all the points pleaded and urged by the applicant in the earlier OA, have also been done so in the present OA. The subject matter of instant OA was directly and substantially the issue in the earlier OA. All these issues were considered and negated and the OA was dismissed as premature by this Tribunal. Therefore, the instant OA is not at all maintainable on the analogy of principle of constructive res judicata as envisaged under Explanation IV of Section 11 of The Code of Civil Procedure, 1908 (hereinafter to be referred as "CPC") which postulates that "any matter which might and ought to have been made ground of defence or attack in such former suit, shall be deemed to have been a matter directly and substantially in issue in such suit". Explanation-V further posits that "any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused".

15. In this view of the matter, the relief claimed on the basis of the grounds pleaded in instant OA for the same very cause of action would be deemed to have been refused in earlier OA. The applicant is estopped from filing the present OA on account of his own act and conduct. Hence, this OA is hit by principle of constructive res judicata & estoppels, and is not at all legally maintainable.

16. This is not the end of the matter. This Tribunal has granted the liberty to the applicant to file his representation

and the Disciplinary Authority was directed to consider the same and to take a decision as to continue with the disciplinary proceedings or not. Admittedly, the applicant did not file any such representation and has directly filed the present OA with an unfounded explanation that since the Disciplinary Authority has already appointed Enquiry Officer and Presenting Officer so there is no scope of getting any relief from it. In other words, the applicant has not come to the court with clean hands and is not entitled to any relief at this stage.

17. Ex-facie, the next contention of learned counsel that the Disciplinary Authority has submitted the list of witnesses as Nil with the charge sheet and there is no oral evidence to substantiate the charge against the applicant, is not only devoid of merit but misplaced as well. No doubt, the list of witnesses attached with the charge is Nil. At the same time, the prosecution has relied upon 8 (eight) documents Annexure E-1 to E-8 mentioned therein in the list of documents and statements including the confessional statement of the applicant and others to prove the charges. If the charges can be proved by documentary evidence then there is no legal requirement to produce oral evidence.

18. The submission of learned counsel that statement of witnesses mentioned in the list of documents recorded by the

authorities under the Customs Act are not admissible in DE, has no force.

19. The Hon'ble Supreme Court in the case of ***Percy Rustomji Basta Vs. State of Maharashtra (1971) 1 SCC 847*** while interpreting Sections 107 and 108 of the Customs Act & relevant provision of the India Evidence Act, 1872 and relying upon its earlier judgment in the case of ***Illias Vs. Collector of Customs, Madras MANU/SC/0297/1968*** observed that Customs Officer conducting an inquiry under Section 107 or 108 of the Act is not a Police officer and the person against whom the inquiry is made is not an accused and the statement made by such a person in that inquiry "is not a statement made by a person accused of an offence" and is admissible in evidence.

20. It was further observed by Hon'ble Apex Court in the case of ***The Assistant Collector of Central Excise, Rajamundry Vs. Duncan Agro Industries Ltd. and Others 2000 (7) SCC 53*** that statement recorded by customs officers under Section 108 of the Customs Act is admissible in evidence. The same view was reiterated by the Hon'ble Delhi High Court in the case of ***Krishnan Vs. R.K. Virmani, Air Customs Officer 2013 (288) ELT 366 (Del.)*** that as per settled law, statement of any person called for enquiries during investigation by the authorities under the Customs Act, can be recorded by the customs officer. Such statement is admissible in evidence.

21. Therefore, if the department proposes to prove the charges against the applicant on the basis of 8 (eight) documents including the confessional statement of the applicant and others there was no necessity to introduce the names of the witnesses in the list. As to whether the documentary evidence to prove the charge is sufficient or not are the matters to be decided by the EO during the course of the enquiry and not by this Tribunal at this stage as urged on behalf of the applicant.

22. The further argument of the learned counsel that the delay of about 11 years in serving the charge-sheet is fatal to the prosecution case, cannot be accepted and deserves to be ignored for more than one reason. At the first instance, as depicted hereunder, the point of limitation was taken by the applicant and negated by this Tribunal in its order dated 11.11.2014 (Annexure A-11). Secondly, it is also the case of the applicant that the matter had remained pending for long before CBI, authorities under the Customs Act and CVC, naturally due to procedural wrangles. Moreover, the question of explanation of delay and its effect would naturally depend upon variety of factors which can be decided only on the basis of evidence produced by the parties during the enquiry proceedings. The Hon'ble Supreme Court in **B.C. Chaturvedi Vs. Union of India AIR 1996 SC 484** has held as under:-

“11. The next question is whether the delay in initiating disciplinary proceeding is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the

Constitution. Each case depends upon its own facts. In case of the type on hand, it is difficult to have evidence of disproportionate pecuniary resources or assets or property. The public servant, during his tenure, may not be known to be in possession of disproportionate assets or pecuniary resources. He may hold either himself or through somebody on his behalf, property or pecuniary resources. To connect the officer with the resources or assets is a tedious journey, as the Government has to do a lot to collect necessary material in this regard. In normal circumstances, an investigation would be undertaken by the police under the Code of Criminal Procedure, 1973 to collect and collate the entire evidence establishing the essential links between the public servant and the property or pecuniary resources. Snap of any link may prove fatal to the whole exercise. Care and dexterity are necessary. Delay thereby necessarily entails. Therefore, delay by itself is not fatal in this type of cases, it is seen that the C. B. I. has investigated and recommended that the evidence was too strong enough for successful prosecution of the appellant under Section 5 (1) (e) of the Act. It had, however, recommended to take disciplinary action. No doubt, much time elapsed in taking necessary decisions at different levels. So, the delay by itself cannot be regarded to have violated Article 14 or 21 of that Constitution.”

23. There is yet another aspect of the matter which can be viewed entirely from a different angle. As indicated hereinabove, the applicant neither filed any representation in pursuance of the order of this Tribunal (Annexure A-11) nor participated in the enquiry proceedings nor did he allow the enquiry proceedings to proceed smoothly. Instead he has filed the present OA. All the points taken and now urged on behalf of the applicant in the present OA have already been rejected by this Tribunal in its order (Annexure A-11). Moreover, such intricate questions cannot possibly be decided in the absence of any evidence by this Tribunal at the preliminary stage of the enquiry. The enquiry officer and the disciplinary authority will naturally evaluate the evidence at the first instance after the same is produced by the parties and then would pass the

appropriate order. This matter is no more res integra and is now well settled.

24. An identical issue came to be decided by the Hon'ble Supreme Court in a celebrated judgment in the case of **Union of India V/s. Upendra Singh (1994) 3 SCC 357** wherein having considered the scope of judicial review, at the stage of framing the charge, it was ruled as under:-

“6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be...”

25. Therefore, keeping in view the seriousness of allegation of grave misconduct and allegation of bribe against the applicant, no extraordinary ground to entertain the instant OA at this premature stage even without the completion of DE and before exhausting all the departmental remedies is made out. In view of the law laid down by the Hon'ble Apex Court in the cases of **S.S. Rathore Vs. State of Madhya Pradesh (1989) 4 SCC 582** and **The Govt. of A.P. and Others Vs. P. Chandra Mouli and Another (2009) 13 SCC 272**, we are of the view that the OA cannot be entertained. Hence, the contrary argument of the learned counsel that the OA is liable to be allowed at this stage “*stricto-sensu*” deserve to be and

are hereby repelled. The crux of law laid down by the Apex Court in the indicated judgments is *mutatis mutandis* applicable to the present case and is complete answer to the problem in hand.

26. No other point, worth consideration, has been urged or pressed by learned counsel for the parties.

27. In the light of the aforesaid reason and without commenting further anything on merit, lest it may prejudice the case of either side during the course of disciplinary proceeding, as there is no merit, the instant OA is hereby dismissed in the obtaining circumstances of the case.

28. Needless to mention that nothing observed herein above, would reflect in any manner on the merits of the case in the enquiry proceedings as the same has been so recorded for a limited purpose for deciding the present OA at this stage. No costs.

**(K.N. SHRIVASTAVA)**  
**MEMBER (A)**

**(JUSTICE M.S. SULLAR)**  
**MEMBER (J)**

**Rakesh**