

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.4150/2013

Order Reserved on: 01.12.2016
Order pronounced on 24.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)
Hon'ble Shri V. N. Gaur, Member (A)

Mohammad Naushad
R/o 1690, Kucha Dakhni Rai
Darya Ganj
New Delhi – 110 002. ... Applicant

(By Advocate: Shri Piyush Sharma)

Versus

Union of India
Through Secretary (Revenue)
Ministry of Finance, Department of Revenue
Central Board of Excise and Customs
North Block
New Delhi. ... Respondent No.1

Commissioner of Customs
Central Revenue Buildings, Queen's Road
P B NO.5400
Bangalore – 560 001. .. Respondent No.2

(By Advocate: Shri D.S.Mahendru)

ORDER

By V. Ajay Kumar, Member (J):

The applicant, an Inspecting Officer, in the Department of Revenue, filed the OA questioning the Annexure A2-Disciplinary Order

dated 31.03.2011 whereunder he was imposed with the penalty of compulsory retirement from service and the Annexure A1-Appellate Order dated 05.07.2012 whereunder his appeal was rejected.

2. The facts of the case, as narrated in the OA, are that the respondents issued Annexure A3-Charge Memorandum dated 04.05.2006, containing four Articles of Charges, under Rule 14(1) of the CCS (CCA) Rules, 1965 alleging certain omissions and commissions on the part of the applicant while he was working as Appraiser, ICD, Bangalore, and the main Article No.1 of the said Charge Memorandum, reads as under:

Article I

Shri M. Naushad, while working as Appraiser at ICD, Bangalore, was in charge of import assessment. An import General Manifest (IGM) No.2482 dated 04.04.03 was filed in ICD showing the importer as M/s G.M. Exports, No.1686, Marwari Galli, Ilkal-587125 and description of the goods as "Vitrified tiles". A request to change the description of the goods to "Ceramic Tiles" in the IGM was made by the importer on 4.4.03 and Bill of Entry No.2416 was filed on 5.4.03 indicating the goods as "Ceramic Tiles". Shri M. Naushad, appraiser who was in charge of assessment of the B/E No.2416 dt. 5.4.03 failed to take on record the request for IGM amendments on a separate file and obtain permission of the senior officers to permit the amendment in the IGM as was the normal practice. Further when the importer requested on 7.4.03 to change the description of the goods in the Bill of Entry from "Ceramic Tiles" to "Vitrified Tiles" he failed to refer the matter to noting section to have the description reconciled so that both would read as "Vitrified Ceramic Tiles" as prescribed in para 14(24) on page 30 of the Appraising Manual (Volume 1) issued by Calcutta Customs House.

Thus Shri M. Naushad, Appraiser failed in proper discharge of his duties and failed to maintain absolute integrity and devotion to duty in terms of Rule 3(1) (i) and 3(1)(ii) of CCS (Conduct) Rules, 1964. He also acted in a manner unbecoming of a government servant and thereby contravened the provisions of Rule 3(1)(iii) ibid. Therefore he is liable for action under CCS (CCA) Rules, 1965."

The other Charges, i.e., Articles of Charges 2 to 4 are also relating to and consequential to the same issue.

3. A detailed inquiry was conducted in pursuance of the aforesaid Charge Memorandum, and the Inquiry Officer by his report, dated 30.09.2009, concluded as under:

“In view of the above position, **the status of** each charge levelled against Shri Naushad, Appraiser, in Article I to Article IV of the Charge Memorandum, **i.e., whether, `Proved or Not Proved’**, is given below:

ARTICLE I

- (1) In respect of amendment of IGM No.2482 dated 4-4-2003 – **STAND NOT PROVED**
- (2) In respect of amendment of B/E No.2416 dated 5-4-2003 – **STAND PROVED**

ARTICLE II

- (1) The Charges leveled in Para(a)- **STAND PROVED**
- (2) The Charges leveled in Para(b)- **STAND PROVED**
- (3) The Charges leveled in Para(c)- **STAND PROVED**
- (4) The Charges leveled in Para(d)- **STAND PROVED**
- (5) The Charges leveled in Para(e)- **STAND PROVED**
- (6) The Charges leveled in Para(f)- **STAND PROVED**

ARTICLE III

- (1) The Charges leveled in Para(a)- **STAND PROVED**
- (2) The Charges leveled in Para(b)- **STAND PROVED**
- (3) The Charges leveled in Para(c)- **STAND PROVED**

ARTICLE IV

- (1) The charges levelled in Para(a)- **STAND PROVED**
- (2) The charges levelled in Para(b)- **STAND PROVED**
- (3) The charges levelled in Para(c)- **STAND PROVED**
- (4) The charges levelled in Para(d)- **STAND PROVED”**

4. After considering the representation of the applicant made against the findings of the Inquiry Officer, the Disciplinary Authority, vide the impugned Annexure A2, dated 31.03.2011, while imposing the penalty of compulsory retirement on the applicant, concluded as under:

“ CONCLUSION

56(i). Once the examination report viz., vitrified ceramic tiles along with the actual size 500X500X10mm was signed by S/Shri Dharan Kumar and Gopinath, the examination inspector/appraiser respectively, and given to the CO for assessment, it was the duty of the CO to impose anti-dumping

duty on the vitrified ceramic tiles, the non-imposition of which has resulted in huge loss of revenue to the exchequer to the tune of Rs.43,95,658/-.

(ii) On noticing the variation in the measurement of the tiles i.e., from the earlier 400X400X10mm to the 500X500X10mm and also the description of goods being vitrified tiles, the CO assessed a differential duty of Rs.20,263/- accordingly. Noticing the discrepancies and misdeclaration, it was his duty to order for 100% examination which would have avoided the suppression in the quantity declared by the assessee which resulted in the loss of revenue of customs duty of Rs.15,53,751/-.

(iii) On both the above counts, instead of booking a case against the assessee, the CO facilitated the evasion of duty, and also in view of the fact that the country of origin of the said consignment was China, the CO failed to apply his mind which has resulted in the huge loss of revenue to the Government, to the extent of Rs.59,49,409/-."

5. On an appeal, made by the applicant, against the said Disciplinary Authority's order, the Appellate Authority vide Annexure A1 dated 05.07.2012, rejected the appeal of the applicant and accordingly confirmed the punishment of compulsory retirement imposed on the applicant. Hence, the present OA is filed, seeking the following relief(s):

"a) Set aside and quash the impugned Order-in-Appeal No.03/2012 (Vig.) dated 05.07.2012 passed by the learned Chief Commissioner of Customs, Bangalore.

b) Set aside and quash the impugned order C.No.II/10-A/2/2005.Cus.A3 dated 31.03.2011 passed by the Disciplinary Authority, learned Commissioner of Central Excise, Bangalore and quash the proceedings initiated against the applicant thereunder.

c) Set aside and quash the impugned Charge Sheet bearing C.No.II/IOA/2/2005-Cus.A3 and quash the proceedings initiated thereunder dated 04.05.2006."

6. Heard Shri Piyush Sharma, the learned counsel for the applicant and Shri D.S.Mahendru, the learned counsel for the respondents, and perused the pleadings on record.

7. The learned counsel for the applicant, inter-alia, raised the following grounds in support of the OA prayer:

- (A) (a) Since the allegations levelled against the applicant also attracts the penal provisions under the Customs Act, 1962 and the Rules made thereunder, the respondents initiated proceedings against the applicant, and Shri T.M.Gopinath and Shri Amit Chaudhary, also Appraisers and Shri Dharan Kumar, Inspector apart from certain private persons, who are connected with the allegations under the provisions of the Customs Act, 1962. The Commissioner of Customs conducted a detailed inquiry in pursuance of the said initiation, and by his order dated 31.08.2004 though imposed various penalties on the private persons, dropped the proceedings initiated against the applicant, Shri T.M.Gopinath and Shri Amit Chaudhary, Appraisers and Shri Dharan Kumar, Inspector.
- (b) The appeals filed by the respondents against the aforesaid order of the Commissioner of Customs dropping the proceedings initiated under the Customs Act, 1962 against the applicant and others were also dismissed, by Order dated 15.09.2006.
- (c) The allegations made against the applicant before the Commissioner of Customs under the provisions of Customs Act, 1962, and the witnesses examined therein, and the documents marked therein,

are identical and same in the departmental inquiry, conducted against the applicant. Once the proceedings against the applicant in the identical circumstances and with regard to very same allegations and evidence were dropped, the findings made by the inquiry officer in the departmental inquiry and the disciplinary and appellate orders passed thereon basing on the same set of facts and evidence are perverse, unsustainable and liable to be set aside.

(d) The learned counsel placed reliance in support of this contention, on the following decisions:

- i. OA No.2862/1997 dated 07.08.2000 in **R.D.Gupta v. Union of India & Others** of this Tribunal (Principal Bench), as upheld by the Hon'ble High Court of Delhi and of the Hon'ble Apex Court.
- ii. OA No.539-HR-2007 dated 13.02.2009, in **Rajeev Sood v. Union of India & Others** of the Chandigarh Bench of this Tribunal.
- iii. O.A.No.1690/2007 dated 19.11.2008 in **J.P.Singh v. Union of India & Others**, of this Tribunal (Principal Bench), as upheld by

the Hon'ble High Court of Delhi in WP(C)
No.11881/2009 dated 17.12.2013.

- (B) The Annexure A1 - Charge Memorandum, dated 04.05.2006, wherein four Article of Charges were levelled against the applicant, ten documents were shown as List of Documents by which the said Article of Charges are proposed to be sustained, and no witnesses were mentioned as List of Witnesses. But not a single witness on behalf of the respondents was examined in the departmental inquiry and not even a single document was marked and proved in the departmental inquiry. Hence, the inquiry is violative of the principles of natural justice and rules of inquiry, and accordingly, the inquiry report and the consequential disciplinary and appellate orders are liable to be quashed.
- (C) The punishment of compulsory retirement imposed upon the applicant is disproportionate to the gravity of the charges made against the applicant.
- (D) In addition to the applicant, only Dharan Kumar, Inspector was proceeded departmentally and was imposed with lesser punishment, whereas the applicant was imposed with the punishment of compulsory retirement. Hence, the imposition of the

punishment of compulsory retirement is arbitrary and discriminatory and liable to be set aside.

- (E) The charges are pertaining to the year 2003 and whereas, the chargesheet was issued on 04.05.2006 and hence, the chargesheet and the consequential proceedings are liable to be dismissed on the ground of abnormal delay in initiation of the disciplinary proceedings.

8. On the other hand, the learned counsel for the respondents would contend as under:

- i) The scope of inquiry under the provisions of the Customs Act, 1962 is different and distinct from that of the departmental inquiry under the CCS (CCA) Rules, 1965, and hence, though the charges before both the authorities are identical, but the dropping of the charges before one authority cannot have any bearing on the proceedings before the other authority.
- ii) The decisions on which the applicant placed reliance are not applicable as the facts in the present case are different.
- iii) The applicant admitted the charges and sought lenience and hence, he is estopped from questioning the disciplinary proceedings in any manner.
- iv) The applicant having not chosen to examine himself as defence witness, and not examined any other witnesses

on his behalf, to disprove the charges, cannot contend that no witnesses on behalf of the respondents were examined in the inquiry.

- v) Though no witnesses were examined before the inquiry officer, but he considered the statements of various witnesses deposed in a preliminary inquiry and after applying his mind to the entire evidence and the documents in proper perspective, came to the final conclusion, by holding the applicant is guilty, and hence, there is no illegality.
- vi) The learned counsel placed reliance on the following decisions in support of his averments:
- a) **Union of India & Others v. P. Gunasekaran**, CA No.10386/2014, decided on 19.11.2014 by the Hon'ble Supreme Court.
 - b) **Senior Superintendent of Post Offices, Pathanamthitta and Ors. v. A. Gopalan**, ATJ 1998(1) SC 571.
 - c) **The Deputy Inspector General of Police & Anr. v. S. Samuthiram**, Civil Appeal No.8513/2012, decided on 30.11.2012 by the Hon'ble Supreme Court of India.
 - d) **R.S.Saini v. State of Punjab & Ors.**, ATJ 1999(3) SC 476.

9. In view of the aforesaid rival contentions, it is necessary to examine the relevant provisions of the Customs Act, 1962 which are extracted as under:

SECTION 112:

"112. Penalty for improper importation of goods, etc.-
Any person, -

(a) who, in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such an act, or

(b) who acquires possession of or is in any way concerned in carrying, removing, depositing, harbouring, keeping, concealing, selling or purchasing, or in any other manner dealing with any goods which he knows or has reason to believe are liable to confiscation under section 111, shall be liable, -

(i) in the case of goods in respect of which any prohibition is in force under this Act or any other law for the time being in force, to a penalty not exceeding the value of the goods or five thousand rupees, whichever is the greater;

(ii) in the case of dutiable goods, other than prohibited goods, to a penalty not exceeding the duty sought to be evaded on such goods or five thousand rupees, whichever is the greater;

(iii) in the case of goods in respect of which the value stated in the entry made under this Act or in the case of baggage, in the declaration made under section 77 (in either case hereafter in this section referred to as the declared value) is higher than the value thereof, to a penalty not exceeding the difference between the declared value and the value thereof or five thousand rupees, whichever is the greater;

(iv) in the case of goods falling both under clauses (i) and (iii), to a penalty not exceeding the value of the goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest;

(v) in the case of goods falling both under clauses (ii) and (iii), to a penalty not exceeding the duty sought to be evaded on such goods or the difference between the declared value and the value thereof or five thousand rupees, whichever is the highest."

SECTION 124:

"124. Issue of show cause notice before confiscation of goods, etc. - No order confiscating any goods or imposing any penalty on any person shall be made under this Chapter unless the owner of the goods or such person -

(a) is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;

(b) is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and

(c) is given a reasonable opportunity of being heard in the matter :

Provided that the notice referred to in clause (a) and the representation referred to in clause (b) may, at the request of the person concerned be oral."

SECTION 127:

"127. Award of confiscation or penalty by customs officers not to interfere with other punishments. -The award of any confiscation or penalty under this Act by an officer of customs shall not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of Chapter XVI of this Act or under any other law."

10. In **R.D.Gupta** (supra), the applicant who was working as Inspector of Central Excise was proceeded under the provisions of the Customs Act, 1962 and the Commissioner of Customs after conducting an inquiry came to the conclusion that the charges levelled against the applicant were not proved, and the said decision was also accepted by the Central Board of Customs and Excise. When a departmental chargesheet was issued on the same allegations, he challenged the same. This Tribunal, while allowing the said OA, observed as under:

"4. This shows that the applicant was not blameworthy or remiss at all. This order has become final. The Board of Customs also accepted this. The present charge sheet is again issued containing the same allegations. Admittedly, the allegations are the same. No doubt, it is true, he was charged for violating the Conduct Rules. The Commissioner, having considered the entire evidence, both oral and documentary found that there was no evidence, whatsoever, against the applicant and accordingly exonerated. It is seen that the witnesses as well as the documentary evidence in the present case are the same as in the previous enquiry. When once it was found by the competent authority that the charges were not established, in our view considering the allegations and findings in this case. It is not open to the department to proceed once more afresh for the violation of same allegations, on the same evidence. If it is a case where a misconduct, on a different set of facts and, evidence was sought to be established, then a fresh charge may be laid. As stated supra in this enquiry, the case is sought to be proved on the same evidence orally and documentary. In view of the above, we hold that the impugned charge sheet and proposed enquiry as illegal, the charge sheet and all further proceedings taken in pursuance of the charge sheet are quashed."

The said decision was upheld by the Hon'ble High Court and Hon'ble Supreme Court.

11. In **Rajeev Sood** (supra) also in the similar circumstances the chargesheet was questioned and this Tribunal by observing that his case is identical to the case of **R.D.Gupta** (supra), allowed the OA.

12. In **J.P.Singh** (supra), an Assistant Commissioner of Central Excise, at the relevant time, filed the OA in the identical circumstances, i.e., when a penalty was imposed on him, under the provisions of the Customs Act, 1962 and on challenge, the same was quashed by the Customs Excise and Service Tax Tribunal, and even thereafter, a departmental chargesheet was issued to him, on the same allegations. The grounds raised in the said OA, as narrated in Para 3 of the OA Judgement, are as under:

"3. First, the charges against the Applicant are the same as in the enquiry under the Customs Act, 1962. The CESTAT quashed the penalty imposed by the Respondents. The finding of CESTAT has remained unchallenged and has become final. Third, the statement of witnesses, cited in the list of relied upon documents, have been recorded behind the back of the Applicant without affording him an opportunity to cross examine them. Cognizance of these statements cannot be taken without their appearing in the disciplinary enquiry and giving the Applicant an opportunity to cross examine them. -The only witnesses listed in the list of witnesses are those who had recorded the statements of persons during the enquiry under the Customs Act. The charge is founded solely on those statements. These witnesses can only state that they had recorded the statements, of which the copies have been placed as relied upon documents. It is contended that the charge cannot be proved without examining the witnesses and giving the Applicant opportunity to examine them and by only considering their previous depositions. Fourth, the charges against the Applicant relate to the acts done in 1998 and the memorandum of charge has been served on the Applicant after an inordinate delay of eight years in May, 2006. No explanation for the delay has been given by the Respondents. The delay has caused serious prejudice to the Applicant. "

This Tribunal, after exhaustively considering the aforesaid grounds with reference to various decisions of the Hon'ble Apex Court, by approving the grounds raised as indicated above, allowed the OA, and quashed the charge memorandum therein. The said decision has been affirmed by the Hon'ble High Court of Delhi in WP(C) No.11881/2009.

13. In the present case, the Commissioner of Customs in his Order dated 31.08.2004, while dropping the proceedings initiated against the applicant under the Customs Act, 1962, observed as under:

"210. However I hasten to make it very clear here that the observations made above are only in respect of the charges proposed against the Customs Officers under the provisions of the Customs Act, 1962. The question of initiating departmental action against the officers is a matter that should be considered separately by the proper authorities on the basis of a proper enquiry. The observations made here in above, has nothing to do with the investigation and out come of such proceedings, because such action does not form part of these adjudication proceedings."

14. The learned counsel for the respondents, by drawing our attention to the aforesaid observation of the Commissioner of Customs read with Section 127 submits that the respondents are empowered to proceed against the applicant departmentally though the charges are the same. The said contention is unsustainable in view of the decisions in **R.D.Gupta, Rajeev Sood and J.P.Singh** (supra). The other contentions of the respondents, in the circumstances, and in the facts of the case, are unsustainable.

15. We have carefully gone through the entire report of the Inquiry Officer dated 13.09.2007. As rightly contended by the learned counsel for the applicant, and not disputed by the respondents counsel, not even a single witness was examined in the departmental inquiry and no document is marked and proved by any witness of the respondents. The inquiry officer, gave his findings basing on the list of documents enclosed to the chargesheet without there being marked before him. All the statements basing on which he gave his finding were admittedly

the statements recorded before issuance of the chargesheet and before other authorities, such as, Directorate of Revenue Intelligence, etc., As a result, the applicant was deprived of cross-examining any witness and confronting with any document, pitted against him. The whole process of inquiry is clearly in violation of the principles of natural justice and also the CCS (CCA) Rules, 1965 and against to the settled principles of law. Accordingly, the inquiry report dated 30.09.2009 and the impugned orders passed in pursuance thereto are liable to be quashed on this ground also.

16. As rightly submitted by the learned counsel for the applicant, identical grounds, raised in the present OA were also raised in **J. P. Singh** (supra) and were accepted by this Tribunal.

17. There is no cavil with the principles of law enunciated by the Hon'ble Apex Court in the decisions on which the learned counsel for the respondents placed reliance. However, in none of the said cases the scope of inquiry under the provisions of Customs Act, 1962 vis-à-vis the departmental inquiry under the CCS (CCA) Rules, 1965 were considered. Similarly, none of those decisions supports the view that an employee can be imposed with a punishment in pursuance of an inquiry where no witnesses were examined and no opportunity of cross-examination was provided to the charged officer and where the statements recorded behind the back of the charged officer were considered. Hence, the said decisions have no relevance in the facts of the present case.

18. It is the settled principle of law that even after punishment imposed upon the employee is quashed by the Court or Tribunal, the payment of back wages still remains discretionary and an order can be passed keeping in view the circumstances of the case. [See: **CMD Coal India Limited v. Anant Saha & Others**, (2011) 5 SCC 142; **State Bank of Bikaner & Jaipur v. Nemi Chand Nalwaya**, (2011) 4 SCC 584; and **Commissioner of Police, Delhi v. Jai Bhagwan**, (2011) 6 SCC 376]

19. In the circumstances and for the aforesaid reasons, the OA is allowed, and the impugned orders are quashed and the respondents are directed to reinstate the applicant into service within 60 days from the date of receipt of a copy of this order, with all consequential benefits. However, in the circumstances, the applicant is not entitled for any arrears of salary for the break period. No order as to costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)

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