

**Central Administrative Tribunal
Principal Bench
New Delhi**

OA No.1837/2014

This the 20th day of November, 2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman

Hon'ble Mr. Pradeep Kumar, Member (A)

P. S. Purkayastha, Aged 61 years (Group-A)
Ex-Deputy Commissioner Central Excise,
S/o P. K. Purkayastha,
E-15/D, DDA Flats, Munirka,
New Delhi-110067.

... Applicant

(By Mr. S. Sunil, Advocate)

Versus

1. Union of India through Secretary,
Department of Revenue,
Ministry of Finance, North Block,
New Delhi-110001.
2. Through: The Chairman,
Central Board of Customs & Excise,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110011.

... Respondents

(By Mr. Vidya Sagar for Shri H. K. Gangwani, Advocate)

ORDER

Justice L. Narasimha Reddy, Chairman :

The applicant was working as Deputy Commissioner of Customs, Inland Container Depot (ICD), New Delhi, during November-December, 2002. He was issued a charge memorandum dated 16.10.2005, stating that while acting as

Deputy Commissioner in the ICD, he cleared 18 shipping bills submitted by various firms in respect of ready-made garments/ leather harness goods for export, under duty drawback scheme, without making efforts to verify their contents, and on further verification by a team of the Customs Preventive Commissionerate, it was found that the goods were of very inferior quality, and the applicant allowed huge amount as duty drawback. On receipt of the charge memorandum, the applicant submitted his representation.

2. A departmental inquiry was conducted, and the inquiry officer submitted its report, holding that the charges were not proved. The disciplinary authority, however, issued a memorandum, proposing to disagree with the findings of the inquiry officer, duly indicating the reasons. The applicant submitted his reply thereto. The disciplinary authority forwarded the entire file at that stage to the UPSC, and on the basis of the advice tendered by them, punishment of reduction to a lower stage in the time scale of pay by one stage till his retirement, with cumulative effect, was imposed on the applicant, through order dated 26.07.2013. The same is challenged in this OA.

3. The applicant contends that the verification of the samples was mostly the duty of the Superintendent/Inspector, and despite that, he too made some efforts to verify the samples, and that the inquiry officer also found that there were no lapses on his part. It is stated that despite such clear record, the disciplinary authority has chosen to disagree with the findings of the inquiry officer, and imposed the punishment, without there being any basis.

4. The respondents filed a counter affidavit opposing the OA. It is stated that the very purpose of posting an officer of the rank of Deputy Commissioner, at the ICD was to ensure that proper verification is undertaken before clearing the goods for export, that too, with the benefit of duty drawback, and that the applicant has failed in discharge of his duties. It is stated that the disciplinary authority assigned cogent reasons, both while proposing to disagree with the findings of the inquiry officer, and while imposing the punishment, and that no exception can be taken to the impugned order. It is also stated that the prescribed procedure was strictly followed.

5. We heard Shri S. Sunil, learned counsel for the applicant, and Shri Vidya Sagar for Shri H. K. Gangwani, learned counsel for the respondents.

6. The applicant was posted as Deputy Commissioner at the ICD for a brief period of two months. He was required to satisfy himself as to the value of the goods, which are sought to be exported, in the context of permitting duty drawback. It is not in dispute that the applicant cleared as many as 18 consignments, and when the team of the Customs Preventive Commissionerate inspected the goods, it emerged that the same were of very poor quality, and not of the value mentioned in the bills. The applicant does not dispute these findings. However, his effort is only to put the blame on the subordinate staff, such as Superintendent and Inspector.

7. It is no doubt true that the inquiry officer held that the charges levelled against the applicant were not proved. The disciplinary authority issued a notice proposing to disagree with the findings, duly indicating reasons. The representation received from the applicant, together with the disagreement note was forwarded to the UPSC, which, in turn, proposed the punishment against the applicant.

8. It is not as if that the disciplinary authority has just disagreed with the findings and held the charges as proved. In the impugned order, the following reasons were assigned in support of the conclusions:

“And whereas, the representation of Shri P. S. Purkayastha has been examined in the light of facts and circumstances of the case and material evidence available on record and the following facts emerge:-

- (a) As stated by the IO, the defence at no stage questioned the value as opined by the experts, or the competence or otherwise of the said experts, or the representative character of the sample produced to the CO, or the factual position as narrated by the Inspector Shed and Supdt Shed in their statements. Nor did he request for producing the representative sample or the goods under seizure to be examined by any other experts. In the face of these facts, the IO has held that the CO failed to ascertain the quality and value of the consignments in question.
- (b) There is nothing in CCS (CCA) Rules, 1965 and orders/instructions issued thereunder which prohibits splitting of various allegations made in a charge.
- (c) It is not correct on the part of CO to claim that the sample shown to him was of good quality as the goods on examination by the officer of Preventive Commissionerate were found to be of very inferior quality. It is also clear from IO's report that the defence at no stage questioned the value as opined by the persons dealing with textile produces/readymade garment, or their competence or the representative character of the sample

produced to the CO. Shri S.K. Sharma, Inspector and Smt. Rita Khanna, Supdt. have confirmed during cross examination on 3.8.2007 that the sample drawn was duly signed by the Inspector (Shri S. K. Sharma) while sending it to the CO.

- (d) The charge against the CO is that of lack of devotion to duty and exhibiting conduct unbecoming of a public servant. No Custom officer who has put in a long service as the CO could allow the consignment for export if the value is about 1/11th or 1/8th as the case may be of the declared value. A smaller variation in the declared and actual value could have been considered as human error. If the CO was nourishing any doubt, he could have asked for market inquiry which he failed to do.
- (e) As per CBEC circular No.83/95-Cust., dated 20/7/1995, it is the duty of AC/DC to conduct test check of 5% cases on random basis. In this case, DC (Processing) had given a clear instruction "to check the quantity/value of goods in respect of shipping bill no.1272506 dt. 10.12.12". As such, it was the responsibility of the CO to ascertain the quantity/quality/value of the consignments meant for exports.
- (f) The contention that Smt. Rita Khanna, Supdt who was also charge-sheeted, amongst others, for the lapse relating to the same SB No.1272506 dated 10.12.2002, has been exonerated by the Chief Commissioner of Customs, New Delhi vide order dated 13.01.2013, is not tenable, since it was the responsibility of CO to check the quantity/value of goods in respect of bill no.1272506 dt. 10.12.12.
- (g) As stated earlier, the charge against the CO is that of lack of devotion to duty and exhibited conduct unbecoming of a public

servant. The penalty recommended by the Commission appears to be commensurate with the nature and gravity of the proven charge against the CO.”

9. From this, it becomes clear that the disciplinary authority was able to demonstrate that there were serious lapses on the part of the applicant. The punishment imposed for these lapses cannot be said to be either disproportionate, or without basis. The applicant has since retired from service.

10. We do not find any merit in the OA, and accordingly the same is dismissed. There shall be no order as to costs.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/