CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No.1343 of 2012

Orders reserved on : 10.08.2018

Orders pronounced on : 20.08.2018

Hon'ble Ms. Nita Chowdhury, Member (A)
Hon'ble Mr. S.N. Terdal, Member (J)

Ajai Kumar Arora,
Superintendent,
Customs & Central Excise,
R/o SA-104, Gulmohur Tower,
Sector-6, Chiranjeev Vihar,
Ghaziabad.

....Applicant

(By Adv. : Ms. Vidhushi Shubham for Shri Piyush Kumar)

VERSUS

1. Union of India
Through Secretary (Revenue)
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.

2. Commissioner,
Customs & Central Excise Commissionerate,
C.G.O. Complex II,
Kamla Nehru Nagar,
Ghaziabad.

.....Respondents

(By Advocate : Shri R.V. Sinha with Shri Gyanendra Singh, Shri Amit Sinha and Vaibhav Pratap Singh)

O R D E R

Ms. Nita Chowdhury, Member (A):

The instant OA has been filed by the applicant seeking the following reliefs:-

"a) Set aside and quash the impugned Order-in-Appeal No.02/Appl./CC-MRT/2011 dated

26.7.2011 passed by the learned Chief Commission, Customs & Central Excise, Meerut Zone, Meerut;

b) Set aside and quash the impugned Order-in-Original No.02/Commr./2010 dated 29.10.2010 passed by the learned Commissioner, Customs & Central Excise, Ghaziabad;

c) Set aside the impugned Memorandum bearing C.No.II (8) 422 – VIG/M-II/03/Pt.-V/764 dated 29.08.2005 and quash the proceedings initiated against the applicant thereunder;

d) Allow Consequential relief;

e) pass such other or further order(s) in 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."

2. This OA was earlier heard by this Tribunal and vide Order dated 15.10.2014, this Tribunal allowed the instant OA and quashed and set aside the Memorandum dated 29.8.2005 by which the departmental proceedings were initiated against the applicant, impugned orders of the Disciplinary Authority dated 29.10.2010 and that of the Appellate Authority dated 26.07.2011 with the directions to the respondents to restore all the benefits which the applicant has been deprived of due to the aforesaid orders. The respondents shall also pass appropriate orders in compliance of the aforesaid directions within a period of two months from the date of receipt of a copy of this order.

3. Feeling aggrieved by the aforesaid Order of this Tribunal, the respondents had preferred a Writ Petition (Civil) No.24014/2015 before the Hon'ble High Court of Allahabad

and the Hon'ble High Court of Allahabad vide its Order dated 3.9.2015 passed in the said Writ Petition restored this OA to its original number and directed the respondent no.2, i.e., this Tribunal to **examine the merits of the OA as fresh specifically with records of charge no.2**. The detailed order of the Hon'ble Delhi High Court in the said Writ Petition is reproduced as under:-

> *"This writ petition is directed against the judgment and order of the Central Administrative Tribunal, Delhi passed in Original Application No. 1343 of 2012 dated 15.10.2014.*
>
> *Facts in short leading to the writ petition are as follows :*
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> *Ajai Kumar Arora, respondent no.1 to the writ petition was employed as Superintendent, Custom and Central Excise at Inland Container Depot (ICD), Moradabad. He was proceeded with departmentally for various acts and omissions, which according the department amounted to misconduct by issuance of a charge sheet dated 29.8.2005. Assistant Commissioner, who conducted the departmental enquiry after following the procedure prescribed in the matter of conduct of such enquiry, submitted his enquiry report to the Disciplinary Authority on 16.6.2009. Four charges were levelled against the petitioner and in respect of charges no. 1, 3 and 4, the Enquiry Officer found that the charges have not been brought home but so far as charge no.2 is concerned, the finding returned by the Enquiry Officer reads as follows :*
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> *"Second Charge (para 2 of Annexure-II) is that Shri A.K.Arora, Superintendent had in an unauthorized manner allowed the factory stuffing in respect of the questioned Shipping bills because as per Public Notice No. 15/95 dt. 15.11.95 as well as Exim Policy 1997-2002, the factory stuffing was not permissible in the said case.*
>
> *As per Public Notice No. 15/95 dated 15.11.95, the stuffing is to be allowed in the factory of production*

or in a Customs area. Further, in the said Public Notice, it has been clarified as to the types of cases which merit permissions for Factory Stuffing. However, the fact remains that in this case, the said power has been exercised by Shri A.K.Arora, Superintendent beyond his authority.

Public Notice No. 15/95 dated 15.11.95 does not specify that Assistant/Deputy Commissioner is empowered to allow said factory stuffing as the said Public Notice specifies only type of cases which shall merit for permitting factory stuffing. However, there is precedence that factory stuffing permission is being allowed by the Deputy / Assistant Commissioner and Shri A.K.Arora, Superintendent in his submission dt. 18.10.10 has submitted copies factory stuffing permission granted by the Assistant Commissioner in respect of other units. He has insisted that the factory stuffing permission in this case was also given by the Assistant Commissioner although no copy of such permission could be furnished by him. However, the facts remain that Shri A.K.Arora, Superintendent had overlooked as to how a factory engaged in the manufacture of chemical products, can do manufacturing of garments & watches in the same premises and thereby gave orders for factory stuffing. Thus there is lapse on the part of the charged officer."

It may be noticed that the Enquiry Officer specifically pointed that there has been a lapse of the post of the charged officer and that he had exceeded his authority in permitting the stuffing. The Enquiry Officer also took note of the fact that the petitioner had contended that the orders for such stuffing were issued by the Assistant Commissioner but in fact, he failed to produce any document in support thereof.

The enquiry report was forwarded by the disciplinary authority to the petitioner for his comments and similarly a copy of the enquiry report along with the comments of the disciplinary authority were also forwarded to the Director General of Vigilance for his comments. The Director General of Vigilance vide the order dated 22.5.2010 found that it was a case for major penalty. The representation made by the employee along with the report of the Director General of Vigilance was taken note by the disciplinary authority. After

affording opportunity of personal hearing, he decided to impose the penalty of reduction of his pay by two stages for a period of three years and one month without the effect of postponing his future increments of pay vide order dated 29th October 2010.

The employee being not satisfied, filed an appeal against the order of disciplinary authority before the next higher authority, the appeal came to be rejected vide order dated 26.7.2011 and the order of the disciplinary authority was maintained. The employee approached the Central Administrative Tribunal by means of an application under Section 19 of the Administrative Tribunal Act, 2005 being application No. 1343 of 2012. The Tribunal has been pleased to allow the Original Application and to set aside the order of punishment vide order dated 15.10.2014. The department has approached this Court by means of the present writ petition.

It is submitted by Sri B.K.Singh Raghuvanshi, Counsel for the department that the order of the Tribunal records two reasons for setting aside the order of the disciplinary authority appellate authority which are as follows :

(a) That no oral evidence was laid to bring home the documents proposed to be relied upon by the department, therefore, in absence of oral evidence to prove the documents during enquiry, the charge could be said to have been brought home. For the said proposition, the Tribunal has relied upon the judgments of the Apex Court in the case of ***Roop Singh Negi Vs. Punjab National Bank & Ors., (2009) 2 SCC 570, Kuldeep Singh Vs. the Commissioner of Police and others, JT 1998 (8) SC 603*** *as well as upon the judgment in the case of* ***L.I.C. of Inida and Anr. vs. Ram Pal Singh Bisen, 2011(1) SLJ 201****, reference has also been made to CCA Rule 1965 with regard to the furnishing of the statement of article of charge along with the list of documents and list of witnesses to sustain the charges.*

The other reason on which the original application has been allowed is that in the case of Manoj Kumar Sharma similarly situate the Tribunal has found that the departmental enquiry against the officer concerned was vitiated and accordingly the order of the disciplinary authority and appellate

authority was set aside. There was no reason to take any different view in the case of the present applicant also.

Sri B.K.Singh Raghuvanshi submitted before us that the Tribunal has failed to take into consideration that so far as the charge no.2 is concerned, it was based more on an admission of the employee concerned to the effect that an order for stuffing was made but according to him such an order was made by the Assistant Commissioner and not by the employee. This defence could not be established by any material evidence. Therefore, the principle of oral evidence being led in support of the documentary evidence had no application. The Tribunal has misdirected itself in refusing to examine the correctness or otherwise of the finding returned on charge no.2 on general principle as noticed above.

So far as the second ground is concerned, it is stated that in the case of Manoj Kumar Sharma, none of the charges were found proved by the Enquiry officer nor by the disciplinary authority and it was on the asking of the Vigilance Department that the order of punishment was made. Against Ajay Kumar Arora, charge no.2 was found proved by the Enquiry Officer as well as by the disciplinary authority, which aspect of the matter has been completely lost sight by the Tribunal .

Counsel for the respondent no.1 made an attempt before the Court to take the Court though the entire departmental proceedings for suggesting that charge no.2 was also not established. He also made an attempt to suggest that the said aspect had not been examined by the Tribunal. He then submitted that the finding returned by the Tribunal qua oral evidence having not been led to proving the documents proposed to be relied upon, is well established under the judgments of the Apex Court. Therefore, there is no reason for this Court to take any contrary view. He further submitted that the case of Sri Manoj Kumar Sharma is more or less identical to the case of the applicant before the Tribunal and therefore, the Tribunal was justified in touching what had been laid down in the cases of Manoj Kumar Sharma.

We have heard counsel for the parties and perused the records of the present writ petition.

We find that charge no.2 was found proved by the Enquiry Officer. It may be noticed that issuance of order of stuffing is not under question. According to the employee, the order in that regard had been issued by the Assistant Commissioner and not by the employee concerned. Form the report of the Enquiry Officer, it is established that he could lead no evidence to establish the said facts/plea. Once the employee takes such a stand that the order had been issued by the higher authority and not by him, it was obligatory upon him to prove with cogent evidence that such order in fact was issued by the higher authority, mere statement may not suffice. From the records, we find neither the date nor the number of the order of stuffining issued by the Assistant Commissioner was referred to by the employee concerned in his defence nor any documentary evidence was brought on record.

The Tribunal was not correct in holding that the finding returned on charge no.2 as the department had not laid any oral evidence to prove the documents. We are of the considered opinion that so far as the charge no.2 is concerned, it required no oral evidence to be led for being brought home for the reasons, which have been recorded hereinabove. We however, leave it open to the Tribunal to examine as to whether there was sufficient denial by the employee concerned of the charge and as to whether there was any illegality in the finding of the Enquiry Officer on the said charge as accepted by the disciplinary authority on the basis of material on record. The Tribunal, in our opinion has failed to examine the charge no.2 in its true prospective, while passing the order impugned. The law laid down by the Apex Court in the matter of oral evidence being laid to prove the document sought to be relied upon against the employee is well established but as already noticed above, there being no denial to the issuance of stuffing order no oral evidence was required to be led for bringing home the charge no.2.

We may record that in the case of Manoj Kumar Sharma, the Enquiry Officer as well as the disciplinary authority had specifically recorded that none of the charges levelled against the employee could be brought home. Therefore, it was held by the Tribunal that no penalty could be levied upon

the employee concerned only at the direction of the Vigilance Officer.

The facts in the case of Mr. Arora, are entirely different. Charge No.2 has been brought home during departmental enquiry as per the report of the Enquiry Officer and the order of the disciplinary authority. Therefore, the principle, which had been applied in the case of Manoj Kumar Sharma may not be strictly applicable in the case in hand.

We may record that the Apex Court has specifically held that a little difference in the facts, will make a law of difference in the preconditional value of the judgments.

Counsel for the petitioner has placed reliance upon a Division Bench judgment of the Delhi High Court in the case of Union of India and another Vs. Bhupendra Singh Suhag for the proposition that if three persons are charged for same set of mis-endeavor pertaining to the same period, there cannot be different destinations when against one, it has attained finality. But the judgment in our opinion is distinguishable on facts.

For all the aforesaid reasons, we find that the order of the Tribunal cannot be legally sustained and is hereby quashed. The original application is restored to its original number with a direction to the respondent no.2 to examine the merits of the original application as fresh specifically with records of charge no.2 preferably within three months from the date of production of a certified copy of this order.

The writ petition is allowed."

4. In view of the above mentioned specific observations of the Hon'ble High Court of Allahabad in this case, this Tribunal is required to examine the merits of the instant OA afresh specifically with records of charge no.2 levelled against the applicant by the impugned Memorandum dated 29.8.2005. Vide Annexure II (Statement of Imputation of

Misconduct against the applicant, the then Superintendent, Inland Container Depot, Moradabad) of aforesaid impugned Memorandum, the said second charge levelled against the applicant reads as under:-

> *"2. That, Shri A. K. Arora, Superintendent had in an unauthorized manner allowed the factory stuffing in respect of the questioned shipping bills because as Public Notice No. 15/95 dated 15.11.95 as well as EXIM Policy 1997 - 2002, the factory stuffing was not permissible in the said case."*

5. The following documents were relied upon by the Department in support of the said Memorandum dated 29.8.2005:-

> "1. Letter of the Asstt. Commissioner, I.C.D., Moradabad dated 14.10.2004
>
> 2. Letter of Asstt. Commissioner, Central Excise Division, Moradabad dated 25.11.2004.
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> 3. S/Bill Nos.5244, 5245, 5245, 5246 (for Shirts) and No.427 (for quartz watches) all dated 11.09.98 of M/s Sukumar Chemicals (P) Ltd., Meerut.
>
> 4. S/Bills Nos. 5242, 5243, 5247, 5248 (for Shirts and skirts) and S/bill No.426 (for quartz analogue watches) all dated 11.09.98 of M/s Agomo Leather Components (P) Ltd., Meerut.
>
> 5. Copy of Public Notice No. 15/95 dated 15.11.95 issued by Central Excise Commissionerate, Meerut.
>
> 6. Copy of Public Notice No.01/90 dated 01.09.90 issued by Central Excise Commissionerate, Meerut."

6. The Inquiry Officer after completion of inquiry proceedings returned the findings on each articles of charges levelled against the applicant. So far as now this Tribunal is

concerned with regard to the findings recorded by the IO in respect of aforesaid second charge, which reads as under:-

> "The Shipping bill no.5244, 5245, 5246 (for shirts) and nos.427 (for quartz watches) all dt. 11.09.98 had been filed by M/s Sukumar Chemicals (P) Ltd. These had been processed by Shri A.K. Arora, Superintendent (DE-I). These Shipping bills had been marked "F.S." (for factor stuffing) specifically to Inspector DE-II by Shri A.K. Arora, Superintendent (DE-I). No factory stuffing permission had been granted by the proper officer in respect of M/s M/s Sukumar Chemicals (P) Ltd.. Shri A.K. Arora, Superintendent (DE-I) has contended that factory stuffing had already been permitted by the jurisdictional Assistant Commissioner as stated in Additional Commissioner (Vig.)'s letter dt. 14.03.2000. However, it is evident that "request for examination of the goods at factory premises was filed and the same was allowed by the AC concerned" as mentioned in above letter is only part of intelligence received. No where in the departmental records does there exist any trace of factory stuffing permission having been granted by the AC concerned. On the basis of this letter, it would therefore be impossible to conclude that factory stuffing permission had at any time been allowed by the A.C. concerned. Also, at that point of time, as per the prescribed procedure, the factory stuffing permission was required to be obtained every six months. This the factory stuffing permission was required to be obtained every six months. This requirement of six monthly permission was withdrawn only in the year 2001 vide Circular No.60/2001 dt. 01.11.2001. There is no evidence available on record to indicate that any permission for factory stuffing had been granted within six months as required. Argument forwarded by Shri A.K. Arora, Superintendent (DE-I), therefore, does not hold water. Another contention of Shri A.K. Arora, Superintendent (DE-I) is that the factory stuffing order is not available in the office of the Assistant commissioner. As clear from para 6.3, when no permission for factory stuffing has been granted, the same cannot be available in the office of the Assistant Commissioner concerned. The department cannot be expected to produce a document that does not exist. **It is therefore established that Shri A.K. Arora, Superintendent (DE-I) committed a lapse in as much as he ordered for factory stuffing without verifying a proper valid factory stuffing permission order in respect of shipping bills no.5244, 5245, 5246 (for**

shirts) and nos.427 (For quartz watches) all dt. 11.09.98 filed by M/s Sukumar Chemicals (P) Ltd.

With respect to the remaining shipping bills viz. 5242, 5243, 5247, 5248 and S/Bill No.426 all dt. 11.09.98 pertaining to M/s Agemo Leather Components (P) Ltd., it is found that these were not processed and no Examination/Factory stuffing order has been endorsed by Shri A.K. Arora, Superintendent (DE-I), copies of these Shipping Bills available on record do not bear any marking by or signature of Shri A.K. Arora, Superintendent (DE-I). These have not been processed by Shri A.K. Arora, Superintendent (DE-I) and accordingly no examination instructions etc. have been endorsed on them, it does not appear possible to correlate these shipping bills with the charge sheet. Therefore it can be concluded that no offence had been committed by Shri A.K. Arora, Superintendent (DE-I) in respect of Shipping Bills No.5242,5243, 5247, 5248 and B/Bill No.426 all dt. 11.09.98."

7. In this connection, the views from DG (Vig)/CVC were obtained and the DG (Vig.) vide its letter dated 1.8.2008 communicated the advice of the CVC wherein Commission had observed that the standard of proof required for prosecution cases is of evidence "beyond reasonable doubt", whereas for disciplinary proceedings, it is of "preponderance of probability", and would involve aspects of procedural lapses. The Commission, would therefore, advice that the disciplinary proceedings against the applicant may be completed expeditiously. Accordingly, the said communication of CVC was communicated to the applicant alongwith the inquiry report and comments of the disciplinary authority on inquiry report and directed him to submit written representation or submission. The applicant submitted his written submission on 18.10.10.

8. So far as second charge is concerned, the disciplinary authority recorded as under:-

> "As per Public Notice No.15/95 dated 15.11.95, the stuffing is to be allowed in the factory of production or in a Customs area. Further, in the said Public Notice, it has been clarified as to the types of cases which merit permissions for Factory Stuffing. **However, the fact remains that in this case, the said power has been exercised by Shri A.K. Arora, Superintendent beyond his authority**.
>
> Public Notice No.15/95 dated 15.11.1995 does not specify that Assistant/Deputy Commissioner is empowered to allow said factory stuffing as the said Public Notice specifies only type of cases which shall merit for permitting factory stuffing. However, there is precedence that factory stuffing permission is being allowed by the Deputy/Assistant Commissioner and Shri A.K. Arora, Superintendent in his submission dt. 18.10.10 has submitted copies of factory stuffing permission granted by the Assistant Commissioner in respect of other units. He has insisted that the factory stuffing permission in this case was also given by the Assistant Commissioner although no case of such permission could be furnished by him. **However, the facts remain that Shri A.K. Arora Superintendent had overlooked as to how a factory engaged in the manufacture of chemical products, can do manufacturing of garments & watches in the same premises and thereby gave orders for factory stuffing**. Thus there is lapse on the part of the charged Officer. **Therefore, I agree with the findings of I.O.'s report particularly because Shri A.K. Arora, Superintendent allowed factory stuffing by not following strictly the stipulated guidelines as contained in the said Public Notice No.15/95 dated 15.11.95.**
>
> (emphasis supplied)

9. In view of the discussion on all the charges levelled against the applicant vide aforesaid Memorandum by the disciplinary authority, after considering the report of the Inquiry and the representation submitted by the applicant on

the said inquiry report, vide its order dated 29.10.2010 (Annexure A-2) imposed a penalty on the applicant of reduction of his pay in the pay scale of Rs.9300-34700 by two stage, i.e., from current Rs.18070 + Grade Pay of Rs.5400/- to Rs.16710/- + Grade Pay of Rs.5400/- with immediate effect for a period of three years and one month and further that the applicant will earn increments of pay during the period of reduction and this reduction will not have the effect of postponing his future increment of pay.

10. The applicant preferred an appeal dated 21.12.2010 against the aforesaid order of the Disciplinary Authority. Thereafter, the applicant preferred additional submission during the course of hearing on 10.3.2011. The Appellate Authority vide order dated 26.7.2011 (Annexure A-1) rejected the said appeal of the applicant.

11. Feeling aggrieved by the said Memorandum, aforesaid orders of Disciplinary and Appellate Authorities, the applicant has filed this OA challenging the same.

12. We have heard learned counsel for the parties and perused the material placed on record.

13. Counsel for the applicant submitted that in view of the aforesaid observations of the Hon'ble High Court, following three questions arise for adjudication by this Tribunal in this case:-

I. Whether there is any evidence that Assistant Commissioner and not applicant had issued factory stuffing permission in respect of M/s Sukumar Chemicals Pvt. Ltd. And M/s Agemo Leather in question?

II. Whether there was sufficient denial by applicant in respect of charge No.2 relating to factory stuffing permission?

III. Whether there is any illegality in finding of Inquiry Officer on the said charge as accepted by Disciplinary Authority on the basis of material on record?

14.1 On the first issue, counsel for the applicant submitted that in the contextual investigation, Department had first referred the matter to CBI on 14.3.2000 which was converted into FIR on 29.3.2000 wherein after completing investigation, CBI filed chargesheet before learned Special CBI Court, Ghaziabad on 25.1.2002 wherein after trial, learned Special CBI Judge has since acquitted applicant of all the charges (refer to pages 213 to 214).

14.2 However, during the pendency of proceedings before the CBI Court, respondents also issued the impugned Memorandum on 29.8.2005 levelled charges, *inter alia*, including charge No.2, as quoted above. Qua the aforesaid Charge No.2, the IO returned the finding that applicant could

not lead any evidence to establish that factory stuffing permission was accorded by Assistant Commissioner insofar as neither such permission was available on department's record nor a copy of the same was furnished by applicant in support of his contention.

14.3 Counsel for the applicant submitted that such factory stuffing permission granted by Assistant Commissioner existed on record as is evidence from the following documents:-

(a) Complaint by the then Additional Commissioner (Vigilance) dated 14.03.2000 containing a categorical averment:

> "In these cases request for examination of the goods at factory premises was filed and the same was allowed by the AC concerned."

(b) Deposition of complainant Additional Commissioner before learned CBI Court on 19.04.2004, *inter alia,* stating as under:-

> "In this particular case this power has been exercised by AC. I do not know the name of this particular AC but my First Information report has mentioned of that person. It is wrong to say that in order to save AC I have falsely implicated Superintendent in this case."
>
> (Page 505/521 of the OA)
>
> "In my statement under section 161 crpc, I had also stated that the permission for grant of factory stuffing was granted by AC concerned."

(Page 506/522 of the OA)

(c) Such factory stuffing permission was in fact accorded to M/s Sukumar Chemicals Pvt. Ltd. and M/s Agemo Leather is also manifest from the fact that prior to impugned Shipping Bills, subject exporters had earlier filed 58 Shipping Bills and exported 58 consignments from the same addresses under factory stuffing facility. The aforesaid fact is manifest from para 5 of Additional Commissioner (Vigilance)'s letter dated 14.3.2000 addressed to CBI, which reads as under:-

> "One such consignment was also intercepted by the Central Preventive Unit of the Meerut Commissionerate but before that consignment under 58 Shipping Bills have been exported and total amount of drawback is likely to be more than 3 Crores. In these cases request for examination of the goods at factory premises was filed and the same was allowed by the AC concerned."

(Page 145 of the OA)

(d) Aforesaid fact is also corroborated by complainant Additional commissioner's (Commissioner at the time of deposition) before CBI Court that prior impugned exports, subject exports had exported consignments earlier also. The relevant part of deposition reads as under:-

> "It is correct that even before this, the containers were sent by Sukumar Chemicals and Agemo Leathers from given address. We had informed CBI in this regard regarding the earlier goods so sent. I do not know that what action CBI has taken in this regard."

(Page 506/522 of the OA)

14.4 All the aforesaid documents were duly available before Inquiry Officer as well as Disciplinary Authority/Appellate Authority which conclusively proved that the factory stuffing permission was accorded by Assistant Commissioner and not by applicant, however, neither Inquiry Officer nor Disciplinary Authority/Appellate Authority referred to these documents nor addressed applicant's contention raised on the basis of aforesaid documents.

14.5 Counsel further submitted that all the documents referred to above clearly indicate that the subject exporters M/s Sukumar Chemicals Pvt. Ltd. and M/s Agemo Leather had applied to the then Assistant Commissioner for factory stuffing permission, who had duly accorded the same and pursuant thereto. Applicant marked impugned Shipping Bills to Shri Manoj Kumar Sharma under Factory Stuffing facility.

14.6 Counsel for applicant further submitted that aforesaid facts clearly depict that factory stuffing permission was available on record having been granted by Assistant Commissioner and applicant had marked on Shipping Bills F/S and referred to Inspector for extending factory stuffing facility in consonance with said permission. The fact depicts that the applicant had not granted any factory stuffing permission but had marked factory stuffing in compliance to an already existing order granted by Assistant Commissioner.

15. On this issue, counsel for the respondents have stated that it is an admitted fact that permission of factory stuffing in respect of aforesaid specific bills had been granted by the applicant without the approval of the competent authority, i.e., Assistant Commissioner. This fact is evidently proved by the Inquiry Officer and the same was accepted by the Disciplinary Authority after considering the report of the IO as well as representation of the applicant in this regard and further the appeal preferred by the applicant against the order of the Disciplinary Authority had also been rejected by the Appellate Authority concurring the findings of the IO as well as Disciplinary Authority on this point. Therefore, it is the earnest submission of the learned counsel for the respondents that when this particular charge has been proved on the basis of evidence led by the prosecution in this matter, the applicant has miserably failed to disprove the same by leading any documentary evidence contrary to the same. Counsel further submitted that this Tribunal is expected not to go into this aspect, as the same amounts to exercising of power of appellate authority which this Tribunal does not have, as held by the Apex Court in catena of cases. Reliance has also been placed on the decision of the Hon'ble Supreme Court in the case of ***Union of India and others vs. P. Gunasekaran***, (2015) 2 SCC 610, the relevant part of the said judgment are as under:-

"Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, re-appreciating even the evidence before the enquiry officer. The finding on Charge no. I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Article 226/227 of the Constitution of India, shall not venture into re- appreciation of the evidence. The High Court can only see whether:

a. the enquiry is held by a competent authority;

b. the enquiry is held according to the procedure prescribed in that behalf;

c. there is violation of the principles of natural justice in conducting the proceedings;

d. the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;

e. the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;

f. the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;

g. the disciplinary authority had erroneously failed to admit the admissible and material evidence;

h. the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;

i. the finding of fact is based on no evidence.

Under Article 226/227 of the Constitution of India, the High Court shall not:

(i). re-appreciate the evidence;

(ii). interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;

(iii). go into the adequacy of the evidence;

(iv). go into the reliability of the evidence;

(v). interfere, if there be some legal evidence on which findings can be based.

(vi). correct the error of fact however grave it may appear to be;

(vii). go into the proportionality of punishment unless it shocks its conscience.

In one of the earliest decisions in ***State of Andhra Pradesh and others v. S. Sree Rama Rao*** AIR 1963 SC 1723,, many of the above principles have been discussed and it has been concluded thus:

> "7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution."

In State of Andhra Pradesh and others v. Chitra Venkata Rao, (1975) 2 SCC 557, the principles have been further discussed at paragraph-21 to 24, which read as follows:

> "21. The scope of Article 226 in dealing with departmental inquiries has come up before this Court.

Two propositions were laid down by this Court in State of A.P. v. S. Sree Rama Rao. First, there is no warrant for the view that in considering whether a public officer is guilty of misconduct charged against him, the rule followed in criminal trials that[pic]an offence is not established unless proved by evidence beyond reasonable doubt to the satisfaction of the Court must be applied. If that rule be not applied by a domestic tribunal of inquiry the High Court in a petition under Article 226 of the Constitution is not competent to declare the order of the authorities holding a departmental enquiry invalid. The High Court is not a court of appeal under Article 226 over the decision of the authorities holding a departmental enquiry against a public servant. The Court is concerned to determine whether the enquiry is held by an authority competent in that behalf and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Second, where there is some evidence which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court to review the evidence and to arrive at an independent finding on the evidence. The High Court may interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion. The departmental authorities are, if the enquiry is otherwise properly held, the sole judges of facts and if there is some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226.

22. Again, this Court in Railway Board, representing the Union of India, New Delhi v. Niranjan Singh said that the High Court does not interfere with the conclusion of the disciplinary authority unless the finding is not supported by any evidence or it can be said that no reasonable person could have reached such a finding. In Niranjan Singh case this Court held that the High Court exceeded its powers in interfering with the findings of the disciplinary authority on the charge that the respondent was instrumental in

compelling the shut-down of an air compressor at about 8.15 a.m. on May 31, 1956. This Court said that the Enquiry Committee felt that the evidence of two persons that the respondent led a group of strikers and compelled them to close down their compressor could not be accepted at its face value. The General Manager did not agree with the Enquiry Committee on that point. The General Manager accepted the evidence. This Court said that it was open to the General Manager to do so and he was not bound by the conclusion reached by the committee. This Court held that the conclusion reached by the disciplinary authority should prevail and the High Court should not have interfered with the conclusion.[pic]

23. The jurisdiction to issue a writ of certiorari under Article 226 is a supervisory jurisdiction. The Court exercises it not as an appellate court. The findings of fact reached by an inferior court or tribunal as a result of the appreciation of evidence are not reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by a tribunal, a writ can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Again if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. A finding of fact recorded by the Tribunal cannot be challenged on the ground that the relevant and material evidence adduced before the Tribunal is insufficient or inadequate to sustain a finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal. See Syed Yakoob v. K.S. Radhakrishnan.

24. The High Court in the present case assessed the entire evidence and came to its own conclusion. The High Court was not justified to do so. Apart from the aspect that the High Court does not correct a finding of fact on the ground that the evidence is not sufficient or adequate, the evidence in the present case which was considered by the Tribunal cannot be scanned by the High Court to justify the conclusion that there is no evidence which would justify the finding of the Tribunal that the respondent did not make the journey. The Tribunal gave reasons for its conclusions. It is not possible for the High Court to say that no reasonable person could have arrived at these conclusions. The High Court reviewed the evidence,

> reassessed the evidence and then rejected the evidence as no evidence. That is precisely what the High Court in exercising jurisdiction to issue a writ of certiorari should not do."

These principles have been succinctly summed-up by the living legend and centenarian Justice V. R. Krishna Iyer in ***State of Haryana and another v. Rattan Singh,*** (1977) 2 SCC 491. To quote the unparalled and inimitable expressions:

> "4. .... in a domestic enquiry the strict and sophisticated rules of evidence under the Indian Evidence Act may not apply. All materials which are logically probative for a prudent mind are permissible. There is no allergy to hearsay evidence provided it has reasonable nexus and credibility. It is true that departmental authorities and Administrative Tribunals must be careful in evaluating such material and should not glibly swallow what is strictly speaking not relevant under the Indian Evidence Act. For this proposition it is not necessary to cite decisions nor text books, although we have been taken through case-law and other authorities by counsel on both sides. The essence of a judicial approach is objectivity, exclusion of extraneous materials or considerations and observance of rules of natural justice. Of course, fairplay is the basis and if perversity or arbitrariness, bias or surrender of independence of judgment vitiate the conclusions reached, such finding, even though of a domestic tribunal, cannot be held good. ..."

In all the subsequent decisions of this Court upto the latest in ***Chennai Water Supply and Sewarage Board v. T. T. Murali Babu,*** (2014) 4 SCC 108, these principles have been consistently followed adding practically nothing more or altering anything.

On Article I, the disciplinary authority, while imposing the punishment of compulsory retirement in the impugned order dated 28.02.2000, had arrived at the following findings:

> "Article-I was held as proved by the Inquiry authority after evaluating the evidence adduced in the case. Under the circumstances of the case, the evidence relied on viz., letter dated 11.12.92 written by Shri P. Gunasekaran, provides a reasonable nexus to the charge framed against him and he did not controvert the contents of the said letter dated 11.12.92 during the time of inquiry. Nor did he produce any defence witness during the inquiry to support his claims including that on 23.11.92 he left the office on permission. There is nothing to indicate that he was handicapped in producing his defence witness. ..."

> The disciplinary authority, on scanning the inquiry report and having accepted it, after discussing the available and admissible evidence on the charge, and the Central Administrative Tribunal having endorsed the view of the disciplinary authority, it was not at all open to the High Court to re- appreciate the evidence in exercise of its jurisdiction under Article 226/227 of the Constitution of India.
>
> Equally, it was not open to the High Court, in exercise of its jurisdiction under Article 226/227 of the Constitution of India, to go into the proportionality of punishment so long as the punishment does not shock the conscience of the court. In the instant case, the disciplinary authority has come to the conclusion that the respondent lacked integrity. No doubt, there are no measurable standards as to what is integrity in service jurisprudence but certainly there are indicators for such assessment. Integrity according to Oxford dictionary is "moral uprightness; honesty". It takes in its sweep, probity, innocence, trustfulness, openness, sincerity, blamelessness, immaculacy, rectitude, uprightness, virtuousness, righteousness, goodness, cleanness, decency, honour, reputation, nobility, irreproachability, purity, respectability, genuineness, moral excellence etc. In short, it depicts sterling character with firm adherence to a code of moral values.
>
> The impugned conduct of the respondent working as Deputy Office Superintendent in a sensitive department of Central Excise, according to the disciplinary authority, reflected lack of integrity warranting discontinuance in service. That view has been endorsed by the Central Administrative Tribunal also. Thereafter, it is not open to the High Court to go into the proportionality of punishment or substitute the same with a lesser or different punishment. These aspects have been discussed at quite length by this Court in several decisions including ***B.C. Chaturvedi v. Union of India and others,*** (1995) 6 SCC 749, ***Union of India and another v. G. Ganayutham,*** (1997) 7 SCC 463, ***Om Kumar and others v. Union of India***, 2001) 2 SCC 386, ***Coimbatore District Central Cooperative Bank v. Coimbatore District Central Cooperative Bank Employees Association and another,*** (2007) 4 SCC 669, ***Chairman-cum- Managing Director, Coal India Limited and another v. Mukul Kumar Choudhuri and other,*** (2009) 15 SCC 620, and the recent one in Chennai Metropolitan Water Supply (supra)."

16. As regards the second issued, i.e., whether applicant has sufficiently denied the charge in the proceedings. The applicant drew our attention to applicant's very first

submission dated 6.9.2005 filed in response to the impugned Charge Memorandum wherein applicant made two categorical averments, which are as follows:-

> "10. As the permission for factory stuffing had already been allowed by the Assistant Commissioner, the shipping bills were marked to Shri Manoj Kumar Sharma, inspector for factory stuffing. It was not for the first time that such shipping bills were marked to the inspector for factory stuffing. The procedure for examination of the goods and for drawal of sample, whenever necessary, is already laid down in public notices and is well known to the officers. It is also a fact on record that even earlier, from the same premises, goods had been exported by the same exporters.
>
> (Page 150 of the OA)
>
> 17. Factory stuffing had already been allowed by the Assistant Commissioner. I had only deputed the Inspector to supervise the factory stuffing. From the same premises, for the same exporters, such factory stuffing had taken place in the past. I had not created any precedent. The shipping bills after due scrutiny were marked to the Inspector in the normal course of duties. There were nothing unusual. No motive of any kind could be ascribed against me."

The applicant, according to him, took this consistent stand in all his representations/appeals filed before all authorities.

16.1 Counsel for applicant submitted that not only applicant denied the charges in the submissions before the respective authorities but also referring to evidences available on record submitted that factory stuffing permission was accorded by Assistant Commissioner and not by applicant.

17. On this issue, counsel for the respondents have submitted that as second charge levelled against the

applicant vide the Memorandum dated 29.8.2005 is that applicant had in an unauthorized manner allowed the factory stuffing in respect of the questioned shipping bills because as Public Notice No. 15/95 dated 15.11.95 as well as EXIM Policy 1997 - 2002, the factory stuffing was not permissible in the said case and the IO on the basis of said Public Notice as well as EXIM Police 1997-2002 and having regard to the said particular bills and also the fact that applicant had not been able to prove by any documentary evidence that actually permission of factory stuffing in respect of the questioned shipping bills had been granted by the Assistant Commissioner in this case. They further submitted that applicant had only made certain averments but the same have to be proved by documentary evidence particularly in relation to the bills in question.

18. On the last issue, i.e, whether there is an illegality in the finding of inquiry officer's report, applicant submitted that finding of learned IO qua charge no.2 pertaining to factory stuffing permission is patently perverse and contrary to documents available on record referred to above. Counsel further submitted that IO's findings on this charge cannot be sustained even on the basis of preponderance of probability which in any case does not mean perverse presumption or baseless/conjectural inferences. In support of this contention, reliance is placed on the Full Bench judgment of

Hon'ble Allahabad High Court in the case of ***Rishi Kesh Singh and Ors. vs. The State*** (18.10.1968 – ALLHC) : MANU/UP/0008/1970.

19. On this issue, learned counsel for the respondents submitted that this second charge is specific in nature and the same had been proved by the IO on the basis of the documents listed with the aforesaid Memorandum dated 29.8.2005 and the applicant had also not denied those documents but his contention that permission for factory stuffing in respect of the questioned shipping bills had already been accorded by the Assistant Commissioner and therefore, he accordingly endorsed the same to the concerned Inspector, cannot be acceptable in view of the fact that Assistant Commissioner is the competent authority for according permission for factory stuffing and this fact of accord of permission of the Assistant Commissioner for factory stuffing in respect of the questioned shipping bills had not been substantiated by any documentary evidence. Counsel further submitted that IO proved this charge on the basis of the documents which were relied upon by the prosecution in support of the chargesheet. As such the contention of the applicant that finding of IO cannot be sustained even on the basis of preponderance of probability, is not acceptable in the eyes of law and the said finding is

neither perverse nor contrary to the documents available on record.

20. Last contention of the learned counsel for the applicant is that punishment awarded to the applicant is not commensurate with the gravity of the charge levelled against him.

21. Having regard to the submissions of learned counsel for the parties on the aforesaid issues as also the observations of the Hon'ble High Court of Allahabad quoted supra, we are of the considered view that applicant has miserably failed to prove that actually Assistant Commissioner had given permission for factory stuffing in respect of the questioned shipping bills. Further, on the second issue, although there was denial by applicant in respect of charge no.2 relating to factory stuffing permission, which cannot be said to be sufficient unless the same is proved by documentary evidence as it is evident from the records that applicant had admitted the fact that he had processed the concerned bills for factory stuffing but he has failed to show any document whether before processing the same he had sought approval of the Assistant Commissioner in this matter.

22. So far as the last issue whether there is any illegality in finding of IO on the said charge as accepted by Disciplinary Authority on the basis of material on record, having regard to the observations of the Hon'ble Allahabad High Court supra,

and also having regard to the contentions of the respondents, we are of the view that there is no illegality in the finding of the IO on the said charge as accepted by the Disciplinary Authority on the basis of material on record. Further, reliance placed by the counsel for the applicant in support of his contentions is not of any help in view of the fact that findings recorded by the IO is based on evidence available on record and there is no question of going into the issue of preponderance of probability.

23. So far as the contention of applicant that punishment awarded is not commensurate with the gravity of misconduct alleged against the applicant is concerned, It is well settled proposition of law, as held by the Hon'ble Apex Court in catena of cases, that *it is only in those cases where the punishment is so disproportionate that it shocks the conscience of the court that the matter may be remitted back to the authorities for reconsidering the question of quantum of punishment.* In **Administrator, Union Territory of Dadra and Nagar Haveli Vs. Gulabhia M. Lad** reported in 2010 (3) ALSLJ SC 28 it has been held by Hon'ble Supreme Court as under:-

> "The legal position is fairly well settled that while exercising power of judicial review, the High Court or a Tribunal it cannot interfere with the discretion exercised by the Disciplinary Authority, and/or on appeal the Appellate Authority with regard to the imposition of punishment unless such discretion suffers from illegality or material

> procedural irregularity or that would shock the conscience of the Court/Tribunal".

Having regard to the gravity of the article of charge no.2, and the punishment awarded by the disciplinary authority vide impugned order dated 29.10.2010, we are of the considered view that punishment imposed by the impugned order dated 29.10.2010 is not so disproportionate that it shocks the conscience of the court, therefore, we do not think any case is made out for interference by the Tribunal even on the question of quantum of punishment.

24. In view of the above, for the foregoing reasons, having regard to the aforesaid observations of the Hon'ble High Court of Allahabad as also the judgment of the Hon'ble Supreme Court in the case of ***Union of India and others vs. P. Gunasekaran*** (supra), we do not find any justifiable reason to interfere with the impugned orders. Accordingly, the instant OA being devoid of merit is dismissed. There shall be no order as to costs.

(S.N. Terdal)
Member (J)

(Nita Chowdhury)
Member (A)

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