

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No. 140 OF 2015

Dated:- Friday, 3rd day of November, 2017.

Coram: Hon'ble Mr. Justice Mehinder Singh Sullar, Member(J)
Hon'ble Shri Prasanna K. Pradhan, Member (A)

Shri S.S. Gurjar,
Appraiser, Aged 41 years.
Presently posted at
New Customers House, Ballard Estate,
Mumbai - 400001
Residing at Flat No. 401
Bldg No. 17-A, MHADA, Customs Colony,
Powai, Mumbai - 400076 **...Applicant**

(By Advocate Shri R.R. Shetty)

Versus

1. Union of India.

Through the Secretary
Ministry of Finance, Department of Revenue,
Government of India,
North Block, New Delhi - 110001..

2. Chief Commissioner of Customs

Mumbai Zone - I
New Customers House
Ballard Estate, Mumbai - 400001

3. The Commissioner of Customs (General)

New Customers House,,
Ballard Estate, Mumbai - 400001

O R D E R**Coram: Hon'ble Shri Prasanna K. Pradhan, Member (A)**

1. The present application has been filed by the applicant against the order dated 21.02.2014 passed by the Disciplinary Authority in a departmental proceeding and the Appellate Authority dated 24.09.2014 praying for setting aside the same. According to the applicant, he was working as a Appraiser to the respondents and was issued a Charge Memorandum dated 18.02.2011(Annex. A-2) in regard to an incident of mistaken out of charge container in December 2006. Following the submission of 'written statement of defence', on 22.03.2011 and 28.03.2011(Annex. A-3), a detailed enquiry was held under Rule 14 of the CCS(CCA) Rules, 1965. Following the enquiry, the Inquiry Officer submitted an inquiry report dated 25.10.2012(Annex. A-5), it is perused that Article I and III of charge is held as not proved, while the Article II of charge is perused to be 'partially proved' to the extent of its contents only without attributing any ill motive and malafide intention on part of the Charge Officer. The Disciplinary Authority, however, disagreed with the findings of the Inquiry Authority by Disagreement Memorandum dated 03.01.2014(Annex. A-6) and has fully perused against being partially proved. Enquiry

Report along with the Disciplinary Note was sent to the applicant by respondents to which he made representation dated 03.02.2014 (Annex. A-7). However, the Disciplinary Authority thereafter imposed a penalty of reducing the pay of the applicant by three stages in the time scale of pay of Rs. 9300-34500 with Grade Pay of Rs. 5400 for a period of one year without any cumulative effect and that he will not earn increment of pay during the period of reduction and that after the expiry of this period, the reduction will have any effect of postponing his further increments of pay.

2. In the O.A., the applicant has made a little reference to the conclusion drawn by the Enquiry Authority by which he had held the charge I and III as not proved and charge II as partially proved. He submitted that action on his part is only bonafide mistake and said that in 7 cases, which are brought on record during the departmental proceedings, were similar type of errors have been occurred in the other cases but no one has been subjected to any disciplinary action. Only in one case disciplinary proceedings were initiated where penalty of censure was only imposed for 6 months. The Disciplinary Authority has accepted the finding conclusion of the Inquiry Officer which says that Article I and Article II and thus accepted that there is no factual ill

motive or planning and malafide intention on the part of the applicant and there incident was inadvertant error. However, the regarding Article of Charge II, the Disciplinary Authority misproved the finding of the Inquiry officer by raising false presumptions. He only relied on false presumptions raised by the Disciplinary Officer, who rejected submissions of the applicant without giving any factual evidence and therefore submits that the observations frawn by the Disciplinary Authority is unjustified. The order is _____ by the Appellate Authority without appreciating the case of the applicant, which is also unjustified and therefore he prays for setting aside both the said orders.

3. The respondents in their reply statement submitted that after the Disciplinary Enquiry was held into charges and report of the inquiry Officer recieved as per normal procedure, we sought for internal submissions of guidance. It is not mandatory for CBI to strictly ____ such_____ to proceed ahead with the proceedings . On detailed consideration, the Disciplinary Authority disagreed with the conclusion drawn by the Inquiry Officer and sent the report to the applicant for his response. Thereafter, the Disciplinary Authority came to the conclusion and imposed a penalty. The Appellate Authority also considered the different aspects raised by the

applicant in his appeal and in this order, the Appellate Authority upheld the order of the Disciplinary Authority. While reviewing the submission of the applicant, the respondents say that the stand taken by applicant that he has accidentally attended computer based EDI system panel and thereby in the system which is not within his jurisdiction is devoid of merits. It is a fact that it is a practice of the all officers who examine goods to make some indentify mark on the B/E to differentiate between the examined and unexamined goods. This fact was admitted by the Applicant too in his depositions. If the Applicant at the time of feeding examination report came accross any bill on which such markings were not made, he ought to have noticed it. The act of the applicant in as much as feedings wrong information report and handline consignment outside his Jurisdiction is totally in violation of the prescribed code of conduct and cannot be blamed on the EDI system. The contention of the Applicant for oversight also cannot be accepted since he attended the documents at three stages i.e. At the time of feedings examination report, at the time of giving out of charge in the system and at the time of signing OOC order no. 12911 for the said Bill of Entry. The respondents further submit that the guilt of the applicant has not been assumed on the basis of

hypothetical presumptions but after taking into consideration the findings of the inquiry proceedings and the facts and evidence on record. Therefore the contention made by the applicant is completely devoid of any merits.

4. The applicant has filed a rejoinder followed by an additional affidavit in reply to respondents in which practically same contentions were reiterated by the applicant and respondents and does not require any further elaboration.

During the hearing, the learned counsel for the applicant made detailed reference to the observation made by the Inquiry Authority in respect of Charge I, II and III of the report and says that the Inquiry Officer had rightly come to the conclusion that charge I and III have not been proved in respect of the IInd charge, it was held as partially proved. He categorically mentioned that there was no malafide intention on the part of the applicant and importer/CHA. No ill motive or malafide on the part of CO was imposed by the impugned authority. He submits that the action on the part of the applicant is only accidental and there have been other instances by other persons in seven cases in which similar mistakes were committed but no departmental proceeding was initiated. In only one case where disciplinary proceedings were initiated, penalty of

censure was only imposed for 6 months. Therefore, the present penalty on applicant based on the _____ in which pay of the applicant is reduced by three stages is clearly unjustified and the Appellate Authority shall appreciate the facts and uphold the orders of the Disciplinary Authority.

5. He submits that in the context of the observations made by the Inquiry Authority and the background _____ of the lenient view taken by the Department in case of similar cases, the penalty imposed on the applicant is very harsh and should be set aside.

6. The learned counsel for the respondents submits that the entire disciplinary proceedings were held in accordance with the rules and the applicant was given all opportunity to defence himself. On going through the report of the Inquiry Authority and taking on record that the disciplinary authority made a disciplinary note in respect of the observation on a conclusion drawn by the Inquiry Officer and communicated this note along with the Inquiry Officer's report to the Appellate Authority. After careful consideration of the submissions made by the applicant, the Disciplinary Authority passed a detailed order addressing all the aspects held by the applicant. The Appellate Authority in its detailed order has also addressed all the concerns made uin

the appeal and held the order of the Disciplinary Authority. Therefore the procedure followed and the conclusion drawn by Disciplinary and Appellate Authority cannot be considered unjustified. He further submits that a relation of the applicant and seven other similar cases as no basis as each case has to rely on the facts there in. The case of applicant has been considered based on the facts in the present case and therefore any same other cases will have no applicability in the present case.

7. As is evident from the records, there have been instructions on the part of applicant which he claims to be TO BE CONTINUED!

g.m.