

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA 1987/2014

New Delhi this the 7<sup>th</sup> day of March, 2019

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

Sh. Bharat Bhushan,  
Aged about 58 years,  
S/o Sh. Badri Nath Gupta,  
R/o 1/9031, Street No. 1,  
West Rohtash Nagar, Shadara,  
Delhi-110032.

... Applicant

(By Advocate: Ms. Tanya Joshi for Mr.Sidharth Joshi)

**VERSUS**

1. Union of India  
Through Secretary (Revenue),  
Ministry of Finance,  
Commissioner of Service Tax,  
North Block, New Delhi-110002.
2. Commissioner of Service Tax,  
17-B, IAEA House, MG Marg,  
New Delhi.
3. Ms. Ashima Batra (Inquiry Officer)  
Assistant Commissioner of Customs  
(Preventive), New Custom House,  
Near IGI Airport, New Delhi.
4. Sh. Bhupendra Singh (Presenting Officer)  
Superintendent of Customs  
(Preventive), New Custom House,  
Near IGI Airport, New Delhi. ... Respondents

(By Advocate : Mr. Y.P.Singh )

**O R D E R (ORAL)**

**Hon'ble Mr. S.N.Terdal, Member (J):**

We have heard Ms. Tanya Joshi for Mr.Sidharth Joshi, counsel for applicant and Mr. Y.P.Singh, counsel for respondents, perused the pleadings and all the documents produced by both the parties.

2. In this OA, the applicant has prayed for the following reliefs:

- "(i) Quash/ set aside the impugned Memorandum bearing No. C.No. VIII (I&V) 26/33/ST/12/17059 dated 23.08.2012 (Annexure A1) issued by Respondent No.2.
- (ii) Quash/set aside the order No. VIII (Cus.prev.) CIU/27/27/2013/798 dated 16.01.2014 Annexure A-2.
- (iii) Quash/set aside the Order No. VIII (Cus.prev.) CIU/27/27/2013/805 dated 16.01.2014 Annexure A-3.
- (iv) award all consequential benefits;
- (v) impose cost on the Respondents;
- (vi) Pass such other and further orders which this Hon'ble Tribunal may deem fit and proper in the interest of justice."

3. The relevant facts of the case are that a memorandum of charge dated 23.08.2012 was served on the applicant for three articles of charge for the alleged misconduct of the applicant having involved in illegal and fraudulent sanction of supplementary duty drawback claims of the exporters and processing unauthorized fraudulent supplementary duty drawback and for not adhering to the procedure prescribed with respect to said process and for not being vigilant enough to observe them etc.

The said articles of charge are extracted below:

"Article-1

That the said Sh. Bharat Bhushan, Superintendent while functioning as Superintendent at Drawback Section, IGI Airport, New Delhi was involved in the illegal and fraudulent sanction of Supplementary Duty Drawback claims of the exporters.

Shri Bharat Bhushan, Superintendent had processed unauthorized supplementary duty drawback by increasing the drawback quantity and the rate per piece over and above the existing rate in respect of the Shipping Bills, details as under:-

Table 1

S.No. & Name of Exporter	Shipping Bill No. & date	SDD Amount (Rs.) & Scroll date	Passing AC & Supdt.	SDD Drawback Head	Initial Drawback Qty.	Changed Drawback Aty.
1. M/s V&S International Pvt. Ltd.	5443233 12.01.05	122700/- 10.05.2006	Ram Chander & Bharat Bhushan	9801	4764 7% of fob i.e. Rs.231862 6.8	10000 Rs.12.27 Per piece
2. M/s Basic Body Line	5941593 30.12.15	321600/- 5.04.2006	Ram Chander & Bharat Bhushan	9801	3520 6% of fob i.e. Rs1334968.4	10000 Rs.32.16 Per piece
3. M/s Texmoda	5813300 22.09.05	82450/- 10.05.2006	Ram Chander & Bharat Bhushan	9801	1640 7.5% of fob i.e. Rs. 818130.3	9700 Rs.8.5 per piece
Loss		526750				

Table -2

S.No. & Name of Exporter	Shipping Bill No. & date	SDD Amount (Rs.) & Scroll date	Passing AC & Supdt.	SDD Drawback Head	Initial Drawback Qty.	Changed Drawback Aty.
1. M/s Basant Exports.	5853882 21.10.05	65900/- 05.04.06	Ram Chander & Bharat Bhushan	9801	945 7.5% of fob i.e. Rs.1268974.7	10000 Rs.6.59 Per piece
2. M/s Basant Exports.	5795010 08.09.05	39300/- 05.04.06	Ram Chander & Bharat Bhushan	9801	1800 6% of fob i.e. Rs.856210/-	10000 Rs.3.93 Per piece
3. M/s Basant Exports.	5777203 26.08.05	37500/- 05.04.06	Ram Chander & Bharat Bhushan	9801	1000 6% of fob i.e. Rs.991699.7	10000

Shri Bharat Bhushan, Superintendent remained posed in the drawback section as Superintendent, Drawback, when the aforementioned fraudulent claim was passed under his login id.

### Article-II

Shri Bharat Bhushan, Superintendent, failed to adhere to the procedure prescribed for processing Supplementary Duty Drawback claims in Rule 15 of the Drawback Rules, 1995 and circular No. 74/2002 of Government of India.

### Article-III

Shri Bharat Bhushan, Superintendent, was not vigilant enough to observe that his login id was manipulated while he was functioning as Superintendent, Air Cargo Terminal, IGI Airport, New Delhi.

By the aforesaid acts of commission and omission as mentioned in Article-1 to Article-III above, it is, therefore, imputed that Shri Bharat Bhushan, Superintendent failed to maintain devotion to duty and without properly exercising best of his

judgment, acted in a manner unbecoming of Government Servant and thereby contravened the provisions of Rule 3 (i)(ii), (iii) of CCS (Conduct) Rules, 1964."

4. Alongwith the memorandum of charge, articles of charge, statement of imputation of misconduct, list of documents and list of witnesses were served on the applicant and vide order dated 16.01.2014 an Inquiry Officer and by another order dated 16.01.2014 Presenting Officer were appointed. The applicant approached this Tribunal by way of this OA challenging the above said orders initiating departmental enquiry, serving of charge sheet and appointments of Inquiry Officer and Presenting Officer. The grounds taken are mainly that the incident with respect to which the charge sheet has been issued is more than 6 years old and in the case of other employees the respondents had dropped the charges and exonerated them and the respondents in the case of Ramesh Kumar Kansotia dropped the charges and exonerated him. As such the impugned orders require to be set aside.

5. The respondents have filed counter reply affidavit stating that as the alleged misconduct is very serious in nature and the applicant could plead each and every ground taken in this OA against the charge sheet in the disciplinary proceedings the initiation of disciplinary proceedings, should not be set aside nor stayed. In support of their contention, the respondents have relied upon the law laid down by the Hon'ble Supreme Court in the following cases.

(1) **Union of India & Others Vs. Swathi S.Patil**  
(Civil Appeal No. 3881/2007 arising out of  
SLP (C) No. 17417 of 2006)

- (2) **Union of India and Anr. Vs. Ashok Kacker**  
(1995 Supp (1) SCC 180)
- (3) **Union of India Vs. Upender Singh**  
(JT 1994(1) SC 658)
- (4) **Union of India Vs. Kuni Setty Satyanarayana**  
(2007 (1) SCT 452).
- (5) **State of Punjab & Ors Vs. Ajit Singh**  
(1997 (11) SCC 368)
- (6) **DIG of Police Vs. K. Swaminathan**  
(1996 (11) SCC 498)
- (7) **State of A.P. & Ors Vs. V.Appala Swamy**  
(2007 (1) SCALE 1)
- (8) **Chairman, LIC Vs. A. Masilamani**  
(2012 (11) JT 533)
- (9) **MCD Vs. R.V.Bansal**  
(2006 (130) DLT 235-Delhi High Court)
- (10) **G.Kumar Vs. UOI & Ors**  
(OA 3313/2011-CAT (PB))

The respondents have specifically referred to the following extract in the case of Swathi S.Patil (supra), which is extracted below:

"We are unable to countenance with the above extracted reasoning recorded by the High Court whether there exists sufficient and cogent material to sustain the articles of charge or not, should not be decided by the court at the stage of framing of the charges. The articles of charge can be established by the evidence only during the course of inquiry without being inquired into by an inquiry officer and without recording any finding whether the article of charge has been sustained or not either by oral enquiry or documentary evidence, it was not open for the High Court to come to the conclusion at the stage of framing of charges that no material is forthcoming to establish the charges 2, 3, 4 are concerned."

6. In view of the law laid down by the Hon'ble Supreme Court especially the one which has been extracted above, the impugned orders do not suffer from any infirmity. Accordingly, OA is dismissed. No order as to costs.

**( S.N.Terdal)**  
**Member (J)**

**( Nita Chowdhury)**  
**Member (A)**

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