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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION Nos.43/2016 & 526/2017

Dated this Friday the 7th day of June, 2019

CORAM : DR. BHAGWAN SAHAI, MEMBER (A)
 R.N. SINGH, MEMBER (J)

OA NO.43/2016

Ashok Jagannath Ghode, Age 57 Yrs.,
 Son of Shri Jagannath, employed as
 Superintendent of Central Excise,
 Office of Commissioner of Central
 Excise, Pune - 01.
 having office at - 41/A, I.C.E.
 House, Sassoon Road, Pune - 411 001.
 (R/at.: Plot No.185, Sector - 28,
 Nigdi, Pradhikaran,
 Pune - 411 044. **Applicant**

(By Advocate Shri Rutwik K. Rao)

VERSUS

1. The Union of India, through
 The Secretary, Ministry of Finance,
 North Block, New Delhi - 110 001.
2. The Chief Commissioner of Central
 Excise and Customs, Pune Zone,
 I.C.E. House, 41A, Sassoon Road,
 Pune - 411 001.
3. The Commissioner of Central Excise
 Pune - I Commissionerate,
 I.C.E. House, Sassoon Road,
 Pune - 411 001. **Respondents**

(By Advocate Shri V.B. Joshi)

OA NO.526/2017

Ashok Jagannath Ghode,
 Age 59 Yrs, Occ.- Service
 Presently working as Superintendent

Central Tax, Division-III (Bhosri)
 GST Pune I Commissionerate.
 R/o. Plot No.185, Sector 28,
 Pradhikaran, Nigdi,
 Pune - 411 044. **Applicant**

(By Advocate **Shri Rutwik K. Rao**)

VERSUS

1. Union of India,
 Through Secretary to Government
 of India, Ministry of Finance,
 Department of Revenue,
 North Block, New Delhi - 110 001.
2. The Chairman,
 Central Board of Excise and
 Customs GST
 Department of Revenue,
 Ministry of Finance,
 North Block,
 New Delhi - 110 001.
3. Jaipalsingh J. Sidhu
 Age 59, Occ-Assistant Commissioner
 GST Commissionerate, Pune - I
 ICE House, 41-A,
 Sasoon Road,
 Pune - 411 001. **Respondents**

(Copy to respondents Nos.1 to 2 to be served
 on the Standing counsel to Union of India)

(By Advocate **Shri V.B. Joshi**)

Reserved on 10.04.2019
Pronounced on 07.06.2019.

ORDER

PER: Dr. Bhagwan Sahai, MEMBER (A)

OA No. 43/2016

Shri Ashok Jagannath Ghode, Superintendent of

Central Excise, Office of Commissioner of Central Excise, Pune filed this OA On 17.11.2015. In this OA he has sought quashing and setting aside of impugned order dated 06.05.2014 passed by Disciplinary Authority and order dated 18.11.2014 passed by Appellate Authority, along with consequential benefits and cost of this OA.

2. Summarised facts:-

2(a). The applicant has stated that he was appointed as Inspector of Central Excise (Group 'C' Post) as a direct recruit on 26.04.1982 in pay scale of Rs.425-700/-. He was then promoted as Superintendent of Central Excise (Group 'B' Post) w.e.f. 28.12.1998. He received a Memorandum of chargesheet dated 31.05.2010 (Annex A-3) under Rule 14 of the CCS(CCA) Rules, 1965 imputing the charges of misconduct on his part. He denied the alleged misconduct in his letter dated 18.06.2010.

2(b). The Commissioner of Central Excise, Pune i.e. the Disciplinary Authority for him appointed an Inquiry Officer and Presenting Officer for conducting the inquiry against him. He participated in the inquiry proceedings based on which the Inquiry Officer submitted his inquiry report on 21.08.2013 holding that all the charges of

misconduct against him stood proved (copy at Annex A-4). On receiving a copy of the inquiry report, the applicant submitted his representation on 06.02.2014 (Annex A-5). Thereafter the impugned order dated 06.05.2014 (Annex A-2) was issued by the Disciplinary Authority imposing the penalty of 'reduction of pay by three stages in the time scale of pay of Rs.9300/- to Rs.34800/- for two years w.e.f. 01.06.2014'. It was further ordered that the applicant would not earn increments of pay during the said period and after its expiry, the reduction will have the effect of postponing his future increments of pay.

2(c). Thereafter the applicant submitted a statutory appeal on 29.05.2014 to respondent No.2 i.e. the Chief Commissioner of Central Excise and Customs, Pune (Annex A-6). The Appellate Authority in his order dropped Articles of charge I and IV of the charge memo but confirmed charges under Article II and III, and modified the order of the Disciplinary Authority to reduce pay of the applicant by three stages in the pay scale of Rs.9300-34800/- for 12 months w.e.f. 01.06.2014 and retained the part of the punishment that the applicant would not earn increments of pay during that period of reduction of pay and on expiry of

that period the reduction in pay will have the effect of postponing his future increments. Copy of this order is at Annex A-1.

2(d). The applicant has further stated that the penalty even modified by the Appellate Authority is a major penalty which will have the effect on his future pay and allowances and pensionary benefits. Therefore the present OA has been filed against the orders of the Appellate Authority and the Disciplinary Authority.

3. Contention of the parties:-

The applicant has contended that -

3(a). the inquiry proceedings were conducted in violation of relevant rules and procedure prescribed under them, the documents listed with the articles of charge were not provided to the applicant by the Presenting Officer and mere placement of documents before the Inquiry Officer does not amount to providing them to the applicant;

3(b). there were no listed prosecution/state witnesses in the chargesheet and the Presenting Officer did not examine any of them. So no oral evidence was recorded against the applicant during the inquiry proceedings;

3(c). the Presenting Officer has failed to bring

on record any oral evidence and in the absence of such oral evidence, conclusion of the Inquiry Officer, that charges stood proved against him, is not sustainable in law;

3(d). in his report the Inquiry Officer assumed many things against the applicant but without any evidence to support them. A perusal of the report of the Inquiry Officer proves his pre-determined mindset against the applicant. The Inquiry Officer has to record his findings based on evidence placed before him by the charged officer and the Presenting Officer but in his case there was no oral evidence presented and the listed documents were not proved. Therefore, the conclusions of the Inquiry Officer are bad in law;

3(e). there is no reason as to why evidence of the sole defence witness was not accepted by the Inquiry Officer even when he acted as a judge in the quasi-judicial proceedings. The Inquiry Officer relied on the submissions made by the Presenting Officer by treating his brief as evidence. Thus the report of the Inquiry Officer is not based on evidence. The Inquiry Officer had not conducted general examination of the applicant after recording evidence of the Presenting Officer and

the Charged Officer. Therefore, it resulted in vitiation of the inquiry;

3(f). the punishment awarded to him is disproportionate which would affect pension of the applicant. His submissions made before the Disciplinary Authority and the Appellate Authority were not considered. They passed their orders after considering various aspects which were not dealt with by the Presenting Officer in his evidence during the Inquiry proceedings;

3(g). the Commissioner of Customs, Pune had held that the applicant and other officers guilty of abatement of overvaluation of goods exported and by his order of 30.04.2009 imposed a penalty of Rs.25000/- on the applicant under Section 114 of the Customs Act, 1962 (copy EX A-7). However, the Customs, Excise and Service Tax Appellate Tribunal in appeals filed by the applicant, four other Customs' officers and M/s. Ruchika International under Section 129A of the Customs Act, 1962 against the order of the Commissioner of Customs, Pune exonerated the applicant of all the charges and the appeal of M/s. Ruchika International was remanded back to the adjudicating authority for reconsideration (Annex Ex A-8); and

3(h). subsequently, when the charges against M/s. Ruchika International were also dropped by the Commissioner of Customs, Pune, the applicant cannot be held responsible for the same charges which were included in the show cause notice. Since the disciplinary proceedings under the CCS Rules got completed before the proceedings under the Customs Act, the applicant was deprived for fair inquiry which caused prejudice to him. Therefore the Tribunal should consider the question as to whether the impugned order is arbitrary or grossly excessive to the offence committed or not warranted by facts and circumstances. It should render justice to the applicant by quashing and setting aside the impugned orders.

3(i). The counsel for the applicant has also attempted to benefit from these caselaws:-

(i). The Apex Court decision on Civil Appeal No.1815/2007 decided on 05.04.2007 in the case of Inspector Prem Chand Vs. Government of NCT of Delhi and Others, in which it was held that initiation of disciplinary proceedings against an officer cannot take place based on vague or indefinite information. It is necessary for the Disciplinary Authority to arrive at a finding of fact that the

appellant was guilty of an unlawful behaviour in relation to discharge of his duties in service which was wilful in character. A negligence simpliciter would also not be a misconduct. The Disciplinary Authority had failed to establish any misconduct against the applicant punishable under the CCS(Conduct) Rules.

(ii). M. V. Valsala Vs. Chief Commissioner of Central Excise & Customs decided by Ernakulam Bench of Kerala High Court on 26.05.2014 in which order passed by the Earnakulam Bench of the Tribunal had dismissed the Original Application for not having exhausted statutory remedy available under Rule 20 of the CCS(CCA) Rules, 1965. The High Court set aside the order of the Tribunal and sent the case back for considering the OA on merits.

(iii). In cases related to Union of India through Commissioner, Customs, Central Excise and Service Tax Vs. Shri Pawan Kumar Singh and Anr., Writ Petition No.17153/2017 and Union of India through Commissioner, Customs, Central Excise and Service Tax Vs. Shiva Karan Vishwakarma and Anr., Writ Petition No.17154/2017, the Customs, Excise and Service Tax Appellate Tribunal guilt of the concerned persons observed had been taken into

consideration by the Tribunal which was upheld by the High Court and the Supreme Court.

The respondents have contended that -

3(j). investigation conducted in the case clearly revealed that the applicant had failed to maintain the registers prescribed in the circular of the Central Board of Customs and Excise dated 17.12.1998. Therefore simply based on oral submissions of the applicant during the disciplinary proceedings, the Presenting Officer did not think it appropriate to deviate from the fact of non availability/non submission of the relevant documents during the investigation. This reveals that the applicant had failed in his duty to ensure maintenance and availability of the registers prescribed under the circular dated 17.12.1998;

3(k). the applicant was holding charge of ICD Miraj from January to April, 2006 and during that period, he failed to maintain absolute integrity and devotion to duty by allowing clearance of export cargo under shipping bills of M/s. Ruchika International without following the prescribed procedure. He also failed to ensure maintenance and availability of the prescribed registers in respect

of fraudulent exports claimed by M/s. Ruchika International. He also failed to maintain Telegraphic Release Advice Register for DEPB Licences issued to the exporter. He failed to take adequate steps to ensure correctness of the FOB value declared by submitting bogus BRC certificates to DGFT and falsely certified on the shipping bills that samples had been drawn as prescribed whereas in fact no samples had actually been drawn and confirmed by him. Therefore this act of the applicant is unbecoming of a government servant;

3(l). during the inquiry no documentary evidence could be produced by the applicant and the defence witness to substantiate his oral claim about maintenance of the documents. The fact that the documents were neither presented to the investigating officer nor the investigator could find them in the ICD depot proved that those documents were not actually maintained. Neither the applicant nor his defence witness could produce evidence of charge handing over/taking over memo to show that the documents were actually maintained and transferred from the handing over to the taking over officer;

3(m). on appeal of the applicant, the Chief

Commissioner of Central Excise, Pune modified the order of the Disciplinary Authority by dropping two of the four charges and reducing the penalty imposed on the applicant. Therefore the OA being devoid of merits should be dismissed;

3(n). the contention of the applicant that he had already been penalised by the Commissioner of Customs under the Customs Act, 1962 and the departmental proceedings being on the same set of evidence and documents, the punishment awarded to him based on the disciplinary proceedings amounts to double jeopardy is not tenable as settled by the Apex Court decision in the case of State of Punjab

& Anr. Vs. Dalbir Singh & Ors. dated 19.07.2000, holding that levy / imposition of penalty under the provisions of Motor Vehicles Act will not debar the employer from initiating departmental proceedings for the alleged misconduct of the employee, nor will such initiation of departmental proceedings be held to be a violation of provisions of Article 20 of the Constitution of India. Therefore, the proceedings conducted and the punishment awarded to the applicant under the Customs Act do not debar the respondents from initiation of the disciplinary proceedings under the CCS Rules against the

applicant and his punishment is based thereon;

3(o). the respondents have also cited in their contention the Apex Court decision in case of Deokinandan Sharma Vs. Union of India and Others decided on 11.04.2001 in civil appeal No.5811/1999, in which it was held that in spite of full opportunity afforded to the appellant to adduce evidence during the course of inquiry, no defence witness was examined by him. It was further held that since all the points raised in the appeal had been considered before dismissing the appeal, there was no infirmity in the impugned order.

3(p). The respondents have also cited a decision of this Tribunal dated 28.07.2016 in OA No.782/2011 which also relied on the Apex Court decision in Deokinandan Sharma Vs. Union of India and Others that appeal to the Revisionary Authority was mandatory rather than optional and in absence of availing of that remedy by the applicant, the OA was disposed of directing the applicant to agitate his grievances before the Revisionary Authority.

Since in the present case, the applicant has not filed any revision application before the concerned revisionary authority, on this ground the OA should be dismissed.

4. Analysis and conclusions:-

4(a). We have perused contents of the OA Memo and rejoinder filed by the applicant, reply and additional affidavit filed by the respondents, various case laws cited by the respective parties and have considered the arguments submitted by counsel on both sides. Based on consideration of the facts and various aspects of the case as above, we conclude as follows:-

4(b). After the order of the Appellate Authority dated 18.11.2014 modifying the order of the Disciplinary Authority, the present applicant has not preferred any revision application before the concerned revisionary authority. Thus the statutory remedy available to him has not been availed of by him.

4(c). The case record reveals that the applicant had earlier also filed OA No.811/2010 after denying the charges against him contained in the charge memo. This O.A. was dismissed on 07.03.2011.

4(d). The claim of the applicant in para 4.9 of the OA that the Appellate Authority dropped two articles of charge against him i.e. article of charge I and IV is correct and based thereon the Appellate Authority had modified the punishment

order of the Disciplinary Authority. However, the view taken by the Appellate Authority for dropping the two charges also do not seem fully convincing to us because the items being exported by the Exporter M/s. Ruchika International were manufactured in Mumbai, then they were shown as taken to Miraj for claiming the DEPB benefits and thereafter were attempted to be exported from JNPT Port Mumbai. This strange route adopted by the exporter ought to have been noticed by the applicant and his failure in doing so has been dropped by the Appellate Authority just because that party had declared ICD Miraj as Port of export for export clearance for DPEB claim.

4(e). It is not clear to us as to how the facts of the present case were similar to those covered in caselaw - Inspector Prem Chand Vs. Government of NCT of Delhi and others and how the present applicant can benefit from that decision. In our opinion facts of the present case are not identical to those covered in that case. Therefore, that caselaw cannot help him.

4(f). The claim of the applicant that action against him under the Customs Act as well as under the CCS (CCA) Rules based on the same

action/inaction on his part amounts to double jeopardy is misleading. The Disciplinary Authority has explained in detail how this claim was misleading. When the fine imposed on the applicant and others by the Commissioner of Customs, Pune under provisions of the Customs Act, 1962 was dropped by the order of Customs, Excise and Service Tax Appellate Tribunal Mumbai Bench dated 04.06.2015, in para 6.5 it has been stated that in our view, violation to perform the duty of scrutinising or examining, non-drawing of samples, at the best can be held as dereliction of duty which can be proceeded in terms of CCS Rules, 1965. This view of the Customs, Excise and Service Tax Appellate Tribunal also has supported the case of the respondents to proceed against the applicant under the CCS(CCA) Rules, 1965. Thus these proceedings and punishment based thereon do not amount to a case of double jeopardy for the applicant.

4(g). The detailed order of the Disciplinary Authority has very clearly brought out the failure of the applicant in not meticulously observing the required procedure for proper valuation of the goods sought to be exported and for issue grossly

inflated invoices for obtaining DEPB benefit by the exporter and also for non-drawing of samples and for not maintaining the required registers and documents which were neither produced before the investigating officer nor the investigating officer could find them in the ICD depot.

4(h). Since after considering all aspects of the case and the conclusions as well as punishment order of the Disciplinary Authority, the Appellate Authority has already taken a lenient view in favour of the applicant by reducing the penalty, in our view it will not be proper to substitute his conclusion by our own opinion. However, rest of the charges were proved against the applicant and the punishment based thereon is justified.

4(i). We also find that during the course of the disciplinary proceedings, the respondents have provided full opportunity to the applicant to defend himself. Thus the principles of natural justice have been complied with. During the inquiry proceedings, the applicant and his defence witness seem to have simply made a statement claiming that the registers were maintained. However, they did not produce any of those claimed registers or documents. Therefore, there is no substance in the

contentions of the applicant in the OA. In view of already reduced penalty by the Appellate Authority, we find that the modified penalty imposed by the Appellate Authority is proportionate to and justified for the gravity of the charges proved against the applicant. We also do not find any reasons as to how the applicant has challenged the order of the Disciplinary Authority in this OA when that order was already modified by the Appellate Authority by reducing the penalty in favour of the applicant based on which challenge to the order of the Disciplinary Authority had become redundant.

In view of these conclusions, the Original Application deserves dismissal.

5. Decision:-

Hence, the OA is dismissed. No order as to costs.

OA No.526/2017

6. OA No.526/2017 has been filed by Shri Ashok Jagannath Ghode on 10.08.2017 seeking direction to respondents Nos.1 & 2 i.e. Secretary to Government of India, Department of Revenue, Ministry of Finance, New Delhi and Chairman, Central Board of Excise and Customs GST, Department of Revenue, New Delhi to consider him for promotion

as Assistant Commissioner w.e.f. 22.10.2014 when his next junior Shri J.S. Sidhu was promoted, along with consequential benefits.

7. In this, the main contention of the applicant is that the DPC was held in October, 2014 for considering promotion to the post of Assistant Commissioner for vacancies during the year 2013-2014 but he was not considered and his case was kept under sealed cover in view of the disciplinary proceedings against him. He has further contended that even the DPC held in February, 2017 for the vacancy years 2014-2015 and 2015-2016 also did not consider his case and it was again kept under sealed cover. This was wrong and illegal because even as per the order of the Appellate Authority in the disciplinary proceedings dated 18.11.2014, his punishment for one year w.e.f. 01.06.2014 got over by 31.03.2015 and therefore, the DPC ought to have considered him for promotion for the vacancy year 2015-2016. He has further claimed that one Shri J.S. Sidhu who is junior to him in seniority was considered by the DPC held in October, 2014 and his promotion order was issued by the respondents on 22.10.2014.

8. The respondents in reply have submitted

that although the penalty imposed on the applicant got over by 01.06.2015, the DPC held in October, 2014 for the vacancy year 2013-2014 had to keep his case in sealed cover because of on-going punishment to him as per DoPT OM dated 14.09.1992. They have further submitted that after the DPC held in February, 2017 his case was inadvertently kept in sealed cover, but it has been opened later on and it has been found that the DPC held in February, 2017 had found the applicant unfit for promotion as Assistant Commissioner for the vacancy years 2014-2015 and 2015-2016 because of the on-going punishment. Therefore, they have denied the contention of the applicant and have sought dismissal of this OA.

9. We have considered the full background of this case in OA No.43/2016 and consideration of the applicant for promotion was based on the final outcome of the disciplinary proceedings and punishment awarded to him based thereon. The decision in this O.A. also depends on the outcome of that OA.43/2016. Since after careful consideration, OA No.43/2016 is being dismissed of this order, the submissions of the respondents with reference to the contentions of the applicant in OA

No.526/2017 seem justified. The applicant was obviously not fit to be considered by the DPC held in October, 2014 for the vacancy year 2014-2015 and his case was rightly kept under sealed cover. The subsequent DPC held in February 2017 has considered his case but found him unfit for promotion because of the ongoing modified order of punishment issued by the Appellate Authority on 18.11.2014 which was in operation till 31.05.2015, thereby rendering the applicant unfit for consideration for the vacancy year 2015-2016 (commencing from 01.04.2015). Therefore, OA No.526/2017 also has no merit and deserves dismissal.

10. Decision :

O.A.526/2017 is dismissed. No costs.

(R.N. Singh)
Member (J)

(Dr. Bhagwan Sakhai)
Member (A)

ma/H.

JP
18/10

