

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI

O.A.No.471/2013

Dated this Friday the 7th day of June, 2019.

Coram: Dr. Bhagwan Sahai, Member (Administrative).
R. N. Singh, Member (Judicial).

Sh. Ajoy Kumar
Age 46 years, working as Superintendent
of Customs, residing at Flat No.1004,
Building No.17-E,
Ganga Customs Colony,
Powai, Pin-400 076.

...Applicant.

(By Advocate Shri S. V. Marne) .

Versus

1. Union of India,
Through the Chief Commissioner
of Customs Mumbai Zone 1,
New Customs House,
Ballard Estate,
Mumbai.400 001.
2. The Commissioner of Customs
(General), New Customs House,
Ballard Estate, Mumbai-400 001.
3. The Additional Commissioner of
Customs (Vigilance),
Office of the Commissioner of Customs
(General),
New Custom House,
Ballard Estate,
Mumbai- 400 001.

... Respondents.

(By Advocate Shri V. S. Masurkar an Sheri S. G.
Pillai) .

Order reserved on: 05.04.2019

Order delivered on: 07.06.2019

O R D E R

Per : Dr. Bhagwan Sahai, Member (A)

1. Shri Ajoy Kumar, working as Superintendent

of Customs with the office of Addition Commissioner of Customs, Mumbai filed this OA on 18.07.2013. He is seeking quashing and setting aside of impugned order dated 08.02.2010 passed by Disciplinary Authority i.e. Additional Commissioner of Customs (Vigilance), New Customs House, Mumbai; order dated 26.11.2010 passed by Appellate Authority i.e. Commissioner of Customs (General), New Customs House, Mumbai and order dated 17.06.2013 passed by Chief Commissioner of Customs, New Customs House, Ballard Estate, Mumbai along with provision of cost of this OA.

2. Summarized facts:-

2(a). The applicant has stated that he was initially appointed as Preventing Officer on 05.03.1992 and thereafter promoted as Superintendent of Customs in the year 2011. When he was posted as Preventing Officer at export shed for six months during the year 2002 and was assigned duty as Examining Officer, he examined consignment of goods with description as 'Ladies' Maxis' (date not mentioned) based on random selection of cartons and on opening them he had found that the goods in those cartons matched with the description of export documents. He took some samples and sent

them to the Deputy Commissioner of Exports Shed for checking the declared value.

2(b). It has been stated that the Superintendent of Customs thereafter issued let export order for that consignment. However, instead of sending that consignment for loading in the ship, the applicant claims that it appears the clearing agent M/S. Vega Shipping and Transport Pvt. Ltd., who was handling export consignments of M/S. Kai Overseas and M/S. M. W. Impex, kept some consignments of similarly described goods in the export shed. The applicant has further stated that as Examining Officer he was not responsible for ensuring that the consignments for which let export order had been issued were sent for stuffing in the ship. He also claims that it is was the duty of the Stuffing Officer of the Customs and BPT.

2(c). It has been stated that on 19.08.2002, the clearing agent i.e. M/S. Vega Shipping and Transport Pvt. Ltd. presented another consignment of goods with description as ladies maxis of M/S. M. W. Impex. After randomly selecting of cartons for examination, the applicant claims that the clearing agent mischievously brought three cartons of M/S. Kai Overseas with replaced marking

thereof by wiping off the earlier marking or by changing the polythene cover of the cartons and presented those cartons for examination as if they were of M/S. M. W. Impex.

2(d). The applicant further claims that there was no way in which he could have noticed that the goods presented for examination on 19.08.2002 were the same as had been examined by him earlier on the same date. After examining the consignment of M/S. M. W. Impex on that date and noticing that the consignment contained goods of same description as mentioned in the export documents, he issued the examination report in respect of that consignment and Superintendent Shri D. S. Basetia issued the let export order in respect of the 2nd consignment.

2(e). The applicant has further stated that it appears to him that on 22.08.2002 Customs Intelligence Unit detained the consignment of M/S. M. W. Impex which had been examined by him on 19.08.2002 and found that the said consignment contained small cut pieces (Chindi) of fabrics and not even a single new garment. That consignment was seized on 22.08.2002 and statement of the applicant was record on 24.08.2002.

2(f). Thereafter the applicant was placed under suspension from 05.12.2002 till its revocation on 09.03.2004. He was issued the Charge-Memorandum on 10.05.2005 under Rule 14 of CCS (CCA) Rules, 1965 alleging that he had willfully and deliberately given wrong examination report in respect of the consignment examined by him on 19.08.2002 certifying that the cartons contained ladies maxis whereas actual goods contained therein were subsequently found to be only small cut pieces of fabrics (Chindi). Because of this misleading examination report submitted by the applicant and let export order given based thereon, the exporters were enabled to claim duty drawback of Rs.3,98,827/-.

2(g). The applicant denied the charge on 20.05.2005 and thereafter Inquiry Officer and Presenting Officer were appointed by order dated 14.10.2005. It has been stated that out of thirteen witnesses cited in the charge-sheet, the prosecution examined eight witnesses and examination-in-chief of witness Shri P. D. Manjrekar, Proprietor of M/S. Vega Shipping and Transport Pvt. Ltd. (clearing agent) was held but he never returned for cross-examination. At the end

of the inquiry, the applicant submitted his defence brief on 04.08.2006 (Annex A-6).

The Inquiry Officer submitted his report to Disciplinary Authority holding that the charge against the applicant was not proved and also mentioned that manipulations were made by CHA's representatives and substantial time gap gave scope for replacement of marking, etc, and there was no segregation in the shed of examined goods ready for loading and the goods carted for the customs examination.

The Inquiry Officer also held the applicant responsible for not being careful enough to check the customs pass of the persons presenting the goods for examination to avoid entry or handling of the goods in the shed by unscrupulous persons. A copy of the Inquiry Officer's report is annexed at Annex A-7.

2 (h) . But the Disciplinary Authority disagreed with the finding of the Inquiry Officer and served a memorandum on the applicant on 28.01.2007 (Annex A-8) along with the report of the Inquiry Officer. It has been claimed by the applicant that in the memorandum the DA failed to record any reasons for disagreeing with any

specific finding of the Inquiry Officer. The applicant submitted reply to the disagreement note on 06.12.2007 (Copy at Annex A-9).

2(i). Thereafter, the DA consulted with Central Vigilance Commission on his tentative opinion about the guilt of the applicant. The CVC gave its advice on 21.10.2009 advising imposition of major penalty on the applicant (Copy at annex A-10). A copy of the CVC advice was also provided to the applicant on 26/27.10.2009, on which he made a representation on 23.12.2009.

2(j). The DA passed the order dated 08.02.2010 holding the applicant guilty of the charge concluding therein that there was possibility that during the examination of the packages on 19.08.2002, the applicant failed to notice that the marks and numbers were of M/S. Kai Overseas and not of M/S. M. W. Impex. The DA also held the applicant guilty of not verifying the bonafides of the persons handling the consignments. The applicant was held guilty of lack of devotion to duty and unbecoming conduct of the public servant but absolved of the charge of lack of integrity observing that the applicant was hoodwinked by unscrupulous operators. The DA has

imposed penalty on the applicant of reduction in salary by two stages in the time scale of pay i.e. Rs.9300-34800 + G.P. Of Rs.4200 for a period of one year from 15.02.2010 without cumulative effect. For his suspension period from 05.12.2002 to 09.03.2004, the amount of pay and allowance of the applicant will be restricted to the amount of subsistence allowance drawn by him and that period of suspension shall be counted only for the purpose of qualifying service and for the purpose of pension.

2 (k) . Thereafter the applicant preferred an appeal on 23.03.2010 to Appellate Authority i.e. the respondent no.2, Commissioner of Customs (General), New Customs House, Ballard Estate, Mumbai (Annex A-12). The Appellate Authority rejected the appeal by its order dated 26.11.2010. Then the applicant filed a Revision Petition on 28.05.2011 before the respondent no.1 i.e. Chief Commissioner of Customs, Mumbai Zone 1, New Customs House, Ballard Estate, Mumbai. The Revisionary Authority also gave a personal hearing to the applicant when he submitted his written statement on 01.02.2012. However, the Revisionary Authority rejected the Revision Petition on 17.06.2013.

Therefore, the present OA has been filed.

3. Contentions of the parties:-

The applicant and his counsel have contended that:-

3(a). the orders passed by the Disciplinary Authority, Appellate Authority and Revisionary Authority are illegal and void as the Inquiry Officer had exonerated the applicant of the charges. The Disciplinary Authority erroneously disagreed with his findings. The DA did not specifically disagree with particular findings of the Inquiry Officer and made only general observations. Since none of the particular findings of the Inquiry Officer was disagreed nor any reasons were given, it can not be said that reasonable opportunity was given to the applicant to deal with the disagreement. On this ground the penalty deserves to be set aside;

3(b). during the inquiry the applicant had taken a defence that the goods which had been examined by him on 13.08.2002 as consignment of M/S. Kai Overseas were shown to him on 19.08.2002 which was accepted by the Inquiry Officer. The DA also recorded that the only possibility which remains is that during the examination of the

packages on 19.08.2002, the charged officer had failed to notice that the marks and numbers on the packages examined by him were those of M/S. Kai Overseas and not those of M/S. M. W. Impex and the examination report for the said shipping bills of M/S. M. W. Impex had been given without examination of the actual consignment of M/S. M. W. Impex.

This means the DA also accepted that substituted cartons were shown to the applicant for examination on 19.08.2002. In view of this, the DA ought to have not punished the applicant. When the applicant actually examined the packages they had already been opened by the clearing agent and thus kept ready for examination. Hence the applicant could not detect mischievous substitution of the packages by the clearing agent. The DA has erroneously held that it was highly implausible that substitution or replacement of packages or frequent wiping off of marks and numbers involving 50 cartons escaped the notice of Mumbai Port Trust Shed staff, customs or Steamer agents;

3(c). since not all cartons were examined and only five of them were examined, it was quite possible that nobody noticed the replacement of those five packages and therefore the view of the

DA is incorrect. Since the DA also held that the applicant was hoodwinked by unscrupulous operators, the applicant is proved to be innocent but he has been unnecessarily punished;

3(d). the applicant has been punished because of pressure put by Central Vigilance Commission in the form of its second stage advice. The order of the Appellate Authority dated 26.11.2010 suffers from non-application of mind as he merely recorded chronological events and reproduced the grounds in appeal on first seven pages of the order and also reproduced the findings of the DA holding that whatever was held by the DA was correct;

3(e). the Appellate Authority has recorded an imaginary finding that the DA is correct to observe that there is no corroboration in the testimony of Deputy Commissioner Shed. No such observation or recording has been made by the DA which reveals total non-application of mind of the Appellate Authority. The Appellate Authority has also held that no substitution of cartons took place but he has also held that fraud committed by the exporters could have been detected by the applicant by observing carefully the correct marks

and numbers on the consignment;

3(f). the order of the Revisionary Authority also suffers from non-application of mind as he has merely reproduced various findings of the Appellate Authority and erroneously held that the issue of not producing Shri Manjrekar for cross-examination can not be taken at the Revisionary stage and should have be taken in the inquiry proceedings during which the applicant did not raise that issue; and

3(g). in the adjudication proceedings against the exporter and CHA vide show cause notice issued dated 21.08.2003, the Customs Intelligence Unit had stated that the goods had been substituted by the clearing agent but this aspect was not appreciated by the Appellate and Revisionary Authorities. The penalty of reduction of salary by two stages for one year without cumulative effect may appear to be not harsh but it has seriously affected the applicant. He had become due for promotion to the post of Superintendent in the year 2005 when his junior was promoted but because of keeping his case in a sealed cover during the Disciplinary Proceedings, he was promoted only in March 2011. This has also delayed his promotion to

the post of Assistant Commissioner. Therefore, the penalty deserves to be set aside.

The respondents have contended that:-

3(h). the action of the respondents is strictly as per the provisions of law, the applicant was provided reasonable opportunity to defend himself at each stage during the Disciplinary proceedings and he was also given personal hearing. Thus the respondents have fully complied with the provisions of the law and principles of natural justice. There is neither any procedural flaw nor violation of rules;

3(i) the punishment imposed upon the applicant is commensurate with the gravity of his mis-conduct under the rules. Hence the OA is devoid of merit and deserves dismissal with cost, particularly in view of following case laws:-

(i). AIR 1996 SC 1232 S/o Tamil Nadu V/S. S. Subtramaniam.

(ii). 1997 (A) SCSLJ 227 Govt. of Tamil Nadu V/S S. Vel Raj.

(iii). 1997 (1) SLJ (SC) 63 Govt. of Tamil Nadu V/S K. N. Ramamurthy.

(iv). JT 1997 (4) SC 2366 Commissioner and Secretary to the Govt. V/S S. Shanmugam.

(v). 1998 (1) SCSLJ 74 Union of India V/S B. K. Shrivastava.

(vi). 1998 (1) SCSLJ 78 Union of India V/s A. Nagamalleshwari.

(vii). JT 1998 SC 61 Apparel Export Promotion Council V/s A. K. Chopra;

3(j). a consignment declared to contain ladies maxis valued at Rs. 33,23,559/- was being exported by M/S. M. W. Impex involving duty drawback claim of Rs.3,98,827/-. The applicant examined that consignment and gave a misleading examination report. When the Customs Intelligence Vigilance Unit intercepted that consignment on 22.08.2002, the cartons of the consignment were in intact condition and in original packing indicating that they had not been examined at all. On subsequent examination, they were found to contain small cut pieces of fabrics and rags instead of the declared goods. There is no corroborative evidence suggesting that substitution of the packages took place;

3(k) this clearly establishes that the applicant had failed to notice that the consignment was bearing different marks and numbers from those certified by him. Even though the contents in the

packages of M/S. Kai Overseas and M/S. M. W. Impex were identical, they had distinct marks and numbers which were not noticed by the applicant showing his negligence in examining the consignments. It is an undisputed fact that when the CIU (i.e. Customs Intelligence Unit) intercepted the consignment, it was lying in unexamined condition with original packaging and on examination it was found containing rags instead of the declared contents. Had the Customs Intelligence Unit not intercepted and examined the consignment, fraudulent claim of duty drawback by the unscrupulous exporters would have succeeded. In view of these facts, the orders passed by the Disciplinary Authority, Appellate Authority and Revisionary Authority are legal and proper;

3(1). for that case, disciplinary proceedings were also initiated against Sh. Dara Singh Basetia, the Superintendent at that time. The charges against him were also proved and penalty of reduction in pay by two stages without cumulative effect was also imposed on him with consultation of UPSC (Annex R-1);

3(m). the order of the Disciplinary Authority has nowhere indicated that the applicant

was penalized only on the basis of statements of Sh. Manjrekar. In fact the punishment was on the basis of credible evidence which revealed that the consignment had not even been examined by the applicant and there was no scope for substitution of the consignment. Since the Inquiry Officer exonerated the applicant from the charge, the disciplinary authority disagreed with his finding giving sound reasons for his disagreement. In the findings the Inquiry Officer had ignored some vital evidence. Therefore, the disciplinary authority was correct in disagreeing with the report of the Inquiry Officer;

3(n). also, the submissions of the applicant on the disagreement note were considered by the DA before passing the final order. Therefore, the conclusions of the DA based on facts and evidence of the case were correct that the applicant was negligent in examining the consignments. Hence, the applicant cannot be absolved of his assigned duties and responsibilities. If he had been careful and diligent in examining the consignments, the fraudulent attempt of the exporters would not have escaped his notice. The applicant has attempted to

cover up his negligence by raising certain imaginary aspect to divert attention of the Tribunal.

3(o). the applicant has made a false attempt to claim that the finding of the Appellate Authority was for substitution of the cartons but there was no such substitution;

3(p). in the Supreme Court decision in case of State of Tamil Nadu V/S S. Subramaniam reported in AIR 1996 SC 1232, it has been held that on the conclusions reached by the authorities based on the evidence the Tribunal does not have the authority to appreciate the evidence and to come to its own conclusions. It is the exclusive domain of the Disciplinary Authority to consider the evidence on record and reach its finding whether the charge has been proved or not. In judicial review the Court or the Tribunal has no power to trench on the appreciation of the evidence and arrive at its own conclusion. Judicial review is not an appeal on the decision but it is a review of the manner in which the decision has been made. It is meant to ensure that a delinquent receives fair treatment and not the conclusion of the authority which would be necessarily correct in view of the Court or the

Tribunal. When the conclusion is reached by the authority based on the evidence, the Tribunal is devoid of power to re-appreciate the evidence and come to its conclusions.

In the Apex Court Decision in case of State of Tamil Nadu V/S K. N. Ramamurthy reported in 1997 (1) SLJ (SC) 63, it was held that the Tribunal cannot interfere in the findings if there is no flaw in the proceedings. Since in the present case the order passed by the Disciplinary Authority is legal, just and proper, and which has been rightly upheld by the Appellate Authority and Revisionary Authority, the OA deserves to be dismissed with cost;

3(q). the applicant had wilfully and deliberately given a wrong and misleading examination report, based on which the let export order was issued. This could have enabled the exporter to claim the duty draw back but it was stopped due to timely intervention of Customs Intelligence Unit. This action of the applicant very clearly reveals that he did not maintain absolute integrity and devotion to duty.

The Inquiry Officer failed to prove the charge against the applicant and strangely accepted

the applicant's hypothesis that the goods examined by him on 19.08.2002 were in fact ladies maxis and since they were re-examined by Customs Intelligence Unit on 22.08.2002, there was a possibility of tempering with the content of the consignment. There is no evidence for such a hypothesis, claimed by the applicant and when he tried to plead such an alternative hypothesis, the burden of proof shifted on him to prove it but the applicant never gave any evidence. Therefore, acceptance of such an alternative hypothesis by the Inquiry Officer was wrong; and

3(r). the Disciplinary Authority had already taken a lenient view by not holding the applicant responsible for lack of integrity and he has been held responsible only for lack of devotion to duty. Therefore, the penalty imposed by the Disciplinary Authority and upheld by the Appellate and Revisionary Authorities does not warrant any interference by the Tribunal. Hence, the OA should be dismissed.

4. Analysis and Conclusions:-

4(a). We have perused the OA memo, reply of the respondents filed on 12.11.2013 and considered the arguments advanced by both the parties on

05.04.2019 when their counsel remained present and were heard. We have also considered the written arguments submitted by the counsel for the applicant on 06.03.2019 and by the counsel for the respondents on 02.04.2019. Based on careful consideration of all these, we conclude as follows;

4(b). The main issue involved in this case is whether the examination report submitted by the applicant for the consignment examined by him on 19.08.2002 was an act of negligence as a public servant. Based on his disagreement with the findings of the Inquiry Officer during the Disciplinary proceedings conducted against the applicant, the Disciplinary Authority held the applicant guilty of negligence and lack of devotion to duty and therefore imposed the penalty on him. The Appellate Authority and Revisionary Authority have upheld / confirmed those conclusions and decision of the DA and punishment imposed by him on the applicant.

4(c). The claim of the applicant in para 4.2 of the OA that he had examined the consignment earlier on 13.08.2002 based on which the let export order was also issued and that instead of loading that consignment it was kept in the export shed.

His further claim that when he examined another consignment on 19.08.2002, three cartons of M/S. Kai Overseas were replaced for examination as those of M/S. M. W. Impex and that he was not in a position to notice this. These claims are totally misleading and unacceptable. He was posted there at the relevant time as Preventive Officer/Examiner of the export consignments and it was obviously his duty to meticulously examine and verify as to which exporter the consignments examined by him belonged. This duty he failed to discharge sincerely and responsibly.

4 (d) . The applicant has mentioned some conjectures and guesswork on what might have happened because of non-segregation of the consignments in the export shed. In the shed as careful and vigilant examiner, he ought to have ensured that the consignments were properly segregated for examination and thereafter for loading.

4 (e) . The applicant has attempted to appreciate only a part of the conclusions of the Inquiry Officer. In fact, in the finding (d) the Inquiry Officer recorded that the charged officer does not seem to be careful enough in checking the

customs pass of the persons who are presenting the goods for examination and entry for handling of the goods in the shed by unscrupulous persons.

4(f). Also the claim of the applicant that no reasons have been mentioned by the Disciplinary Authority in the disagreement note is false. In the memorandum containing the disagreement note dated 28.11.2007, the DA had listed three observations that the cartons under five shipping bills of M/S. M. W. Impex dated 12.08.2002 declared content as ladies maxis were carted into docks on 14.08.2002. Those cartons were not shown or presented for the examination to Customs. When examined by the Customs Intelligence Unit on 22.08.2002 and were found to contain only rags having no commercial value on which no drawback was admissible. However, the examination report of the applicant and let export order pertaining to those shipping bills indicated that the consignment had been examined by the applicant under supervision of Sh D. S. Basetia, Superintendent on 19.08.2002 and let export order had been given on the same date. However, the contents appeared on the cartons examined on 19.08.2002 were the same which were found in the consignment of the M/S. Kai Overseas

earlier examined by the applicant on 13.08.2002 under supervision of Sh. D. S. Basetia. Therefore, the examination report in respect of those five shipping bills had been given by the applicant without actual examination of the consignment under those shipping bills and due to this misleading examination report, the let export order was given enabling the exporters for claiming undue duty drawback. Because of these reasons, the Disciplinary Authority disagreed with the finding of the Inquiry Officer.

4(g). The Disciplinary proceedings conducted by the respondents and the decision on punishment taken by the Disciplinary Authority after consulting the Central Vigilance Commission as well as the orders passed by the Appellate authority and the Revisionary Authority reveal, as submitted by the respondents, that the applicant had been provided adequate opportunity to defend himself at every stage including giving personal hearing. Therefore, in the proceedings conducted by the respondents we do not find any procedural lapse. In our opinion the principles of natural justice have been fully complied with by the respondents.

4(h). Although the applicant claims that the Inquiry Officer did not hold him liable for punishment. But in fact the Inquiry Officer had only exonerated him about his connivance with the exporters and CHA and any monetary involvement. But the Inquiry Officer had held him guilty of not being careful to check even the customs passes of the persons presenting the goods for examination meant for exports and entry and handling of the goods in shed by unscrupulous persons.

4(i). The claim of the applicant that he has been punished due to pressure of Central Vigilance Commission is unfounded and imaginary. His claim that the DA did not mention any reason to disagree with conclusion of Inquiry Officer is also false. Also his vague, tentative claims about keeping of some consignment in the shed by the clearing agent and presenting of cartons of M/S. Kai Overseas as those of M/S. M. W. Impex by the clearing agent are of no substance. They only prove his negligence.

4(j). The Disciplinary Authority in his order has mentioned reasons to arrive at the conclusion that the conduct of the applicant was in violation of Rule 3 of CCS (Conduct) Rules,

1964. Based on conclusions of the Disciplinary Authority relating to lack of devotion to duty on the part of the applicant in handling the consignments and shipping bills, and there was casual manner of the applicant in not verifying the marks of the handled consignment and shipping bills, the quantum of punishment awarded by him in the form of reduction in salary by two stages for one year without cumulative effect also in our opinion seems fully justified. That punishment awarded to the applicant vis-a-vis his lapses of the negligence and lack of devotion to duty also does not seem excessive.

In view of these conclusions, we feel that the submissions of the respondents are correct and justified. The contentions and claims of the applicant have no merit, they are unjustified. Hence, the present OA has no merit and it deserves dismissal.

5. Decision:-

The OA is dismissed. Parties to bear their respective costs.

(R. N. Singh)
Member (J)

V.

(Dr. Bhagwan Sahai)
Member (A)

