In the High Court of Judicature at Madras

Dated : 24.2.2015

Coram :

The Honourable Mr.Justice V.RAMASUBRAMANIAN

and

The Honourable Mr.Justice P.R.SHIVAKUMAR

Writ Petition No.25313 of 2014

Mr.S.Krishnan ... Petitioner

Vs

1. The Government of India, rep.by its Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, Jeevan Deep Building, Parliament Street, New Delhi-110001.

2. The Commissioner of Customs (Exports) Customs House, Rajaji Salai, Chennai-1.

3. The Central Administrative Tribunal, rep.by its Registrar, Chennai-104. ... Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to O.A.No. 1588 of 2011 on the file of the Central Administrative Tribunal, Chennai culminating in the passing of the impugned order dated 7.7.2014 and quash the same.

For Petitioner : Mr.Y.Venkataraju

For Respondents 1 & 2 : Mr.K.Mohanamurali, SPC

Order of the Court was made by V.Ramasubramanian,J

The petitioner has come up with the above writ petition challenging the dismissal of his application by the Central Administrative Tribunal, upholding the penalty of reduction by two stages in the time scale of pay for a period of one year.

2. Heard Mr.Y.Venkataraju, learned counsel for the petitioner and Mr.K.Mohanamurali, learned Senior Panel Counsel appearing for the respondents 1 and 2.

3. While the petitioner was working as an Appraiser in the Examination Section of Tuticorin Port, a charge memo dated 29.1.2001 was issued under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. The only charge against the petitioner was that he did not carry out physical examination of the shipping bills as detailed in Annexure A to the charge memo on 31.12.1998 and that without verifying the goods shown as presented for export by the Customs House Agent on the relevant shipping bills, he made false entries as if he physically examined the goods.

4. The petitioner denied the charges and a preliminary enquiry followed. Subsequently, a detailed enquiry was held and the Enquiry Officer submitted a report on 2.12.2003 holding the charge proved. The copy of the report was given to the petitioner and the petitioner gave objections to the findings of the Enquiry Officer.

5. A personal hearing was also granted to the petitioner, after which, a memorandum containing the second stage advice from the Directorate of Vigilance was also furnished to the petitioner. The petitioner gave a reply to the same also.

6. After considering all the above, the Disciplinary Authority passed an order dated 13.9.2006 imposing a penalty of reduction of pay by two stages in the same time scale of pay that the petitioner was holding, for a period of one year. As against the order of penalty, the petitioner filed a statutory appeal. During the pendency of the statutory appeal, the petitioner also made a representation to the President of India. After obtaining advice of the Union Public Service Commission, the President of India rejected the representation on 11.11.2009. The Appellate Authority also dismissed the appeal. Challenging these orders, the petitioner filed an application in O.A.No. 1588 of 2011 on the file of the Central Administrative Tribunal, Madras Bench. The Tribunal dismissed the application by an order dated 7.7.2014. Aggrieved by the said order, the petitioner is before this Court.

7. Before proceeding to consider the contentions of the learned counsel for the petitioner, it must be pointed out that an order of penalty such as the one imposed upon the petitioner, falls under Rule 11(v), which reads as follows :

"Reduction to lower time scale of pay,

grade, post or service for a period to be specified in the order of penalty, which shall be a bar to the promotion of the Government servant during such specified period to the time scale of pay, grade, post or service from which he was reduced, with direction as to whether or not, on promotion on the expiry of the said specified period

a) the period of reduction to time scale of pay, grade, post or service shall operate to postpone future increments of his pay and if so, to what extent; and

b) the Government servant shall regain his original seniority in the higher time scale of pay, grade, post or service."

8. It is actually a major penalty. Therefore, the Authority concerned was obliged to serve a charge memo, conduct an enquiry, furnish a copy of the enquiry report, get explanation and thereafter consider the material and pass orders. The second respondent has followed the procedure prescribed in Rule 14 of the Rules. The complaint of the petitioner is not that any of the procedure prescribed in Rule 14 is not followed.

9. Once it is found that there is no violation of the procedure prescribed in Rule 14 and that there is no violation of the principles of natural justice, then a challenge to a penalty can be only on one more limited ground namely that the findings are completely perverse and not borne out by evidence.

10. As a matter of fact, the learned counsel for the petitioner tries to bring the case only within this parameter. According to the petitioner, the petitioner physically examined all the bills. Apart from the disciplinary proceedings initiated against the petitioner, it appears that proceedings were also initiated against the exporter. According to the learned counsel for the petitioner, the exporter approached the Tribunal (CESTAT). The Tribunal passed an order in favour of the exporter in Marvel Apparel Vs. Commissioner of Customs [2008 (227) ELT 243]. Therefore, the learned counsel contends that the findings are not based upon any evidence.

11. We have carefully considered the above submissions.

12. It is seen from the order of the Tribunal that what was alleged against the exporter was that they claimed duty drawback without actually making any export, by getting signatures of the officers pre-dated in the shipping bills. In other words, the

proceedings against the exporters were on the basis that the officers had pre-dated the shipping bills. But, the charge against the petitioner was that without physically examining the shipping bills, he made false entries in the shipping bills as though he had physically examined them. Therefore, the charge is completely different from the allegation made against the exporter for cancellation of duty drawback.

13. In the case on hand, the Enquiry Officer has given all particulars to the petitioner. The matter was referred to the Director General (Vigilance). Though he recommended a higher penalty, the Disciplinary Authority imposed a lesser penalty. The Union Public Service Commission has also independently examined the same and the Central Administrative Tribunal did not find the case to be one where there was perversity. In such circumstances, we find no material to interfere with the order.

14. Accordingly, the writ petition is dismissed. No costs.

Sd/-
Asst. Registrar

/true copy/

Sub Asst. Registrar.

RS

To

1. The Secretary to Government of India, Ministry of Finance,
   Department of Revenue, Central Board of Excise & Customs,
   Jeevan Deep Building, Parliament Street, New Delhi-110001.

2. The Commissioner of Customs (Exports), Customs House, Rajaji Salai,
   Chennai-1.

3. The Registar, Central Administrative Tribunal,High Court Campus,
   Chennai-104.

+1cc to Mr.Norton and Grant, Advocate, S.R.No.10178
+1cc to Mr.K.Mohanamurali, Advocate, S.R.No.9911

WP.No.25313 of 2014

EV(CO)
CA(05/03/2015)