IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.6368 OF 2013

1 The Union of India, through
The Chairman,
Central Board of Excise & Customs,
North Block, New Delhi-110 001

2 The Chief Commissioner of Central
Excise,
Mumbai Zone-I, 115, Maharshi Karve Road,
New Central Excise Building, Churchgate,
Mumbai 400 020

3 The Commissioner of Central Excise,
Thane-I,
Nav Prabhat Chambers,
Ranade Road, Dadar (West),
Mumbai 400 028.

4 The Joint Commissioner (P&V),
Central Excise, Thane-I,
Nav Prabhat Chambers,
Ranade Road, Dadar (West),
Mumbai 400 028. ......Petitioners

Versus

Balakrishnan Thiruvengadam Mudaliar,
Last employed at :
Central Excise, Thane-I Commissionerate,
Nav Prabhat Chambers,
Ranade Road, Dadar (West),
Mumbai 400 028
Residing at: BDD Chawl No.18, Room No.6,
Worli, Mumbai- 400 018. ....Respondent

Mrs. Neeta V. Masurkar , Advocate for Petitioners.
Mr. Milan Topkar i/by Ranjan Todankar, Advocates for Respondents.

CORAM : SMT. V.K. TAHILRAMANI, &
SANDEEP K. SHINDE, JJ.

DATE : June 21, 2017.

JUDGMENT : [Per Shri Sandeep K. Shinde, J.]

Rule. Rule made returnable forthwith. With consent of the learned counsel for the parties, the matter is taken up for final hearing forthwith.

2 The Union of India has preferred this writ petition against the order dated 21.2.2013 passed by the Central Administrative Tribunal in Original Application No.787 of 2010 whereby the Union of India and other petitioners herein were directed to reinstate the respondent (Original Applicant) in service with continuity of service and the penalty imposed on him of compulsory retirement was reduced to stoppage of one increment for a period of three years. Aggrieved by the said order, the

Union of India has preferred this petition under Articles 226 and 227 of the Constitution of India.

3 The Respondent/Original Applicant was working as driver in the Central Excise Commissionerate, Bombay (II). On 4.6.2003, the respondent was in the office/chamber of one Mr. Keer, public servant working in the office of Central Excise. At the relevant time, Mr. Keer asked the respondent to count Rs.1,000/- allegedly given to him by Mr. Pasha as bribe. After counting money, the respondent returned the same to Mr. Keer. Mr. Keer thereafter handed over the said amount to Mr. M.S.Kamble, who was clerk in the very office. Money given by Mr. Pasha to Mr. Keer was tainted money in-as-much as a trap was led by the Anti Corruption Bureau, CBI and Mr. Keer was apprehended by the officers of the ACB. Mr. Keer was tried in the Special Case No.51/2004 under the provisions of the Prevention of Corruption Act, 1988. Mr. Keer was dismissed from service. Neither the respondent nor Mr. Kamble were prosecuted. In fact, respondent/original applicant was prosecution witness in the Special Case No.51 of 2004. On

the backdrop of these facts, the respondent was suspended on 5.6.2003 and the disciplinary proceedings were initiated against him and Mr. Kamble. Charge-sheet was issued against him on 13.9.2004 and the article of charge would read:

> *" Shri Balakrishnan Thiruvengadan Mudaliar, Driver, Customs Marine & Preventive Wing, 3rd Floor, Everest House, Marine Drive, Mumbai, while functioning as above, being Government servant, committed gross mis-conduct in as much as he received the tainted bribe amount from Shri S.A.Keer who accepted this amount as a bribe/illegal gratification from Shri Abdul Pasha in connection with disbursing the sanctioned reward amount to Shri Pasha. Shri Mudaliar was aware that this amount was not a legal income of Shri Keer. He did not maintain absolute integrity and showed lack of devotion to duty and acted as unbecoming of Government servant.*
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> *The above acts of Shri B.T.Mudaliar are unbecoming of a Government Servant and he thereby contravened Rule 3(1)(i), (ii) & (iii) of CCS (Conduct) Rules, 1964."*

4 Inquiry officer held enquiry under Rule 14 of CCS (CCA) Rules, 1965 against M.S.Kamble and the respondent

herein. Vide enquiry report 15.6.2006, he recorded the finding thus, “as far as charged officers Shri B.T.Mudaliar (Driver/Respondent herein) and Shri Kamble (LDC) are concerned, there was no charge of demand of bribe against them, but they were part of game and their nexus cannot be ruled out. As Shri Mudaliyar and M.S.Kamble were assisting Mr. Keer in his activities, suitable punishment may be considered against them by the disciplinary authority.”

5 It may be stated that disciplinary authority of the Respondent was Joint Commissioner (P&V) Central Excise, Thane whereas the disciplinary authority of Mr. Kamble was different. Be that as it may, disciplinary authority of the respondent vide order dated 8.1.2008 held him guilty of charge and inflicted penalty of compulsory retirement from the service with immediate effect.

Respondent preferred an appeal before the Commissioner Central Excise, Thane (I) who by order dated 30.3.2009 dismissed the appeal. Aggrieved by the same, a revision was preferred but it met with same fate vide order dated 27.8.2010.

6 That aggrieved by the order passed by the disciplinary authority dated 8.1.2008, the order dated 30.3.2009 passed by the appellate authority and the order dated 27.8.2010 passed by the revisional authority, he preferred the Original Application before the CAT, which was allowed as stated here-in-above and thus, this petition by the Union of India.

7 Heard the learned counsel for the petitioners and the respondent. Perused the pleadings, disciplinary proceedings and such other reports.

8 The learned counsel for the petitioners would contend that the CAT exceeded its jurisdiction by interfering with the administrative order without recording finding that the punishment imposed was shockingly disproportionate. She would contend that the Court cannot interfere with quantum of punishment unless it is shown that administrative decision was illogical or suffers from procedural impropriety. She would submit that the CAT has not recorded finding on either of these counts. She would

also submit that the CAT has committed error by reducing the quantum of punishment at par that with Mr. Kamble. She would submit that reliance of the CAT on the judgment in the case of **Tata Engineering & Locomotive Co. v. Jitendra Pd. Singh and Anr.** reported in **2002 SCC (L & S) 909** was misplaced. She, therefore, submitted that the order passed by the CAT is against settled principles of law and, therefore, the said order may be quashed and set aside.

9 The learned counsel for the respondent, on the other hand, has supported the order of the CAT.

10 The following facts are not disputed viz.,

(a) That the respondent and Mr. Kamble were not prosecuted by Anti Corruption Bureau.

(b) That the respondent and Mr. Kamble were present in the cabin of Mr. Keer on 4.6.2003. The charge against the respondent was gross misconduct for counting tainted bribe amount from S.A.Keer and that the respondent was aware that this amount was not legal income of Shri Keer. He was charged for not maintaining absolute integrity and for lack of devotion to duty.

(c) In enquiry report dated 15.6.2006, the respondent and Kamble were held guilty of charge on the ground that their nexus with Mr. Keer cannot be ruled out with a finding that they were assisting S.A. Keer in his activities.

(d) That Mr. Kamble was awarded punishment of reduction of increment for five years by the disciplinary authority, which was further reduced for a period of 3 years by the appellate authority

(e) The respondent was punished with compulsory retirement by the disciplinary authority and it was confirmed by the appellate and revisional authority.

11 The learned counsel for the respondent vehemently submitted that finding recorded by the enquiry officer against respondent and Mr. Kamble is the same but the punishments awarded to the present respondent is not only disproportionate but also harsh. He would further submit that Mr. Kamble though found guilty of charge for assisting Mr. Keer in his activities, he was awarded lesser

punishment of stoppage of increment for 3 years as against the punishment awarded to the respondent of compulsory retirement. He, therefore, urged that the CAT has correctly placed reliance on judgment in the case of **Tata Engineering and Locomotive (Supra).** Mr. Topkar, the learned counsel for the respondent, has relied on the observations of the Supreme Court in the said case wherein it was held that:

> "*Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.*"

Mr. Topkar has taken us through the orders passed by the Appellate authority and the revisional authority on the quantum of punishment. He has also taken us through the transcript of conversation between Mr. Keer and Mr. Pasha, eventually recorded by raiding party members. Mr. Topkar has taken us through the finding of the appellate authority wherein (Para 34) it is recorded that conversation between Mr. Keer and Mr. Pasha was heard by this respondent. Same finding is recorded by the revisional authority in paragraph 20. On this premise, Mr. Topkar submitted finding recorded by both the authorities is contrary to the material on record and particularly, transcript of conversation between Mr. Keer and Mr. Pasha.

12 We have perused the orders passed by the appellate authority and the transcript of conversation between Mr. Pasha and Mr. Keer. At the first place, transcript does not suggest demand by Mr. Keer. The said conversation in no manner suggest that Mr. Keer demanded the bribe. It is not possible to conceive even on the touch-stone of preponderance of probabilities, that the respondent would know Rs.1,000/- given to him by Mr. Keer was tainted money or bribe given to him by Mr. Pasha. There appears nothing on record to indicate that the respondent was either sharing intention or had knowledge that money given to him was tainted or a bribe. The

transcript does not suggest anything. No other evidence was brought on record to show that respondent was aware that Mr. Pasha would be giving bribe to Mr. Keer. Both the authorities have held that it was within the knowledge of the respondent and, therefore, he assisted Mr. Keer in his activities.

The finding recorded by both the authorities that the respondent was aware that the money counted by him at the instance of Mr. Keer was tainted money was without any foundation and/or material. In the circumstances, such finding recorded by both the authorities as was de-horse the material on record and hence, incorrect.

13 Another charge against him was not maintaining absolute integrity and the lack of devotion to duty. The learned counsel for the petitioners relied on communication dated 10.4.2003, addressed by one Shri S.A.Rahate, Superintendent (Maintenance), Mole Station whereby he requested office of petitioners for provision of vehicle to carry out maintenance job at Alibag, Shrivardhan and Murud and for aerials, wire-less sets. She submitted that date mentioned in the request letter for vehicle was erased

with white fluid and substituted with **4.6.2003** in place of **10.4.2003**. She would contend that on the basis of this forged letter, the respondent was claiming he was to drive the vehicle to the destination on 4.6.2003 and as Mr. Keer was interested to travel in the said vehicle, he came in the office of Mr. Keer.

14 That relying on this document, learned counsel for Petitioners submitted that presence of the respondent in cabin of Mr. Keer was voluntary and, therefore, knowledge on his part that it was tainted money is to be inferred. This contention cannot be accepted, firstly, for the reason that the respondent was not charged for forging official communication dated 10.4.2003 and secondly, from this document, it cannot be inferred that he was either sharing intention and/or knowledge with Mr. Keer. It is for this reason, it cannot be held even on touch-stone of preponderance of probabilities that respondent was helping Mr. Keer in his activities.

15 Now the question arises as to whether the petitioners were justified in inflicting major penalty on the

respondent, as admittedly much lesser penalty was inflicted on Mr. Kamble though both were held guilty for helping Mr. Keer in his activities in one and same enquiry. The disciplinary as well as the revisional authorities while dealing with this contention held in the respective orders that the disciplinary and the appellate authority of Mr. Kamble was different and, therefore, decision taken by those authorities would not bind them. This finding appears to be strange and not sustainable for the simple reason that Mr. Kamble and the respondent were held guilty in the one and the same enquiry. Evidence gathered against them was common and under these circumstances the authorities could not have awarded different punishments to the respondent when both were held guilty of the same charge and by same enquiry officer.

That after appreciating the material on record, we are of the opinion that disciplinary as well as revisional authorities have committed an error by concluding a fact that the respondent “was aware” and was “knowing” that the money counted by him was bribe given to Mr. Keer by Mr. Pasha. There is absolutely no evidence to support such finding. What remains is to ascertain as to whether presence of the respondent in the cabin of Mr. Keer was voluntary or otherwise. That even assuming that the respondent was party to forged communication of March, 2003 but since he was not charged with this, he cannot be held guilty. That even otherwise the punishment awarded to the respondent in the aforesaid facts and circumstances is illogical and highly disproportionate. A co-delinquent has been awarded punishment of stoppage of increment for a period of three years whereas punishment awarded to the respondent is compulsory retirement. In view of these facts and circumstances, we are of the opinion that the learned CAT committed no error and no interference is called for in its order dated 21.2.2013. Resultantly,the petition fails. The same is dismissed. Rule is discharged.

(SANDEEP K. SHINDE, J) **(SMT. V.K. TAHILRAMANI, J)**