HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

<u>WRIT PETITION No.37216 of 2017</u>

<u>ORDER</u>: (Oral)

(Per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have challenged the order dated 21st December 2016 passed in O.A.No.1222 of 2012, whereby, the application filed by the respondent has been allowed by setting aside the proceedings impugned therein.

2. Brief facts of the case are that the respondent was working as Deputy Commissioner, Export Shed, Air Cargo Complex, Sahar, Mumbai in the year 2000. On 9th March 2005, he was served with a charge memorandum under Rule 16 of the CCS (CCA) Rules, 1965. The incident leading to the charge memo was that certain Exporting Firms had entered into criminal conspiracy to cheat the Government by misusing the Export Incentive Scheme. The export consignments were wrongly declared as "Rayon Cotton Powerloom Ladies Skirts" when they were actually "Roughly Stitched Up rags, Tubular Stitched Rags". The FOB value of the consignment was over-invoiced exorbitantly with a view to securing illegal gain by way of Duty Drawback from the Government. The gross mismatch between the declaration made in the export documents and the actual goods cleared for export was detected when the consignments were intercepted and examined by the officers of Rummaging and Intelligence Unit on 02.06.2000. The charge against the respondent was that he committed gross misconduct inasmuch as he

endorsed and signed the Annexure-C pertaining to Shipping Bill Nos.4425762 and 4425764 and approved the samples, which were shown by the Examining Officer, from the allotted packages of the concerned shipping bills. He failed to satisfy the genuineness of the export consignments with reference to the export documents, which was obligatory on his part. The respondent denied the charges. Thereafter, an Inquiry Officer was appointed, who in his report dated 17th May 2007, held that the article of charge was not proved. The inquiry officer observed that the role of the Assistant Commissioner is confined to verification of value and other particulars for assessment. Therefore, it cannot be stated that it was obligatory on the part of the charged officer to satisfy himself that the samples and the contents of the packages are tallying.

3. In the first instance, the disciplinary authority forwarded the inquiry report to the respondent, only on 28th November 2007 along with the 2nd stage advice of the Central Vigilance Commission (CVC) and advised him to make submissions, if any, against the inquiry report. He contended that while forwarding the inquiry officer's report and the 2nd stage advice of the CVC, there was no mention regarding any disagreements with the findings of the inquiry officer by the disciplinary authority. Subsequently, the disciplinary authority issued a show cause notice on 12th August 2008, proposing to disagree with the inquiry officer. Hence, the action of the disciplinary authority in not enclosing a disagreement note in the first instance and then subsequently issuing a disagreement note is contrary to the provisions of Rule 15(2) of CCS

(CCA) Rules. Accordingly, the action was in violation of the DOPT instructions dated 27th November 1995, which casts a responsibility on the disciplinary authority to formulate its tentative views before forwarding the report of the inquiry officer to the charged officer.

4. We feel there is no purpose to discuss all facts of the case for the reason that the respondent was slapped with punishment of cutting of increment for one year without cumulative effect vide order dated 16.08.2011. The same lost its effect long back.

5. The issue before the Tribunal was whether the disciplinary authority violated Rule 15 of CCS (CCA) Rules while recording disagreement with the inquiry officer's report. Annexure-A4, dated 28th November 2007, enclosed with copy of inquiry officer's report and 2nd stage advice of CPC does not contain any disagreement with the report of inquiry officer. As such, the disciplinary authority, while communicating the inquiry officer's report to the respondent on 28.11.2007, has not differed with the findings of the inquiry officer that the charge was not proved. The Tribunal, by relying upon the judgment of Hon'ble Supreme Court in the case of **Nagraj Shivarao Karjagi v. Syndicate Bank & others**[1], observed that the impugned order states that after considering the representations of the charged officer dated 29th August 2008 and 23rd September 2008, the disciplinary authority observed as under :

> "*Inquiry Officer is appointed by the Disciplinary Authority to inquire into charges on his behalf. Therefore, the report of the inquiry officer is required to be subjected to detailed*

[1] 1991 AIR 1507

analysis. The inquiry officer's report is also scrutinized carefully by the CVC, UPSC as well as by the Disciplinary Authority himself. In this case, certain deficiencies, shortcomings in the analysis of the inquiry officer had been found and, accordingly, CVC, vide its 2nd stage advice received on 12.10.2007, differed from the conclusions of the IO and advised imposition of minor penalty on Shri Manga Babu. The Inquiry report was also not found acceptable by the UPSC and the Disciplinary Authority. Thus, it is seen that CVC, after analyzing the Inquiry Report, held the charges as proved and advised imposition of minor penalty and this view has been agreed to by the UPSC also in its detailed report dated 25.08.2010."

6. It is established from the above para that the report of the inquiry officer was subjected to detailed analysis by the CVC, UPSC and the Disciplinary Authority and that it was the CVC, who had differed from the conclusions of the inquiry officer and advised imposition of minor penalty on the respondent. The respondent failed to show that the disciplinary authority either formulated his own views on the need for disagreement or exercised his mind independently on the quantum of penalty. Even in earlier findings of the Tribunal that Rule 15(2) of the CCS (CCA) Rules has been violated by non-communication of disagreement and formation of tentative views by the disciplinary authority, there was substantial evidence to show that the disciplinary authority had failed to notice any deficiencies or short-comings in the inquiry officer's report and that it was the CVC, who had differed from the conclusions of the inquiry officer.

7. After going through the case and the punishment which has lost its effect long back, we fail to understand as to why the present petition is filed. The counsel appearing on behalf of petitioners submits that since the Tribunal has lost sight of the fact that the disciplinary authority had disagreed with the inquiry officer's report and same was communicated to the respondent, therefore, the decision taken by the disciplinary authority is justified.

8. In view of the facts and circumstances of the case and the fact that the respondent was imposed with the minor punishment of stoppage of increment for one year without cumulative effect, we find no ground to interfere with the order dated 21st December 2016 passed in O.A.No.1222 of 2012.

9. The writ petition is accordingly dismissed. No order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

June 11, 2018

ajr