

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1957 of 2019

1. Union Of India through the Secretary(Revenue), Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs), Ministry of Finance, Government of India, North Block, New Delhi
3. The Director General of Vigilance, Cumstoms and Central Excise, 1st and 2nd Floor, Hotel Samrat, Kautilya Marg, Chanakya Puri, New Delhi
4. The Chief Vigilance Officer, Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs), Ministry of Finance, Department of Revenue, Government of India, Bhikaji Cama Place, R.K. Puram, New Delhi.
5. The Chief Commissioner, Central Excise and Service Tax(now Central Goods and Service Tax and Central Excise), Ranchi Zone, Patna
6. The Commissioner, Central Excise and Service Tax(now Central Goods and Service Tax and Central Excise), Patna- 800001
7. The Joint Commissioner(P and V), Central Excise (now Central Goods and Services Tax and Central Excise) Hqr, Patna
8. The Secretary, Union Public Service Commissioner, New Delhi New Delhi

... .. Petitioner/s

Versus

Leela Devi W/o Prem Bahadur Lal Ex. Inspector, Central Excise, Patna,
Resident of Mithapur, B-Area, Nehru Lane, P.O. Patna GPO, Distt. Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2007 of 2019

1. Union Of India and Ors through the Secretary(Revenue), Govt. of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs), Ministry of Finance, Government of India, North Block, New Delhi.
3. The Director General of Vigilance, Customs and Central Excise, Ist and 2nd Floor, Hotel Samrat, Kautilya Marg, Chanakyapuri, New Delhi
4. The Chief Vigilance Officer, Central Board of Excise and Customs(now Central Board of Indirect Taxes and Customs), Ministry of Finance, Department of Revenue, Government of India, Bhikaji Cama Place, R.K. Puram, New Delhi.
5. The Chief Commissioner, Central Excise and Service Tax(now Central Goods and Services Tax and Central Excise), Ranchi Zone, Patna



6. The Commissioner, Central Excise and Service Tax(now Central Good and Services Tax and Central Excise), Patna-800001
7. The Joint Commissioner(P and V), Central Excise (now Central Good and Services Tax and Central Excise) Hqrs. Patna
8. The Secretary, Union Public Service Commission, New Delhi.

... .. Petitioner/s

Versus

Janardan Sharma Son of late Ram Bhawan Singh Ex-Inspector Central Excise, Patna, Resident of Adarsh Nagar, Dalluchak, P.O- Khagaul, District-Patna

... .. Respondent/s

with

Civil Writ Jurisdiction Case No. 2242 of 2019

1. Union Of India and Ors through the Secretary(Revenue), Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs), Ministry of Finance, Government of India, North Block, New Delhi
3. The Director General of Vigilance, Cumstoms and Central Excise, 1st and 2nd Floor, Hotel Samrat, Kautilya Marg, Chanakya Puri, New Delhi
4. The Chief Vigilance Officer, Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs), Ministry of Finance, Department of Revenue, Government of India, Bhikaji Cama Place, R.K. Puram, New Delhi.
5. The Chief Commisioner, Central Excise and Service Tax(now Central Goods and Service Tax and Central Excise), Ranchi Zone, Patna
6. The Commisisoner, Central Excise and Service Tax(now Central Goods and Service Tax and Central Excise), Patna- 800001
7. The Joint Commissioner(P and V) Central Excise (now Central Goods and Services Tax and Central Excise) Hqr, Patna
8. The Secretary, Union Public Service Commission, New Delhi

... .. Petitioner/s

Versus

Ramanand Prasad Son of late P.N. Lal Ex Inspector, Central Excise, Resident of DR Narayan Prasad Colony, Nanhmuha, P.O. Gulzarbagh, Distt. Patna

... .. Respondent/s

Appearance :

(In Civil Writ Jurisdiction Case No. 1957 of 2019)

For the Petitioners : Mr. S.D. Sanjay, ASG
Mr. R.K. Verma, Advocate



For the Respondent : Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kumar Chaubey, Advocate
Mr. Satish Kumar, Advocate
Mr. Shailendra Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 2007 of 2019)

For the Petitioners : Mr. S.D. Sanjay, ASG
Mr. R.K. Verma, Advocate
For the Respondent : Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kumar Chaubey, Advocate
Mr. Satish Kumar, Advocate
Mr. Shailendra Kumar, Advocate

(In Civil Writ Jurisdiction Case No. 2242 of 2019)

For the Petitioners : Mr. S.D. Sanjay, ASG
Mr. R.K. Verma, Advocate
For the Respondent : Mr. M.P. Dixit, Advocate
Mr. S.K. Dixit, Advocate
Mr. Sanjay Kumar Chaubey, Advocate
Mr. Satish Kumar, Advocate
Mr. Shailendra Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 18-10-2019

All the three writ petitions involve similar questions of fact and law, hence they have been heard together and are being disposed of by this common judgment.

In C.W.J.C. No. 1957 of 2019 the original respondent, Late Prem Bahadur Lal died during the pendency of the writ petition. By order dated 16.09.2019 his widow Leela Devi has been allowed to be substituted in



place of her late husband. However, for the sake of clarity and convenience, the reference in the present order to the respondent would mean the husband of aforesaid Leela Devi who at the relevant time was Inspector Customs and Central Excise, Land Custom Station, Jogbani during 2000-2001, who was subjected to a departmental proceeding and was imposed with a penalty of 50% cut in his pension for five years.

In C.W.J.C. No. 2007 of 2019, the sole respondent, at the relevant time, was posted as Inspector, Customs, Land Custom Station, Jogbani, who too has been subjected to a punishment of reduction of 50% cut in his pension for five years by order dated 08.07.2013.

The respondent in C.W.J.C. No. 2242 of 2019 also worked as the Inspector, Customs, Land Custom Station, Jogbani during 2000-2001, who also has been served with a similar punishment of reduction of 50% cut in his pension for five years by order dated 08.07.2013.



The writ petitioners are the Union of India and the officials of the Central Board of Indirect Taxes and Customs and Central Goods and Services Tax and Central Excise. They have assailed the order dated 05.05.2016 passed by the Tribunal in O.A. No. 562 of 2013 whereby the Presidential Order dated 08.07.2013 issued by the Under Secretary to the Government of India, directing for a reduction of 50% in the pension of the respondents for five years has been set aside.

Based on two investigation reports dated 18.10.2004 and 14.11.2005 by the Directorate General, Central Excise Vigilance, Ahmedabad Zonal Unit and the Central Excise and Customs Commissionerate, Surat respectively, it was found that six Surat based exporters had claimed inadmissible export benefits by fraudulently showing export of goods to Nepal through two Land Custom Stations viz. Jogbani and Sonauli in connivance with the assessing officers and the crossing officers who were posted at the aforesaid Land Custom Stations in the



year 2000-02. The respondents at the relevant time were Inspector Customs, Land Custom Station, Jogbani who were responsible for issuing export orders after inspecting and making physical verification of the consignment. The *modus operandi*, as discerned by the intelligence wing, was to use bills of export for transportation of goods to Nepal by non-existent transporting companies. It was found out in the investigation that the M/s Jai Mata Di Transport, whose bills were used, was a non-existent company and the owner of another transporting company viz. M/s Hanuman Roadways denied of having transported the goods in favour of one of such Surat based companies viz. M/s Suvidha Polyesters Pvt. Ltd. It was also found that there was no actual transportation of goods to Nepal. There was no proof of verification of goods except endorsement in the crossing register and the signature of the crossing officer. It was curiously asserted by the companies that for some distance in Nepal, the goods were transported on tyre carts.



Such fraudulent exports had taken place between the check-period 2000-02 when the respondents were posted at Jogbani with the mandate of issuing export orders.

On the first stage advice dated 12.09.2016 of the Chief Vigilance Officer, Central Board of Excise and Customs (now Central Board of Indirect Taxes and Customs), major penalty proceedings were initiated against two officers of the Surat Zone, 13 officers of the Lucknow Zone and 16 officers of the Patna/Ranchi Zone including the respondents.

The respondents were served with a charge memorandum alleging that he connived with the exporters for helping them obtain certificate of export without actual export for fulfilling their export obligation as 100% EOU by issuance of export orders fraudulently. It was thus charged that the respondents as Inspectors of the department had contravened Rule 3(I)(II)(III) of the CCS Conduct Rules 1964.



The enquiry officer submitted a report which though cast suspicion on the respondents but in the absence of any direct evidence, held that the charge of connivance of the respondents with Surat based exporters, giving them certificates of export without actual export, no appraisal or crossing formalities having been done at the concerned Land Custom Station becoming part of the conspiracy could not be proved. The charge on the respondents of not maintaining absolute integrity and devotion in duty was also found to be unsubstantiated and therefore the opinion of the enquiry officer was that none of the charges against the respondents could be said to have been proved.

Attention has been invited of this Court by the Counsel for the petitioners that unnecessary discussion was made in the report about the probative value of hearsay evidence and the actual connotation of the word connivance. On the legal issue *viz.* suspicion ought not to take the place of proof, the charges were held to be not



proved against the respondents. Such opinion was also based on the fact that the evidence against the respondents was circumstantial and not direct. The enquiry officer accepted the endorsements/entries in the crossing register and signature of the bills of export and held it to be sufficient evidence to prove that the consignment had actually crossed Nepal. The story of bullock driven tyre carts being used in the transaction was blindly accepted by the enquiry officer.

The Joint Commissioner (Vigilance) Central Excise and Service Tax Patna after analyzing the report of the enquiry officer gave a tentative opinion that the report of the enquiry officer appeared to be acceptable but sent the report along with the documents for a second stage advice in the matter by his communication dated 24/30.09.2019 contained in Memo No. 1358, to the Director General of Vigilance.

It has been urged on behalf of the writ petitioners that such seeking of second stage advice cannot at all be



said to be an acceptance of the report of the enquiry officer. Apart from this, the concerned officer viz. the Joint Commissioner (Vigilance) was not the disciplinary authority and therefore his tentative observation of the report of the enquiry officer being acceptable is/was of no consequence at all and it could be only read as an effort toward seeking second stage advice in the matter.

The case file appears to have been brought before the Central Vigilance Commission for the second stage advice. The Director General of Vigilance, after going through the entire materials, recommended for the CVO's proposal of major cut in the pension of the respondent.

Thereafter, as it appears from the records, the disciplinary authority viz. the Commissioner, Central Excise, Patna did not accept the report of the enquiry officer as it was lopsided and recorded his note of disagreement with respect to each article of charge in compliance of the provisions contained in Rule 15 (II) of CCS (CCA Rules), 1965 and called upon the respondents



to show cause as to why the enquiry report should not be rejected and appropriate penalty be not imposed upon him.

The disciplinary authority after considering the enquiry report, the defence of the respondents and all other relevant materials, imposed a penalty under Rule 9 of CCS (Pension) Rules, 1972 on the respondents and vide letter dated 19.03.2012, forwarded the records of the case to the Government for decision by the Ministry on behalf of the President under Rule 9. Thereafter the matter was referred to the UPSC for its advice who vide letter dated 13.02.2013 opined that in view of grave misconduct committed by the respondents, 50% pension be deducted for five years. Again, the advice of the UPSC was forwarded to the respondents for submitting his representation and ultimately the order dated 08.07.2013 was passed directing for 50% cut in the monthly pension otherwise admissible to the respondents for a period of five years. The gratuity which was admissible to the respondent



in C.W.J.C. No. 1957 of 2019 was directed to be released if not required otherwise.

The Tribunal, on taking note of the facts that 16 persons who also were subjected to such departmental proceeding with almost similar allegation were served with different penalties and some of them were let off only with warning and displeasure while some were exonerated and that the disciplinary authority had initially agreed with the enquiry report about the charges not being proved and that the punishment was purely based on the second stage advice, came to the conclusion that the disciplinary authority ought to have furnished disagreement note soon after the submission of the enquiry report and not after two years on receipt of the advice of the CVC. The Tribunal also took into account the judgment in case of Rajeev Kapoor, Jagdish Prasad Singh and Ramjit Kumari, some of the employees who were also subjected to departmental proceeding in the same transaction, by the Central Administrative Tribunal, Principal Bench, Delhi



whereby the orders of the disciplinary authority were found to be arbitrary, illegal and unconstitutional and against the procedure laid down in the CCS (CCA) Rules, 1965 and set aside the punishment orders of the respondents and directed to revise the pension of the respondents accordingly.

After having heard the counsel for the parties and having perused the records, we are of the view that the enquiry officer completely failed to appreciate that in a departmental enquiry, rule of strict evidence does not apply and the evidence so collected is to be appreciated on the principle of preponderance of probabilities. When paper transaction with respect to transport of goods was established, it matters not if specific names did not crop-up as to with whom the respondent collaborated or connived. The disagreement note of the disciplinary authority clearly reveals that it took note of the evidence that there was no export of goods in case of M/s Suvidha Polyesters Pvt. Ltd. and that M/s Jai Mata Di Transport Company was a non-



existent and fake company. Similarly, M/s Hanuman Roadways, Kolkata, the transporter whose services are said to have been utilized by M/s Suvidha Polyesters Pvt. Ltd. also denied of having transported any goods. The Department of Customs, Ministry of Finance, Government of Nepal had also confirmed that none of the consignments which is said to have been dispatched to the importers in Nepal had ever been received in Nepal. The evidence which was taken note of by the disciplinary authority was that there was no evidence of any physical verification of the goods except for endorsement in the crossing register and the signature of the crossing officer on the bills of export. The invoices mentioned in the bills of export were in different formats which were signed by different authorized representatives of the exporter within a short period of time. No evidence was found by the disciplinary authority to establish the local custom of using tyre carts to export goods. The disciplinary authority also found that the enquiry officer blindly accepted the contentions of the



respondent and submitted a report which was not at all fair, proper and acceptable.

Thus, we find that the note of difference was not the reiteration of the second stage advice of the CVO but an independent assessment of the disciplinary authority on and of the materials available on record. The note of difference reflects an independent application of mind and the response of the respondents to such note of difference is not at all acceptable to us.

With respect to the contentions raised on behalf of the respondents that different treatment was given to different officials at different stations, we find that different officials had different mandate of the job and only on consideration of their respective lapses, different punishment was meted out to them. The award of punishment is in the domain of the disciplinary authority over which the Tribunal or the Court cannot sit in appeal. All that is required to be seen is whether ample opportunity was given to a delinquent employees to explain



his cause and that the assessment of the disciplinary authority is borne out by the records.

It appears to be difficult for us to sustain the argument on behalf of the respondents that the order passed by the disciplinary authority was only a reiteration of the second stage advice.

Attention of this Court has also been drawn towards the challenge put up by the petitioners against the orders passed by the Principal Bench of Central Administrative Tribunal with respect to some of the officers in which notices have been issued and the orders passed by the Principal Bench of Central Administrative Tribunal has been stayed.

We have also been shown the order passed by the Tribunal, Patna Bench in case of Girish Chandra, wherein the Tribunal has refused to interfere with the order passed by the disciplinary authority as well as the appellate authority.



The fact that the respondents at the relevant time was Inspector of Customs posted at Jogbani Land Custom Station, who were responsible for issuing export orders, it was incumbent upon them to have verified the contents of the commodities before issuing any such export order. The non-existent transportation firms whose services are stated to have been utilized for transporting goods and the other irregularities found during the course of investigation and enquiry do make out a case against the respondents and therefore, we are of the view that the punishment meted out to them by the disciplinary authority was absolutely justified and should not have been interfered with by the Tribunal.

For the aforesaid reasons, we find it difficult to sustain the orders of the Tribunal and therefore we set them aside.

The order of the disciplinary authority is restored.



Necessary revision in the pension order of the concerned respondents shall be issued by the petitioners forthwith.

The writ petitions stand allowed to the extent indicated above.

(Amreshwar Pratap Sahi, CJ)

(Ashutosh Kumar, J)

krishna/-

AFR/NAFR	AFR
CAV DATE	16.09.2019
Uploading Date	18.10.2019
Transmission Date	

