IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 13720 OF 2022

Ashok Jagannath Ghode ..Petitioner
VS.
Union of India and Ors. ..Respondents

Mr. Ajeet Manwani a/w Mr. Faisal Vora i/b A&A Legal, for the Petitioner.
Mr. Neel Helekar a/w Mr. A.A. Garge, for Respondents No. 1 to 3.

CORAM : S.V. GANGAPURWALA, ACJ &
SANDEEP V. MARNE, J.

DATED : MARCH 8, 2023

P.C. :

1. The petitioner has approached this Court against the order of the Tribunal dismissing the original application.

2. The petitioner was working as a Superintendent-Technical in Pune headquarter with respondent no. 2. The disciplinary proceedings were initiated against the petitioner. The following are the charges:

> **"Article of Charge-I**
> Boards Circular No.10/1997, dated 17-04-1997 (Para 8) prescribes maintenance of Shipping Bill and DEPB registers for all Shipping Bills filed for export under DEPB Scheme, wherein minimum specified details were required to be entered. Shri A.J. Ghode, in the capacity as Superintendent failed to ensure maintenance and availability of the said registers in respect of

fraudulent exports made by M/s. Ruchika International under 43 Shipping Bills. Further, Shri A.J. Ghode, Superintendent failed to maintain Telegraphic Release Advice Register for DEPB Licences issued to the said exporter during the period as per Para 9 of the Boards Circular No. 91/98, dated 17-12-1998. The missing of all records, registers from I.C.D., Miraj, clearly points out collusion and abetment on the part of Shri A.J. Ghode, Superintendent with the said fraud exporter.

Article of Charge-II

As per Para No. 7 of Circular No. 10/97, dated 17-04-1997, it was essential to check the correctness of the FOB value declared with a view to ensure the FOB value is not inflated to claim higher DEPB entitlement. When the goods are exported under the DEPB Scheme, the rate of DEPB eligibility is based on the description and value. When DEPB rates are ad-valoreom, it was the primary duty and responsibility of the Superintendent to verify and ensure the correctness of the FOB value declared with respect to the goods under export. Shri A.J. Ghode, Superintendent failed to take adequate steps to ensure the proper valuation of the goods. This failure on the part of Shri A.J. Ghode, Superintendent enabled the exporter to grossly over invoice the export goods and obtain DEPB scrips against exports by submitting bogus BRCs (Bank Realization Certificates) to DGFT.

Article of Charge-III

As per Para 4.5 of the Public Notice No. 75/2001, dated 22-06-2001 issued under F.No. VIII/CUS/40-14/TC/98/594 by the Commissioner of Customs, Pune, samples wherever necessary are to be drawn in the presence of Exporter’s representative. However no such samples were available nor the records of drawal of sample or test thereof were maintained. All the Shipping Bills attended by him were found finally assessed on the same dates on which the goods were examined and assessed. In his letter dated 10-10-2006, Shri A.J. Ghode, had written to the department that he had drawn samples in respect of 3 Shipping Bills and was satisfied with the declaration of the goods and thereafter he did not draw any samples as the consignments were similar. Subsequently, in his statement dated 01-02-2008, he stated that no samples were drawn although he had certified on the Shipping Bills that the samples were drawn. This act on the part of Shri A.J. Ghode is unbecoming of a government servant in as much as his certification on the documents was not factual.

Article of Charge-IV

He allowed clearance of export cargo under 43 Shipping Bills filed by M/s. Ruchika International without following the prescribed procedure. The goods meant for export, were purchased from Mumbai and bought to I.C.D., Miraj for export through Nhava Sheva, Mumbai. Shri A.J. Ghode, Superintendent in charge of I.C.D., Miraj, did not take adequate steps to find out as to why the exporter M/s. Ruchika International which was based in Mumbai was bringing the goods from Mumbai and getting them cleared for export at I.C.D., Miraj and was taking the containers stuffed with export goods to Nhava Sheva for shipment. Inspite of being aware of the strange route followed by the exporter, Shri A.J. Ghode failed in drawing of samples and sending it for testing before finally assessing the Shipping Bills. He also allowed clearance on self basis to the exporter from I.C.D., Miraj even though there was no specific permission from Commissioner of Customs, Pune. Thus, he failed to perform his duty with integrity and devotion which resulted in loss of revenue to the department by way of fraudulent claim/utilization of DEPB credit totally amounting to Rs. 1,45,06,298/-.

By the above acts of omission and commission, Shri A.J. Ghode, Superintendent failed to maintain absolute integrity, devotion to duty and acted in a manner which is unbecoming of Government servant and thereby has contravened the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) and 3(2)(i) of the Central Civil Services (Conduct) Rules, 1964."

3. The Disciplinary Authority imposed punishment of reduction of pay by 3 stages in the time scale of pay of Rs.9,300 to Rs.34,800/- for a period of 2 years. The petitioner filed appeal. The Appellate Authority held that the charges I and IV are not proved and reduced the duration of penalty to 1 year. The original application filed by the petitioner is dismissed.

4. We have heard learned counsel for the petitioner and learned counsel for the respondents.

5. The scope of judicial review in such cases lies in narrow compass. This Court in exercise of writ jurisdiction under Article 226 would not sit in appeal over the decision taken by the respondents; however, would be more concerned with the decision making process. In the present case, the principles of natural justice have been adhered to. No grievance has been made in respect of the same. The defence has been appreciated and re-appreciated by the Appellate Authority and the Tribunal. We do not find any perversity in the appreciation of the defence in that regard.

6. Upon going through the order passed by the Appellate Authority, it appears that the Appellate Authority came to the conclusion that the charges I and IV are not proved and they are required to be dropped. However, from operative part of the order, it appears that the Appellate Authority dropped charges in Article I while modifying the order of the Disciplinary Authority and imposing the penalty. In fact, the Appellate Authority was required to consider dropping of charges in Articles I and IV both. Paragraphs 37 & 38 of the order of the Appellate Authority read thus:

> "37. In view of the foregoing discussions and findings, I drop the charges framed against the Appellant in Article I and IV and confirm the charges against the Appellant framed in Articles II and III of the Memorandum of Charge dated 31-05-2010.
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> **ORDER**
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> 38. In view of the dropping of charges in Article I, I modify the order of the disciplinary authority and impose the following penalty on Shri A.J.Ghode, Superintendent, under the provisions of clause (v) of Rule 11 of Central Civil Services (Classification, Control and Appeal) Rules, 1965:
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> "I order reduction of pay of Shri A.J.Ghode, Superintendent, by three stages in the time scale of pay of Rs.9,300/- to Rs.34,800/- for a period of 12 months with effect from 01-06-2014. It is further ordered that Shri A.J.Ghode, Superintendent will not earn increments of pay during the said period of reduction and that on the expiry of this period, the reduction will have the effect of post-poning his further increments of pay".

This aspect also does not seem to have been considered by the Tribunal while passing the impugned order.

7. In light of that, we pass the following order.

O R D E R

i) The impugned order of the Tribunal is quashed and set aside.

ii) The matter is remitted back to the Appellate Authority for deciding the appeal afresh with regard to the quantum of punishment.

iii) The Appellate Authority shall consider that the charges framed in Articles I and IV have been dropped against the petitioner as not proved and only charges in Articles II and III are to be considered for punishment and thereafter impose punishment accordingly.

iv) The said exercise shall be completed preferably within 3 months.

v) The petitioner is at liberty to appear before the Appellate Authority.

8. The writ petition is disposed of. No costs.

9. The parties to act on authenticated copy of this order.

(SANDEEP V. MARNE, J) (ACTING CHIEF JUSTICE)