IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.12.2024

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM
AND
THE HONOURABLE MR. JUSTICE M.JOTHIRAMAN

W.P.No.110 of 2022

Shri D.Thilagar Joseph ... Petitioner

Vs.

1.The Central Administrative Tribunal,
Chennai High Court Complex,
Chennai – 600 101.

2.Union of India,
Represented by the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi – 110 011.

3.Under Secretary, Ministry of Finance,
Department of Revenue,
Central Board of Indirect Taxes and Customs,
(formerly known as CBEC),
6th Floor, Hudco Vishala Building,
Bhikaji Cama Palace,
R.K.Puram, New Delhi – 110 066.

4.The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin – 628 004. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, calling for records and quashing the First Respondent's order in O.A. No. 310 / 1032 / 2015 dated 1st June 2020 and the Disciplinary Authority's Order No. 02 / 2014 dated 20th January 2014 and remit the matter back to the second Respondent for initiation of fresh proceedings against the Petitioner, with suitable directions to fully observe the Principles of natural justice in the fresh proceedings.

For Petitioner	:	Mr.R.Chandrasekaran
For Respondents	:	Tribunal (R1) Mr.M.Santhanaraman Senior Panel Counsel (for R2-4)

ORDER

(Order of the Court was made by *S.M.SUBRAMANIAM, J.*)

The order of the Central Administrative Tribunal dated 01.06.2020 in O.A.No.1032 of 2015 is sought to be assailed in the present Writ Proceedings.

2. The petitioner instituted the Original Application challenging the order of punishment imposed on him by the Disciplinary Authority in Proceedings in Order.No.02/2014, dated 20.01.2014. Punishment of cut off of 30% of the pension for 5 years and withholding of the entire gratuity on a permanent basis was imposed for the alleged misconduct. Since the Tribunal dismissed the Original Application, the Writ Petition has been instituted by the applicant in the Original Application.

3. The petitioner was holding the post of Deputy Commissioner of Customs and retired from service on 31.03.2010. When he was holding the post of Assistant Commissioner of Customs, certain irregularities were noticed and departmental disciplinary proceedings were initiated. The chargememo dated 31.03.2010 was issued to the petitioner. He denied the charges by submitting detailed explanation. Not satisfied with the explanation, the Disciplinary Authority appointed an Enquiry Officer, who in-turn conducted an enquiry and submitted his final report on 28.03.2012. The Enquiry Officer held that the 1st charge was partly proved and the other charge was held not proved.

4. The Disciplinary Authority disagreed with the findings of the Enquiry Officer in his report and served disagreement note to the petitioner/delinquent Officer vide proceedings in July 2012. In the disagreement note, reasons are assigned for disagreement with reference to the findings of the Enquiry Officer in his report. Further, a show cause notice was issued to the Writ Petitioner/delinquent Officer, along with the disagreement note enabling him to submit his objections, if any, on the disagreement note. The petitioner submitted his representation on disagreement note on 05.09.2012. The Disciplinary Authority considered the materials available on record and passed final order in proceedings dated 20.01.2014 imposing the

punishment of cut off of 30% of pension for 5 years and imposed withholding of the entire gratuity on a permanent basis.

5. The petitioner filed Original Application challenging the said punishment order. The Tribunal dismissed the Original Application on the ground that, the procedures as contemplated under the Discipline and Appeal Rules were followed and the petitioner has not made out any ground for interfering with the quantum of punishment.

6. The learned counsel for the petitioner would mainly contend that a similarly placed Sub-ordinate delinquent Officer, who was also served with the similar nature of allegations, was imposed with a lesser punishment of reduction of pay by one stage for 6 months not affecting his pension.

7. However, the petitioner was discriminated in the matter of quantum of punishment, which was not considered by the Tribunal. Thus, the present case is to be remanded back to the Disciplinary Authority for reconsidering the quantum of punishment imposed on the Writ Petitioner.

8. Learned Senior Panel Counsel appearing on behalf of the

respondents would oppose by stating that, the procedures as contemplated under Central Civil Services (Classification, Control & Appeal) Rules were scrupulously followed in the case of the Writ Petitioner. There is no procedural violation. The disagreement note was communicated to the Delinquent officer and on receipt of the his explanation, final decision was taken on merits. The Tribunal found that quantum of punishment cannot be said to be disproportionate. Thus, the present Writ Petition is to be rejected.

9. We have considered the arguments of the respective learned counsels appearing on behalf of the parties to the lis on hand.

10. The power of judicial review of the High Court in disciplinary matters are undoubtedly limited and the Court cannot appreciate the merits involved with reference to the allegations set out, unless the findings of the Authorities are found to be absolutely perverse.

11. The Court in exercise of the judicial review must restrict its review to determine,

1. Whether the Rules of natural justice have been complied with?
2. Whether the finding of misconduct is based on some evidence?

3. Whether the Statutory Rules governing the conduct of the disciplinary enquiry have been absorbed?
4. Whether the findings of the Disciplinary Authority suffers from perversity?
5. Whether the penalty is disproportionate to a prove a misconduct?

12. With reference to the above principles in the present case, the petitioner has not made any complaint regarding the procedural irregularities committed during the course of the disciplinary proceedings. Chargememo was issued, explanations received from the delinquent officer and an Enquiry Officer was appointed, who in-turn conducted an enquiry and submitted his final report. The findings of the Enquiry Officer in his report was disagreed by the Disciplinary Authority, for which he is empowered and accordingly a disagreement note was communicated to the delinquent officer, enabling him to submit his further explanation on the disagreement note. The petitioner submitted his explanation to the disagreement note and thereafter, the Disciplinary Authority passed the final order imposing the punishment of cut off of 30% of pension for 5 years and imposed withholding of the entire gratuity on a permanent basis.

13. Thus, this Court found that the rules of natural justice have been complied with.

14. Secondly, the findings of the misconduct with reference to the Enquiry Officer's report and disagreement note are elaborate and cannot be construed as unreasoned or non-speaking. Thus, it is based on the documents and some evidences. Statutory Rules governing the conduct of the disciplinary proceedings had been absorbed in the present case. Regarding the findings, the report of the Enquiry Officer was disagreed by the Disciplinary Authority, who in-turn had taken a decision to deviate the finding and accordingly, served disagreement note to the delinquent officer and provided further opportunity. Therefore, we do not find any infirmity in respect of the procedures followed for disagreeing with the findings of the Enquiry Officer in his report. Regarding the penalty imposed, we are of the considered opinion that, huge monetary loss caused to the State exchequer was considered by the Disciplinary Authority. The lapses on the part of the delinquent Officer was taken into consideration and the financial loss caused to the State was also considered by the Disciplinary Authority. Though there is no allegation of misappropriation, there is an allegation of lapses and dereliction of duty of Officer served in the rank of Assistant Commissioner in Customs Department, which resulted in huge

monitory loss to the Government of India. As per the Charge memorandum, the evasion of the customs department was assessed to about Rs.11 crores and that being so, we do not find any penalty imposed on the petitioner is misappropriate to the gravity of the charges proved against the delinquent officer.

15. The Tribunal also considered all these principles, including the grounds raised by the petitioner relating to disproportionality. Since the order of the Tribunal cannot be said to be infirm, we are not inclined to interfere with the order impugned. Consequently, the order of the First Respondent in O.A. No.1032 of 2015 dated 01.06.2020 stands confirmed and the Writ Petition stands dismissed. No costs. Consequently, the connected Miscellaneous Petitions, if any, are closed.

[S.M.S., J.] **[M.J.R., J.]**

04.12.2024

Index: Yes/No
Speaking/Non-speaking order
gd

To
1.The Central Administrative Tribunal,
Chennai High Court Complex,
Chennai – 600 101.

2.Union of India,
Represented by the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi – 110 011.

3.Under Secretary, Ministry of Finance,
Department of Revenue,
Central Board of Indirect Taxes and Customs,
(formerly known as CBEC),
6^{th} Floor, Hudco Vishala Building,
Bhikaji Cama Palace,
R.K.Puram, New Delhi – 110 066.

4.The Commissioner of Customs,
Customs House, New Harbour Estate,
Tuticorin – 628 004.

S.M.SUBRAMANIAM, J.
AND
M.JOTHIRAMAN, J.

gd

W.P.No.110 of 2022

04.12.2024