
P Madhusoodanan Vs Union Of India & Others

Original Application No. 180, 00805 Of 2018

Court: Central Administrative Tribunal Ernakulam Bench, Ernakulam

Date of Decision: Nov. 2, 2021

Acts Referred:

Customs Act, 1962 " Section 155#Central Civil Services (Conduct) Rules, 1964 " Rule 3, 3(1)(i), 3(1)(ii)#Central Civil Services (Classification, Control & Appeal) Rules, 1965 " Rule 14#Central Civil Services (Pension) Rules, 1972 " Rule 9

Hon'ble Judges: P. Madhavan, Member J; K.V .Eapen, Member (A)

Bench: Division Bench

Advocate: C.S.G. Nair, Thomas Mathew Nellimoottil

Final Decision: Dismissed

Judgement

P. Madhavan Member J

1. This is an Original Application filed by the applicant seeking the following reliefs:

1) To call for the records leading to Annexure A10 and may be pleased to set aside the same, on a finding that it is illegal, in the interest of justice;

2) To declare that the applicant is entitled to get his full pension, in the absents of any concluded finding on the quantum of loss, ascertained by due

process of law, along with all retirement benefits with the interest accrued thereon, in the interest of justice.

3) Award cost of the proceedings.

And

4) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.

2. The applicant is challenging the punishment order issued as Annexure A10 in the present OA. According to the applicant he was working as

Superintendent of Customs in the Import-Export Section, Air Cargo Complex, Kochi between 2005 and 2006. The applicant was following the practice

of assessment of garments, without taking samples for lab test which was going on for a long time in the Air Cargo Complex when he came to join

there. The duty done by him was being monitored by the Commissioner of Central Excise & Customs (respondent No. 6). While he was working

there at Air Cargo Complex, a DRI officer who was not in good terms with him had started an investigation into the import of readymade garments

which were cleared by the applicant during the period 2005-2006. After conducting the inquiry the DRI officer had issued 28 show cause notices to

the importers for recovery of duty evaded by them. Thereupon the Central Vigilance Commission had ordered an inquiry into the allegations and

statements were recorded from the applicant on 22.12.2006. While the above matter was pending, respondent No. 6 the Commissioner of Central

Excise & Customs, Kochi had begun adjudication of 3 show cause notices issued against the importers for recovery of additional duty. He decided the

said adjudication and reduced the claim for duty from 3.6 crore to 86.65 lakhs. The importers challenged the said order of the Commissioner before

the Customs Tribunal at Bangalore. After hearing the case, the Customs Tribunal had remanded the case back to respondent No. 6 to decide whether

DRI have powers to issue show cause notices for recovery of the duty. Further registration of FIRs in the alleged matter was also ordered and the

case is now pending before the CBI court. According to the applicant though his statement was recorded on 22.12.2006, no further action was taken

till 2011. On 27.5.2011 he was issued with Annexure A2 charge memo alleging that he had failed to classify the import under proper tariff heads and

he has also failed to test the garments and he has charged consignments at a lower rate and caused a loss of Rs. 8.48 crore to the Government. It

was also alleged that he has failed to supervise the Inspectors who have examined the consignments. He immediately filed reply as Annexure A3 on

22.6.2011 itself. He had also filed an additional reply produced as Annexure A4. Subsequently, the Chief Commissioner of Central Excise & Customs

at Ernakulam had appointed an inquiry officer to conduct the inquiry. According to him he was not provided with the views of CVO and CBEC

second stage after conducting the inquiry. It is mandatory to provide the advice tendered by the CVC and CBEC and this has vitiated the inquiry itself.

According to him the inquiry report was provided only after his retirement i.e. on 30.4.2014. The inquiry report exonerated him but the 4th respondent

the Chief Commissioner disagreed with the findings of the inquiry report. Thereafter the applicant was given an opportunity to submit his views and he

filed a representation before respondent No. 4 as Annexure A6. Since the inquiry was not conducted in a proper manner and the disagreement noted

by the respondent No. 4 was not proper, he filed OA No. 180/45/2015 before this Tribunal. This Tribunal after hearing both sides as per order dated

14.7.2017 did not interfere with the inquiry and directed the respondents to conclude the inquiry. Thereafter respondent No. 1 has passed an order to

cut 10% of monthly pension for a period of one year as per Annexure A10.

3. The main grounds of challenge raised by the counsel for the applicant are that the entire proceedings are arbitrary and it had violated the principles

of natural justice. A copy of the inquiry report was not given to the applicant till his retirement on 30.4.2014. He was not given the second stage

advice of CVC before coming to a finding. Even though the Tribunal had directed to complete the proceedings, the final order was passed only in

2018. There has taken place unexplained delay in the conclusion of inquiry which was started in the year 2006. Another contention put forward was

that the pension can be withheld only by an order of the President. He was not granted gratuity till date. Respondent No. 4 has not given any reason

for dissenting with the inquiry report filed by the inquiry officer. So according to the applicant Annexure A10 is liable to be set aside. It was also

contended that the duties of Superintendent, Customs while assessing duty of readymade materials is quasi judicial in nature and unless there is

malafide it is not proper to punish him for the quasi judicial function that he has undertaken.

4. The respondents appeared and filed a detailed reply statement denying the allegations made in the OA. According to them the applicant was

working as Superintendent of Central Excise, Air Cargo Complex (I&E) at Calicut Airport between April 2005 to July, 2006. The DRI at Cochin got

intelligence that customs duty was evaded on the imports of readymade garments made through Air Cargo Complex, Karipur by misclassifying the

imported garments under customs tariff headings attracting lower rate of duty than the actual applicable. Accordingly, DRI conducted detailed

investigation in respect of the consignments imported through Karipur Air Port during the period from November, 2005 to April, 2006. A parallel

proceeding was also registered by the CBI. According to the respondents the applicant had not properly examined the consignments of readymade

garments imported by various importers wherein the garments were declared with insufficient description and misclassified under inappropriate

chapter heading, attracting lower tariff rate of duty and gave the examination reports in favour of the importers, accepting insufficient descriptions and

misclassification of the garments made in the said bills, as declared by the importers without getting the samples tested by the Textile Committee.

Instead of doing the same the applicant had passed the bills under inappropriate heading as claimed by the importers, with a dishonest intention,

resulting in loss of revenue to the Government. The Chief Vigilance Officer as per letter dated 2.11.2010 advised the disciplinary authority for initiation

of major penalty proceedings against the applicant and other officers involved in the omission and commission. According to the respondents applicant

has committed misconduct by accepting insufficient description of garments. He had assessed and cleared 306 bills of entry without ascertaining the

exact nature and composition of the garments after testing the samples with the Textile Committee for assessment of customs duty. So according to

the respondents the applicant has contravened the provisions of Rule 3(1)(i) and 3(1)(ii) of CCS (Conduct) Rules, 1964 rendering him liable for penal

action under Rule 14 of CCS (CCA) Rules, 1965. The applicant has also failed to supervise the examination work carried out by his Inspector Shri M.

Pratheesh regarding the import consignments under the 306 bills of entry. The applicant has failed to guide the subordinate officer Inspector properly

and failed to ensure observance of all procedure relating to examination of imported consignments of readymade garments. The applicant has denied

the charges and a common inquiry was conducted against the applicant as well the Inspector Shri M. Pratheesh involved in this matter. After the

inquiry the inquiry officer has submitted a report on 19.4.2013 stating that the documentary evidences available on record and oral depositions of state

witnesses, make it clear that there is no sufficient evidences to support and sustain the charges leveled against the applicant. The CVC as per letter

dated 23.4.2014 (2nd stage) had advised imposition of major penalty on the applicant and on the Inspector concerned and the CVC had disagreed with

the findings of the inquiry officer and the recommendations of the disciplinary authority and recommended to impose major penalty on the charged

officer. After getting the 2nd stage opinion of the CVC, respondents had forwarded the inquiry report, copy of the CVC 2nd stage advice, etc. to the

applicant for making further submissions, if any, on his side. On 12.6.2014 the charged officer has stated that charges leveled against him are not

sustainable and requested for a copy of the original report of the CVO, CBEC to CVC for making effective submissions. According to him the

decision taken by the disciplinary authority was contrary to the report originally found by the disciplinary authority and reported to the CVO and

CVEC. Whenever an assessing officer is uncertain about the nature of the material or has reasons to doubt the declaration given by the importer, he is

duty bound to get expert opinion by way of drawing the samples and sending it for testing. The applicant has committed gross negligence and

dereliction of duty by not doing so and had caused loss to the Government. The applicant has retired from service on 30.4.2014 before the conclusion

of the proceedings and the disciplinary order has to be passed by the President as per Rule 9 of the CCS (Pension) Rules, 1972. Hence the entire

records were forwarded to the UPSC for advice for conclusion of the disciplinary proceedings against the applicant on 28.3.2015. The UPSC as per

its advice on 16.10.2017 had observed that on examination of oral documentary evidences, etc. were of the opinion that the charges leveled against

the Superintendent stands proved and he also failed to supervise his subordinate staff in a proper manner. The Commission also observed that the

finding regarding loss of revenue to the Government is not properly proved and the subject matter is still under adjudication. According to the

Commission the charged officer is liable for grave misconduct on his part and recommended imposition of a penalty of withholding of 10% cut of the

monthly pension for a period of one year. The respondents also contend that there was no inordinate delay as alleged by the applicant. The delay alone

cannot be considered as the sufficient ground to interfere with the disciplinary proceedings. The respondents have satisfactorily explained the cause of

delay. The inquiry report was received by the respondents on 19.4.2013 and since the inquiry officer's report was at variant with CVC 1st stage of

advice, 2nd stage of advice was sought on 25.6.2013. The CVC's 2nd stage of advice was received on 29.4.2014 and the charged officer had

requested for 30 days time to file a reply and he was granted time till 20.6.2014. The applicant had sought copy of the report sent by the disciplinary

authority to the CVO and also sought for a copy of the letter received from CVO but it could not be given as they were internal communications and

confidential documents. The charged officer in the meanwhile retired from service on 30.4.2014 and all further action had to be taken in the Ministry

level for conclusion. The disciplinary authority has come to the conclusion on its own and not fully based on the UPSC's advice. There is nothing illegal

in the penalty imposed and it is not excessive in the facts and circumstances of the case.

5. The counsel for the applicant has filed a rejoinder stating that the applicant is entitled to get protection under Section 155 of the Customs Act, 1962

whereby ""(1) no suit, prosecution or other legal proceedings shall lie against the Central Government or any officer of the Government or a local

authority for anything which is done, or intended to be done in good faith in pursuance of Act or the Rules or Regulations"". According to the applicant

assessment made by the applicant is a quasi judicial function. The Assistant Commissioner who is the supervisory authority has approved the

assessment. Moreover, those assessment records were audited by the internal audit party every month and also by the audit party of the Accountant

General every year. According to the applicant there was no practice of testing composition of readymade garments imported at Air Cargo Complex,

Karipur instead the tests were conducted only for the detection of prohibited dyes as per paragraph 11 of notification No. 3(RE-2001)/1997-2002,

dated 31.3.2001. According to him the sample tests for composition were conducted from 2006 onwards. The above information was collected by the

applicant through Right to Information Act. It was also informed that there was no practice of conducting test of composition of imports of assorted

readymade garments of different cloths, types, sizes, colours, make etc.

6. The respondents had also filed an additional reply statement denying the allegation that the disciplinary authority has imposed the penalty on the

advice of the UPSC without applying its mind. Merely because of some delay has occurred in completing the disciplinary proceedings it cannot be

considered as a reason for quashing the entire proceedings. The inquiry conducted was common to the applicant as well as for one Inspector Shri M.

Pratheesh in this case. The competent authority has considered all aspects and had imposed the punishment in this case. So there is no reason for

interfering with Annexure A10 order passed in this case.

7. We have heard the counsel appearing for both sides. We had also perused the various records produced as annexures in this case. The applicant

has challenged the imposition of 10% cut in the monthly pension for a period of one year imposed by the disciplinary authority as Annexure A10.

8. The main arguments raised by the counsel for the applicant is that he was not given details of the advice of CVC 2nd stage after inquiry and this

has prejudiced his case. The respondent No. 4, the disciplinary authority has not given any details regarding the reasons for his disagreement with the

inquiry report and there has occurred unusual delay in completing the inquiry. It was also contended that the work done by the applicant is quasi-

judicial in nature and unless mala fide is there, the applicant cannot be held negligent for the misconduct as claimed by the respondents in this case.

There was no practice of samples being taken from imported garments in the Calicut Air Cargo Complex and the applicant was only following the

same procedure. There was no occasion to doubt the correctness of classification and hence there is no malafides on his part.

9. The counsel for the respondents would contend that the details of the CVC 2nd stage report and the inquiry report were promptly given to the

applicant and there has not occurred any procedural irregularity. The applicant got retired in the meanwhile i.e. on 30.4.2014 and the inquiry was

proceeded under Rule 9 of the CCS (Pension) Rules, 1972 and after completing the inquiry the CVC's report and inquiry report was furnished to him

and the applicant was given opportunity to give a detailed statement of his defense again. In the 3rd paragraph of Annexure A5 dated 30.4.2014, the

disciplinary authority has given the details on the basis of which he had differed from the opinion of the inquiry officer. Though the applicant was doing

a quasi-judicial function he was expected to look into the classification of various goods and he ought to have imposed the correct duty on the imported

goods. The charged officer has failed to get the samples examined for verifying its composition and this has caused loss to the Government. It is clear

negligence on the part of the applicant and hence he is liable for misconduct under Rule 3 of the CCS (Conduct) Rules, 1964. The applicant also failed

to supervise and guide the Inspector who was examining the goods and this is also a misconduct on the part of the officer. The respondents have cited

circular No. F. No. 450/105/2003 - Cus.IV, dated 15.3.2004 for showing that the applicant is bound to take samples before clearing the goods in the

Airport Cargo Complex.

10. On a perusal of Annexure A5, it can be seen that respondent No 4 the disciplinary authority had clearly stated some reasons for his disagreement

with the inquiry report which held the applicant not guilty. Paragraph 3 of Annexure A5 reads thus:

The disciplinary authority does not find substance in the findings of the Inquiry Officer that in the absence of any specific instructions regarding

classification of assorted garments, the officers are supposed to examine the garments based on their judgment. In the instant case, the officers were

asked to conduct first check of the subject consignments and as such they had to form a definite opinion about the nature of the material and the tariff

heading under which it warrants classification. This assumes particular importance considering that the garments appearing in some particular

headings (eg. knitted cotton/knitted cotton dominant or woven cotton/woven cotton dominant) attracted specific rates of duties as against the

advalorem rate of 15% for others. Due to huge difference between the rates of duty, the officers who were conducting first check examination were

duty bound to ascertain the exact nature of the garments and mentioned the same in their report. Even if the garments were assorted, they could have

been categorized into broad categories as per the classification so as to correctly assess the applicable duty. Whenever the officers are uncertain

about the nature of the material, they are duty bound in the interest of revenue to get expert opinion by way of drawing samples and sending them for

testing. During the first check examination, the officer should ascertain the nature of the material and appropriate chapter heading for the same. But in

this case, without looking into such details, the officer has given a vague examination report by describing the goods as ""Assorted garments"" and the

charged officer has merely finalized the classification randomly without any findings as to the nature of the material. The classification is to be decided

on the basis of description of goods and in cases where the goods are assorted and of varied nature it is not open for the assessing officers to classify

them in any convenient chapter heading. Whenever the assessing officers are uncertain about the nature of the material or have reasons to doubt the

declaration given by the importer, they are duty bound in the interest of revenue to get expert opinion by way of drawing the samples and sending

them for testing.

11. The disciplinary authority has stated the reasons for differing with the inquiry report in Annexure A5 and there is no merit in the contention raised

by the counsel for the applicant in this respect. Annexure A5(2) is the CVC report and Annexure A5(5) is the copy of the inquiry report given to the

applicant. Hence, we find that there is no merit in the argument that the applicant was not provided with the copies of these documents. Another

argument put forward is that even though the incident took place between 2005 and 2006, Annexure A2 charge memo was issued only on 27.05.2011.

This has prejudiced the defense of the applicant's case. The respondents have explained the reasons for the delay in completing the inquiry. They

explained that there had occurred delay since they had to obtain 1st stage report from CVC and they had to give sufficient time to the charged officer

for his reply. In the meanwhile applicant got retired and inquiry had to be proceeded as per Rule 9 of CCS (Pension) Rules, 1972. Thereafter the

UPSC's advice had to be obtained before coming to a conclusion. On a perusal of the records, we find that the explanation offered by the respondents

is satisfactory and no prejudice is caused to the charged officer as he was given every opportunity to explain the circumstances came out against him.

So we find that there is no merit in the argument put forward by the counsel for the applicant. Every case has to be considered separately and there

cannot be any hard and fast formula for deciding on this question.

12. The counsel for the applicant has referred to the case of P.V. Mahadevan v. M.D., Tamil Nadu Housing Board - 2005 (5) SCC 611 and the case

of State of Andhra Pradesh v. N. Radhakishan Añâ,-" 1998 (3) SCC 584 in support of his case. In P.V. Mahadevan's case (supra) the Hon'ble Apex

Court in paragraph 9 held as under:

It is not possible to law down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the

disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and

circumstances in that case.

We feel that the facts and circumstances of this case show that it is not proper to terminate the disciplinary proceedings on that ground. So this is not

a fit case to interfere with the proceedings on the ground of delay.

13. The next point to be considered is that whether the applicant can be held guilty of misconduct under Rule 3 of the CCS (Conduct) Rules, 1964. It

appears from the pleadings that the applicant has not complied with the direction issued by the Ministry of Finance in F. No. 450/105/2003-Cust.IV,

dated 15.3.2004 and had not taken the samples necessary for ascertaining the composition of the articles. The applicant had done this recklessly and

this has caused ill-repute to the Department and loss to the Government. He has also not properly instructed the subordinate Inspector to do so when

examination of imported articles was done. The respondents had clearly stated the reasons for imposing the punishment imposed in Annexure A1. In

the case of Union of India & Ors. v. K.K. Dhawan - (1993) 2 SCC 56, the Hon'ble apex court has held that even in cases of quasi-judicial functions,

the officer should not act recklessly and such acts can be proceeded against by the Department. So we are of the view that the applicant can be

considered guilty of negligence and misconduct as alleged by the respondents. So there is no illegality or impropriety in the order passed by the

President. The punishment imposed is only 10% cut in the monthly pension for one year. This cannot be considered as shockingly disproportionate in

the facts and circumstances of this case.

14. Hence, we find that the OA lacks merit and it is liable to be dismissed. Accordingly, the OA is dismissed. No order as to costs.