

(2014) 09 DEL CK 0245

Delhi High Court

Case No: W.P.(C) Nos. 2734/2014, 2739/2014, C.M. Nos. 5681/2014 and 5682/2014

Shakti Singh

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision: Sept. 3, 2014

Hon'ble Judges: Vipin Sanghi, J; S. Ravindra Bhat, J

Bench: Division Bench

Advocate: Sachin Chauhan, Advocate, Anil Soni, CGSC, Naginder Benipal and Tushar Joshi, Advocate for the Appellant; Ashwani Bhardwaj, Advocate, Anil Soni, CGSC, Naginder Benipal, Advocate, Manish Mohan, CGSC, Yudhishter Sharma and Puja Sarkar, Advocate for the Respondent

Judgement

S. Ravindra Bhat, J.

The petitioners - Sh. Shakti Singh and Sh. Joseph Kuok (referred to hereafter by their names) are aggrieved by the common order of the Central Administrative Tribunal (CAT) dated 28.02.2014 in O.A. No.1014/2013 and 1002/2013. The CAT did not accept their request for quashing of charge sheet issued to them, alleging that they had committed misconduct between 1998-99. The charge sheet was issued in 2011.

2. At the relevant point in time, i.e. November 1998 - January 1999, Sh. Shakti Singh was working as Inspector of Customs and Sh. Joseph Kuok was working as Superintendent of Customs. Certain investigations were conducted by the Directorate of Revenue Intelligence (DRI) into consignments of exports by M/s. Aravali (India) Ltd. against shipping bills. The allegations pertained to misdeclaration and over-valuation, with the resultant revenue loss on account of drawback claim by the shipper or consignor. The adjudication orders appear to have been made in 2003 and the DRI appears to have, immediately thereafter, recommended departmental action against 23 officers, including the present petitioners. However, it was only in October 2011 that finally the respondent authorities woke up and sought to initiate departmental proceedings against all those 23 individuals. Apart from the petitioners, there were others, such as Sh. Hari Singh, Sh. Madan Lal, Sh.

M.S. Bhatia, Sh. Rakesh and Sh. Zaki Anwar. The applications of those officers filed before the CAT were eventually allowed on the ground that initiation of departmental proceedings was vitiated by undue delay and laches. The respondent, UOI questions two of those decisions by approaching this Court by filing writ petitions, i.e. in the case of Sh. Hari Singh [W.P.(C) 4245/2013 - UOI v. Hari Singh (decided on 23.09.2013)] and Sh. Madan Lal [W.P.(C) 3944/2012 - UOI v. Madan Lal (decided on 01.10.2013)]. The writ petitions were dismissed by separate judgments.

3. It was in the background of these circumstances that the present petitioners as well as one Ms. Achla Khera approached the CAT, which by its common impugned order, did not quash the charge memo on the ground of delay, but even after noticing the rulings in Hari Singh and Madan Lal, directed the respondent authorities to consider the petitioners' representation for dropping of the proceedings, in the light of the writ proceedings earlier mentioned.

4. Learned counsel for the petitioners relies upon the charge memos issued to Sh. Hari Singh and Sh. Madan Lal on the one hand as well as Sh. Shakti Singh and Sh. Joseph Kuok, on the other, and emphasizes that there is practically no difference in the nature of charges. It is contended that unless 23 officers including the present petitioners Sh. Madan Lal and Sh. Hari Singh were sought to be implicated for identical charges, the refusal by the CAT to quash the departmental proceedings despite the authority of the two judgments of this Court, is erroneous. The respondents apparently did not pursue the matter after the judgements were delivered in the cases of Hari Singh and Madan Lal. Learned counsel for the respondents also was unable to show any difference between the facts of this case pertaining to the charges against the present petitioners and the charges levelled against other individuals in whose cases the relief has become final. During the course of hearing, the petitioners' counsel has also submitted that pursuant to the impugned order, Ms. Achla Khera's representation was accepted and the charge sheet against her was dropped/withdrawn. He relied upon a copy of the order dated 30.07.2014 issued by the Commissioner of Customs, ICD, Tughlakabad in this regard.

5. This Court has considered the submissions. The charge sheet in the case of Shakti Singh impugned in the present proceeding is as follows:

STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI SHAKTI SINGH, SUPERINTENDENT (THEN INSPECTOR)

That the said Shri Shakti Singh, Superintendent (then Inspector) while functioning as Inspector, Export Shed, ICD, TKD, New Delhi, during the period September, 1998 to January 1999.

ARTICLE-I

Failed to maintain absolute integrity in as much as he examined and cleared the export consignment of M/s. Aravali (India) Ltd. Hissar (Haryana) against the shipping Bills (as per Annexure-III) vide which the offending goods were exported, without raising any objection. The goods were mis-declared and overvalued for the purpose of fraudulent availment of drawback. The goods which were exported were junk material and not rigid UPVC as mentioned in the said shipping Bills.

ARTICLE-II

Failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant in as much as he did not properly conduct the de-stuffing of the consignment meant for export from the containers. He also failed to properly conduct the examination, stuffing of the consignment meant for export in the containers and the sealing of the same. He allowed the export of junk materials which were misdeclared and overvalued. He, thus failed to perform his duty as an examination officer.

ARTICLE-III

Failed to maintain devotion of duty and acted in a manner unbecoming of a Government servant in as much as he failed to properly examine the export of the impugned goods as an examination officer which led to loss of huge Government revenue.

ARTICLE-IV

Failed to enforce the requirements of CBEC Circular No.34/95 dated 06.04.1995 issued under F.No.609/34/95- DBK in as much as he did not draw the representative samples from the exported consignments and send the same for chemical analysis to CRCL. Through huge amount of Government Revenue was involved. Had he taken due, care the admissibility of drawback could have been decided judiciously and cases of fraudulent exports could have been detected.

By the aforesaid acts of commissions and omissions contained in Article-I to Article-IV above, it is, therefore, impugned that Shri Shakti Singh, Superintendent (then Inspector), failed to maintain devotion to duty, absolute integrity and without properly exercising best of his judgments, acted in a manner unbecoming of a Government servant and thereby contravened the provisions of Rule 3(1)(I)(II)(III) and 3(2)(i)(ii) of CCS Conduct Rules, 1964."

6. The charge sheet in the case of Joseph Kuok reads as follows:

STATEMENT OF ARTICLES OF CHARGE FRAMED AGAINST SHRI JOSEPH KUOK, SUPERINTENDENT (THEN SUPERINTENDENT)

That the said Shri Joseph Kuok, Superintendent (then Superintendent) while functioning as Superintendent, Export Shed, ICD, TKD, New Delhi, during the period November, 1998 to January 1999.

ARTICLE-I

Failed to maintain absolute integrity in as much as he examined and cleared the export consignment of M/s. Aravali (India) Ltd. Hissar (Haryana) against the Shipping Bills (as per Annexure-III) vide which the offending goods were exported, without raising any objection. The goods were misdeclared and overvalued for the purpose of fraudulent availment of drawback. The goods which were exported were junk material and not rigid UPVC as mentioned in the said Shipping Bills.

ARTICLE-II

Failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant in as much as he did not properly supervise the de-stuffing of the consignment meant for export from the containers. He also failed to supervise the examination, stuffing of the consignment meant for export in the containers and the sealing of the same by the subordinates. He allowed the export of junk materials which were misdeclared and overvalued. He, thus failed to perform his duty as a supervisory officer as he has not pointed out/noticed misconduct committed by his subordinate.

ARTICLE-III

Failed to maintain devotion of duty and acted in a manner unbecoming of a Govt. servant in as much as he failed to examine and supervise the export of the impugned goods as a supervisory officer which led to loss of huge Govt. revenue.

ARTICLE-IV

Failed to enforce the requirements of CBEC Circular No.34/95 dated 06.04.1995 issued under F.No.609/34/95- DBK; as he neither ordered nor ensured the drawl of samples from the exported consignments and sent the same for chemical analysis to CRCL, though huge amount of Government Revenue was involved. Had he taken due care and caution by giving the directions to his subordinate officers to draw samples in such cases of export of goods, the admissibility of drawback could have been decided judiciously and cases of fraudulent exports could have been detected.

By the aforesaid acts of commissions and omissions contained in Article-I to Article-IV above, it is, therefore, imputed that Shri Joseph Kuok, Superintendent (then Superintendent), failed to maintain devotion to duty, absolute integrity and without properly exercising best of his judgments, acted in a manner unbecoming of a Government servant and thereby contravened the provisions of Rule 3(1)(I)(II)(III) and 3(2)(i)(ii) of CCS Conduct Rules, 1964."

7. In the case of Hari Singh, likewise, identical charges were framed. The Statement of Articles of Charges in his case extracted in the impugned order itself reads as under:-

Statement of articles of charges framed against Shri Hari Singh, Superintendent (then Inspector)

That the said Shri Hari Singh, Superintendent (then Inspector) while functioning as Inspector, Export Shed, ICD, TKD. N. Delhi during the period November, 1998 to December, 1998.

ARTICLE-1

Failed to maintain absolute integrity in as much as he examined and cleared the export consignment of M/s Aravali (India) Ltd., Hissar (Haryana) against the Shipping Bills (as per Annexure-III) vide which the offending goods were exported, without raising any objection. The goods were misdeclared and over valued for the purpose of fraudulent availment of drawback. The goods which were exported were junk material and not rigid UPVC as mentioned in the said Shipping Bills.

ARTICLE-II

Failed to maintain devotion to duty and acted in a manner unbecoming of a Government Servant in as much as he did not properly conduct the de-stuffing of the consignment meant for export from the containers. He also failed to properly conduct the examination, stuffing of the consignment meant for export in the containers and the sealing of the same. He allowed the export of junk materials which were misdeclared and overvalued. He, thus, failed to perform his duty as an examination officer.

ARTICLE-III

Failed to maintain devotion of duty and acted in a manner unbecoming of a Govt. servant as much as his failure to properly examine the export of the impugned goods as an examination officer led to loss of huge of Govt. revenue.

ARTICLE-IV

Failed to enforce the requirements of CBEC Circular No. 34/95 dated 06.04.95 issued under F.No. 609/34/95-DBK in as much as he did not draw the representative samples from the exported consignment and send the same for chemical analysis to CRCL, though huge amount of Government Revenue was involved. Had he taken due care, the admissibility of drawback could have been decided judiciously and cases of fraudulent exports could have been detected. By the aforesaid acts of commissions and omissions contained in Article-1 to Article-IV above, it is, therefore, imputed that Shri Hari Singh, Superintending (then Inspector), failed to maintain devotion to duty, absolute integrity and without properly exercising best of his judgments, acted in a manner unbecoming of a Government servant and thereby contravened the provisions of Rule 3 (1) (i)(ii) (iii) and 3 (2)(i)(ii) of CCS Conduct Rules, 1964."

8. This Court, in Hari Singh's case (W.P.(C) 4245/2013), after discussing in detail the internal correspondence of the Commissioner and the higher authorities as well as the course of adjudication proceedings against the consignor, summarized the factual matrix in the following manner:

"56. In the instant case, information with regard to adjudication was received vide the order dated 21st August, 1999 while the charge memorandum has been issued on 25th February, 2011. The charge memo was thirteen years after the transaction; eleven years after completion of the adjudication by the customs; 8 years after the DRI recommended the Departmental action against 23 officials and seven years after the petitioner was interdicted as on 27th of October, 2011 by the Vigilance Section of the petitioner. The petitioner has been given promotion in the meantime. Eight officers out of 23 named in the report dated 6th August, 2003 have retired. Certainly we have noted W.P.(C) 2734/2014 and 2739/2014 Page 10 above the observations of the authority who had passed the order. The DRI in its communication dated 6th August, 2003 has taken a view that it was a little far fetched to infer that each of the officers had colluded and/or connived with the exporter in the later fraudulent activities. The DRI has stated that a charge of gross negligence or dereliction of duty against the concerned officials would appear to be more appropriate and sustainable as well. Thus, no dishonesty was imputed to the respondent or any of the other persons named even by the DRI.

57. In the instant case, so far as delay is concerned, the petitioners do not remotely suggest that the respondent attributed to any delay. It is a hard fact that there is delay which is abnormal and extraordinary. The explanation of the petitioners is completely unacceptable for the reason that it is an after thought. In fact the petitioners had available with them the entire record which they claimed to have acquired belatedly.

58. It would be most inappropriate to accept the only justification tendered by the respondents of merely having written a few communications to the DRI for the documents. In any case, if the petitioner was serious about initiating disciplinary action in the above noted circumstances, it could have done so. We have noted above that the petitioner had available with them the necessary record and there was really no reason or occasion for delaying the proceedings for want of original documents. The final adjudication order as well as all inquiry reports was based on the records of the petitioners. Even after obtaining the inquiry report, the respondents delayed the matter not by one or two years but by several years as set out above."

9. The judgment in Hari Singh considered all the previous rulings of the Supreme Court as to the correctness of issuing charge sheet and continuing departmental proceedings in respect of the facts which occurred long ago. Delay was held to be a crucial persuasive factor for the Courts to intervene and quash the departmental proceedings. Since in this case, the material on record nowhere states that the cases

of the petitioners, i.e. Shakti Singh and Joseph Kuok are in any manner different from the charges levelled against Hari Singh, we are of the opinion that the CAT ought to have quashed the departmental proceedings without any delay. Furthermore Ms. Achla Khera, who had also approached the CAT, appears to have secured relief in that the respondents have withdrawn/dropped the departmental proceedings. In these circumstances, the Court hereby sets aside the impugned orders and quashes the charge sheets/Memorandums dated 24.03.2011 issued against the present petitioners, i.e. Shakti Singh and Joseph Kuok. The writ petitions and pending applications are accordingly allowed in the above terms.