(2016) 02 BOM CK 0227

In the Bombay High Court

Case No : Writ Petition No. 745 of 2015

J.N. Meena APPELLANT

Vs

Union of India RESPONDENT

Date of Decision : 15-02-2016

Acts Referred:

Citation : (2017) 345 ELT 340

Hon'ble Judges : D.H. Waghela, CJ. and V.K. Tahilramani, J.

Bench : Division Bench

Advocate : Shri Ramesh Ramamurthy i/b Saikumar Ramamurthy, Advocates, for the Petitioner; Ms. Neeta V. Masurkar with Shri Vinod Joshi, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Tahilramani, J. (Oral)—Heard learned counsel for both sides. Rule. By consent, Rule is made returnable forthwith and petition is taken up for final hearing.

2. Brief facts in this matter are as under :

In the month of May, 1997, the petitioner was posted as Appraiser under the Air Cargo Complex in the office of Commissioner of Customs (Cargo) at Sahar, Andheri (E), Mumbai. The respondent on the basis of Intelligence Inputs came to know that certain Calcutta based firms were exporting garments made out of cheap quality velvet in the guise of garments made of flocked fabric in fulfilment of export obligation. The value of the goods covered under nine shipping bills was Rs. 2,62,28,525/-. During re-examination of the said goods under panchnama on 27-5-1997 certain discrepancies were noticed about the quality of the fabric used and poor stitching. Further the total quantity found during the re-examination was 10,089 pieces as against the declared quantity of 34,137 pieces indicating a shortage of 27,048 pieces. The petitioner in his statement dated 5-6-1997 and 6-6-1997 recorded under Section 108 of the Customs Act, 1962 admitted that he had countersigned the Examination Report written by the Examiner in the said nine shipping bills. The petitioner also admitted that the shipping bills were brought to him by the CHA Clerk around 5.00 p.m. on 23-5-1997 and it was urged upon him that the shipping bills were urgent as on 23-5-1997 there was a cut-off date for the concerned vessel and as the petitioner was overburdened with work and he had an appointment with the Dentist at 7 O''clock, the petitioner wanted to finish their Examination Report of the goods examined by him. Therefore, the petitioner told CHA Clerk to get the examination done from any Examiner. Subsequently, the CHA Clerk brought one sample to the petitioner which appeared to be made of flocked fabric and being in a hurry, the petitioner did not examine the sample thoroughly. The examination was not conducted in his presence and he has not seen the goods and since the Examiner had categorically written in the Examination Report that Standing Order No. 6853/86 read with 7078/95 had been followed and keeping faith in the Reporting Officer and considering the urgency, he countersigned the Examination Report.

3. The petitioner was issued a charge-sheet dated 8-2-2007 under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 ("CCS Rules 1965" for short) containing two articles of charge. Only the first charge is relevant for our purpose, which is reproduced below :

"Article of Charge-I :

Shri. J.N. Meena, Appraiser while functioning as Appraiser at Frere Basin Shed, Docks, Mumbai during May, 1997 had failed to supervise the examination of the goods and countersigned the Examination Report given by the Examiner Shri R.K. Batra, Examiner without physically examining the goods covered under the aforesaid 9 DEEC Shipping Bills filed by M/s. Limton Electroc Optics Pvt. Ltd., Calcutta, totally valued at Rs. 2,62,28,525/- (FOB) under DEEC Scheme. The goods covered by the aforesaid 9 Shipping Bills said to have been examined by Shri R.K. Batra, Examiner did not conform to the specifications as appearing in the Shipping Bills and were found to be sub-standard goods with the sole aim of availing DEEC benefit. The total quantity found was 10,089 pieces as against the declared quantity of 34,137 pieces indicating a shortage of 24,048 pieces Shri J.N. Meena, Appraiser, thus, had failed to verify the correctness of the goods.

Thus, by doing so, Shri J.N. Meena, Appraiser has exhibited lack of devotion to duty and acted in a manner unbecoming of a Govt. Servant and has thus, contravened the provisions of Rule 3(1)(i), (ii) and (iii) of the Central Civil Services (Conduct) Rules, 1964".

4. The Enquiry Officer vide his Report dated 13-10-2008 held that two Articles of Charge against the petitioner had not been established. The Disciplinary Authority however did not agree with the findings of the Enquiry Officer and issued a disagreement Memo dated 19-1-2010 to the petitioner. The petitioner vide his representation dated 9-2-2010 pointed out that the Inquiry Officer had given a detailed report holding him ''not guilty'' of the charges levelled against

him and his findings had not been disputed in the disagreement memo. The petitioner also pointed out that "original" documents were not produced in respect of the shipping bills and none of the witnesses were produced and brought on record since none of the witnesses relied upon were examined except prosecution witness (Shri S.S. Haram, Sepoy). It was also pointed out that the petitioner''s statement was recorded in August, 1997 but no action was taken thereafter till the issue of charge-sheet resulting in a delay of 10 years without any justification. The Disciplinary Authority however, granted a personal hearing to the petitioner on 7-4-2010.

5. The Disciplinary Authority in the said disagreement note held that the Article of Charge-I against the petitioner was proved in view of the findings given in his order dated 1-10-2010. It is seen from the order passed by the Disciplinary Authority dated 1-10-2010 that it is a detailed and reasoned order in which it has been observed that the petitioner in his own statement recorded under Section 108 of the Customs Act, 1962 had specifically admitted to have countersigned the Examination Reports for the shipping bills and had given Late Export Orders (LEOs) to the same. The Disciplinary Authority in the said disagreement note held the Article of Charge-I against the petitioner as ''proved'' in view of the findings given in his order dated 1-10-2010. However, the Disciplinary Authority agreed with the findings of the Inquiry Officer in holding the Article of Charge at No. II as "not proved".

6. The Disciplinary Authority after his detailed reasons and findings imposed the penalty of reduction in petitioner''s pay by 2 stages from Rs. 22,410/- plus Rs. 5,400/- in the time scale of pay of Rs. 9,300-34,800 (Revised Pay Band) + Rs. 4,800 (Grade Pay) in PB-2 for a period of one year with effect from 1-10-2010. It was further directed that the petitioner will not earn increments of pay during the period of reduction and that on expiry of this period, the reduction will not have the effect of postponing his further increments of pay. The petitioner thereafter preferred an appeal vide dated 19-11-2010 before the Appellate Authority who vide his reasoned order dated 31-5-2011 confirmed the penalty imposed by the Disciplinary Authority on the petitioner. Thereafter the petitioner preferred Original Application before Central Administrative Tribunal which was dismissed, hence, this petition.

7. It is not the case of the petitioner that he was not given reasonable opportunity to defend his case at any stage during the disciplinary proceedings. Moreover, it is seen that personal hearing was also granted to the petitioner before the Disciplinary Authority as well as the Appellate Authority. Therefore, it cannot be said that provisions contained under CCS (CCA) Rules have not been strictly complied with. No procedural flaw or violation of any statutory rule is pointed out to us. It also cannot be said that principles of natural justice were not observed.

8. It is not in dispute that the petitioner had specifically admitted to have countersigned the Examination Reports for the impugned shipping bills as also to

have given Let Export Order to the same in accordance with his statement recorded under Section 108 of the Customs Act, 1962. The said statement was not retracted by the petitioner. It is also noted that there was only one prosecution witness whose statement was taken on record at the time of inquiry proceedings and he was not cross-examined by the petitioner.

9. The petitioner in his statement recorded under Section 108 of the Customs Act, 1962 had admitted to have countersigned the Examination Report in the case of the 9 shipping bills and admitted that being in a hurry he had not examined the sample thoroughly but since he was preoccupied and could not supervise the examination himself, he countersigned the Examination Report. This statement recorded under Section 108 of the Customs Act, 1962 has evidentiary value which can be considered for the purpose of disciplinary proceedings. It is well settled that strict rules of evidence do not apply to disciplinary proceedings.

10. The learned counsel for the petitioner submitted that the original shipping bills were neither produced in the disciplinary proceedings nor the copies of the shipping bills were made available to the petitioner during the enquiry proceedings which fact would be fatal. As far as this contention is concerned, it is seen that although the original/legible copies of the shipping bills were not made available to the petitioner during the inquiry proceedings, the same will not be fatal considering that he had himself admitted to have countersigned the 9 shipping bills under "out of charge" in his statement recorded under 108 of the Customs Act, 1962. Moreover, the relevance of original shipping bills/legible copies of the shipping bills was to establish description of goods and the Examination Report was countersigned by the petitioner who had also given the Let Export Order (LEO), the evidentiary value of these documents cannot be denied now by the petitioner merely on the ground that the original copies of shipping bills were not available during the course of the inquiry especially when he had himself admitted to have countersigned the Examination Report. Thus, the Tribunal has rightly held that there is sufficient material before the Disciplinary Authority to reach the conclusion that Charge No. I is proved and to impose the punishment as stated above.

11. Looking to the facts of this case, no interference is called for, hence, writ petition is dismissed. Rule is discharged.

