

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Dated Monday 1st day of June Two Thousand And Twenty
PRESENT:

THE HON'BLE MR. P. MADHAVAN, MEMBER(J)
THE HON'BLE MR. T. JACOB, MEMBER(A)

O.A.310/1032/2015

D. Thilagar Joseph,
34, Main Road,
Kamaraj Nagar,
Palayamkottai-627 002
Tirunelveli District.

.....Applicant

(By Advocate: M/s. Aiyar & Dolia)

Vs.

1. Union of India Rep. By
Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi-110 011;
2. Under Secretary to Government of India,
Ministry of Finance,
Department of Revenue,
Central Board of Excise and Customs,
6th Floor, Hudco Vishala Building,
Bhikaji Cama Place, R.K. Puram,
New Delhi- 110 066;
3. Commissioner of Customs,
O/o. The Commissioner of Customs,
Custom House,
New Harbour Estate,
Tuticorin-628 004.Respondents.

(By Advocate: Mr. V. Sundareswaran)

ORDER

(Pronounced by Hon'ble Mr. P. Madhavan, Member(J))

This is an OA filed seeking following reliefs:-

"To call for the records of the 1st respondent bearing F.No.C-14011/18/02/2010-Ad.V made in Order No.02/2014 dated 20.01.2014 and quash the same and consequently direct the respondents to pay the arrears of pension for the period from 01.01.2014 and to pay the gratuity with interest to the applicant pass such other order or orders as may be deemed fit and thus render justice."

2. The applicant at the time of his retirement was working as Dy. Commissioner, Customs and Central Excise. He retired on 31-03-10. On the date of retirement, the respondent had issued a charge-memo under Rule 14 CCS(CCA) Rules, 1965 alleging misconduct while applicant was working as Asst. Commissioner, causing a loss of Rs.11,004705/- by granting licence for private bonded Warehouse and failed to supervise the Superintendents and Inspectors working under him etc;. The alleged misconduct was of the year 2003-04. The charge memo was issued after 6 years on the date of his retirement. There has occurred inordinate delay and the charge was issued after the applicant was permitted to retire. On 27-07-10, the first respondent appointed an Inquiry

Officer and a Presenting Officer. The applicant denied the charges. He was given copy and written brief by the Presenting Officer on 19-07-11. Thereafter, applicant also filed his Written Brief on 09-11-11. On 28-03-12, the IO filed his report finding that the charges are not proved. On 24-08-12, he was informed the disagreement of DA with the findings of the IO and he filed a representation on 29-11-12 seeking the dropping of proceedings. Thereafter, the advise of the UPSC was communicated to him. The applicant again gave representation on 31-12-13. The 1st respondent imposed a major penalty of withholding 30% of monthly pension for a period of 3years and to withhold gratuity permanently. He filed a Review Application, but there was no response from Respondent No.1. On 06-04-15, it was informed that petition was received belatedly and cannot be considered. According to the applicant, the liecence was issued after verification and inspecton. The other official, the Superintendent of Central Excise, C.S Raju who had inspected the premises and gave the report, was given only a lesser punishment. The action of the respondent is arbitrary and discriminatory and illegal and liable to be set aside. The charge memo was highly belated and it is prejudicial to the applicant.

3. The respondent filed reply stating the following facts. The applicant while working as Asst. Commissioner at Hyderabad, had issued licence to M/s Raja Textiles (for private bonded warehouse licence) as 100%(EOU). Prior to the coming of the applicant to that post, the previous Asst. Commissioner, Sri Rajan had inspected the premises on 5-09-2003 and found that there was no electric supply to factory building, the space available was not sufficient for storage of raw materials and finished products (only 15x12 ft approximately) and it was not sufficient to install the machinery as per project report and it was communicated to the owner. The applicant visited the premises after reaching there on 24-09-03 and claims to have been satisfied of the requirements provided and he issued licence. The licensee misused the licence and committed massive duty-evasion to the tune of Rs.11,00,47,005/-. According to the respondents, the charge-memo was served before relieving him on the retirement date i.e:31-03-10. So, at the time of serving the charge-memo, the applicant was still in service and there is no illegality in issuing charge-memo on the date of retirement and the proceedings will be deemed to be under Rule 9 after his retirement. The applicant was informed that the investigation by CVC is under process and first

stage of advice was received only on 25-03-10. There is no purposeful in-action on the part of the department to delay the disciplinary proceedings. There is no discrimination shown against the applicant. The punishment was imposed after considering the role played by the applicant. So, there is no merit in the OA.

4. The counsel for the applicant mainly argued on the basis of delay occurred in the initiation of departmental proceedings. He invited our attention to the decision of the Hon'ble supreme court in *State of Punjab v Chamanlal Goyal*(reported in (1995)2 SCC p570), *B.C Chaturvedi v Union of India and others*(1995)6 SCC p.749 for supporting the argument that delay has caused prejudice and the proceedings has to be quashed.

5. But the counsel for the respondents pointed out the decision in *Registrar Co-operative societies, Madras v Fx. Fernando*(1994)2 SCC p746,) to support their case that the department was not sleeping over the subject. According to the counsel, the delay occurred only due to the delay occurred in getting CVC report after 1st stage of investigation. Immediately on receiving the advise they had issued the charge-memo.

6. We had carefully gone through the pleadings and various documents produced as annexures.

7. On a perusal of the pleadings, we find that the CVC's 1st stage advise was given to the department only on 25-03-10. It was the main reason for causing the delay in initiation of the disciplinary action in this case. The department cannot be found guilty for the delay of more than 4 years. It cannot be held that the department slept over the file without any reason. It is true that there had occurred about 6 years delay after the misconduct was committed in initiating the proceedings. In **PV. Mahadevan v MD, TN Housing board reported in (2005)6 SCC p.636**, the Hon'ble Supreme court held that

"para-19- It is not possible to lay down pre-determined principles applicable to all cases and 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 facts and circumstances in that case. The essence of the matter is that the court has to take into all relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously

and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiates the disciplinary proceedings, the court has to consider the nature of the charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employees. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently, and in accordance with rules. If he deviates from this path, he is to suffer a penalty prescribed. Normally, the disciplinary proceedings should be allowed to take its course as per relevant rules. But then, delay defeats justice. Delay causes prejudice to the charged officer, unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration."

8. We have carefully considered the delay in this case and we find that the respondents had satisfactorily explained the delay occurred in this case. It cannot be held that the department was

sleeping over the proceedings. we had also considered whether any prejudice had occurred to the delinquent employee. The applicant had not pointed out any circumstance which had prejudiced his defence. So, we find that no prejudice has caused due to the delay and respondents had explained the reasons for the delay also. The proceedings was initiated in the interest of clean and honest administration. So, we find that there is no merit in the contentions raised by the counsel for the applicant in this case.

The punishment of cut of 30% of pension and denial of gratuity cannot be considered as punishment disproportionate to the misconduct and loss caused to the government. So, there is no reason to interfere in the penalty imposed also. So, we find no merit in the OA and it will stand dismissed. No costs.

(T. JACOB)
MEMBER(A)

(P. MADHAVAN)
MEMBER(J)

01.06.2020