

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION No.51/2020

Date of Decision: 10th February, 2020

**CORAM: R. VIJAYKUMAR, MEMBER (A)
RAVINDER KAUR, MEMBER (J)**

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(By Advocate Shri G.B. Yadav)

VERSUS

1. The Union of India
Through The Secretary,
M/o Finance,
Dept. Of Revenue, North Block,
New Delhi - 110 001.
2. The Commissioner,
CGST & C.EX. Mumbai South,
13th & 15th Floor,
Air India Building,
Nariman Point,
Mumbai - 400 021. **Respondents**

(By Advocate Shri R.R. Shetty)

ORDER (ORAL)

PER: R. VIJAYKUMAR, MEMBER (A)

This Original Application has been filed on 08.01.2020 under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs:-

"8(1) The impugned Charge Memorandum dated 11.10.2019 should be quashed on

the ground of inordinate delay and set aside in its entirety.

(II) Grant consequential benefits and any further relief as the Hon'ble Tribunal may grant in the facts and circumstances of the case.

2. The applicant has also sought interim relief as under:-

"Pending the hearing and final disposal of the present Application, this Hon'ble Tribunal be pleased to stay the proceeding in relation to the Memorandum of Charges by the Department and orders issued in pursuance thereof.

3. The applicant was allegedly involved in a trap set up by the CBI and following which, a criminal case was registered on 13.03.2013. Chargesheet was filed on 07.03.2014. The criminal case has proceeded thereafter and all witnesses named in the chargesheet have been examined except the final expert witness.

4. The respondents have now issued impugned charge memorandum to the applicant on 11.10.2019 in disciplinary proceedings and to which the applicant has filed a reply on 30.10.2019 (Annexure A-8) denying the charges and pleading that the memorandum was issued after more than six years of the alleged incident. He has further cited various cases in support of the need to quash the

chargesheet in the disciplinary matter. In his reply he has also taken the stand that the documents and witnesses involved in the departmental inquiry are the same as in the criminal trial and hence, the departmental inquiry should be kept in abeyance until completion of the criminal trial. The respondents have thereafter appointed an Inquiry Officer and Presenting Officer vide their orders dated 13.12.2019 after which, this applicant has sought the reliefs as above.

5. It is settled law that the applicant has to establish in what way he would be prejudiced by any delay in issuing chargesheet. In the present case, the applicant has not provided any reasons whatsoever except citing case laws but has not explained, under what circumstances his recollection or his defence has been affected by delayed chargesheet in the disciplinary inquiry even while he is arriving at the end of his criminal case..

6. It is also not the case of the applicant that his criminal case is not proceeding and in fact, the applicant has

submitted that the materials, evidence and the witnesses in both the cases are identical. In such a case, what remains is the final witness and his defence. At such a moment, the applicant has not explained in what way his defence or the examination of witnesses already examined in the criminal case and their examination in the disciplinary case would affect his defence in the criminal case.

7. It appears that the applicant is pleading contradictory alternative grounds to somehow delay the progress of the disciplinary case, the first to plead the delayed chargesheet that was evidently awaiting progress in the criminal case and then based on the criminal case in progress, to delay the disciplinary proceedings. Even where DE is kept pending in view of a criminal case on identical charges and complex matters, the Courts have held that the matter should have been reviewed after six months because if a criminal case is prolonged indefinitely, then the deferment of the disciplinary case will lead to a delinquent accused of corruption continuing in its services indefinitely until the conclusion of criminal proceedings.

8. While observing that nearly all witnesses have already been examined in the criminal proceedings, it will also need to be borne in mind that a criminal case and a disciplinary case proceed on different grounds in regard to the evaluation of evidence and the conclusions drawn thereof.

9. In the circumstances, after hearing the learned counsel for the applicant and the learned counsel for the respondents and from the lack of basis for reliefs claimed, this OA is found to be clearly without merits and is accordingly dismissed without any order as to costs.

(Ravinder Kaur)
Member (J)

(R. Vijaykumar)
Member (A)

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