CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

(7)

OA No.3165/2001

New Delhi this the 23rd day of July, 2002.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

Sheo Narayan Singh,
S/o Sh. Ram Nagina Singh,
R/o D-II/299, Vinay Marg,
Chanakya Puri,
New Delhi-110021. -Applicant

(By Shri A.D.N. Rao, Senior Counsel)

-Versus-

Union of India,
through Secretary,
Department of Revenue,
Ministry of Finance,
Govt. of India,
North Block,
New Delhi. -Respondents

(By Advocate Shri R.V. Sinha)

O R D E R

By Mr. Shanker Raju, Member (J):

Applicant impugns a chargesheet dated 21.3.2000 as well as an order passed by the respondents on 10.10.2001 where in pursuance of Tribunal's directions dated 9.7.2001 in OA-1637/2001 the request for dropping the memorandum is rejected. He has sought quashing of the same and grant of consequential benefits, including promotion.

2. Applicant is a 1983 batch officer of Indian Customs and Central Excise Services and was lastly promoted as Joint Commissioner of Customs and Central Excise. From November 23, 1987 to January 3, 1991 applicant was Posted as Assistant Collector, Central Excise Division, Lucknow. Apart from his duties he has been assigned the work of Proper Officer under sub rule 2 of Rule 173-B of Central Excise Rules, 1944 with quasi-judicial functions of approving the classification list of excisable goods filed

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with the department on regular basis by assessees/manufacturers.

3. Applicant while discharging the quasi-judicial functions approved the classification list No.29/89-90 dated 20.7.1989 and No.5/90-91 dated 1.4.1990 of the assessee, M/s Rajshi Foam Therm & Packs, Lucknow.

4. Assessee had wilfully suppressed the value of clearance of their other units at the time of clearance and assessment of goods by not declaring the same in Gate Passes and RT-12 returns.

5. Collector of Central Excise confirmed the demand of Rs.14,38,871.00 and imposed a personal penalty of Rs.3.5 lacks on the firms. This penalty is the same amount which has been alleged in the chargesheet as loss of revenues to the Government by the quasi-judicial act of the applicant. The firm challenged the order before the Central Excise and Gold Appellate Tribunal (CEGAT). The CEGAT by an order dated 13.3.97 held the demand as time barred, against which Department of Revenue has not preferred any appeal

6. Applicant remained posted at Lucknow till 3.1.1991 and thereafter the same classification list was approved by one Sh. R.P. Sharma, who succeeded the applicant to the post of Assistant Collector, Central Excise, Lucknow.

7. Government of India amended Section 11-A of the Act with retrospective effect from 17.11.80 validating action taken for recovery of revenue irrespective of approval granted to classification list. Applicant was served with a show cause notice on 11.11.93, seeking his explanation from him to which he preferred reply.

9. Applicant was served with the impugned memorandum dated 21.3.2000 containing the following article of charges:

> "Shri S.N. Singh, Asstt. Commissioner while he was posted as Asstt. Collector, Central Excise Div., Lucknow during the period from 1989 to 1991 (23.11.89 to 03.01.99) failed to exercise his powers as "Proper Officer" conferred on him under rule 173-B of Central Excise Rules, 1944 in as much as even on the self declaration of the party on classification list No.29/89-90 and 5/90-91 tendered by M/s Rajshi Foam, Therm & Packs, Mohanlalganj, Lucknow to the effect that one of their sister unit i.e. M/S Rajshi Processors situated at Raibareli (both the sister units functioning under the same proprietary firm) was paying duty from the beginning. Therefore by virtue of the fact that the clearances of both the units were to be clubbed in terms of Notification No.175/86 dated 1.3.86 (as amended) with a view to determine duty liability on the part of M//s Rajshi Foam, Therms & Packs, Mohanlalganj, Lucknow. This glaring fact declared on the classification list itself ought to have been noticed by the Asstt. Collector and he should have ordered for causing necessary inquiry with a view to safeguard revenue interests being the "Proper Officer". Further, instead of resorting to provisional assessment under rule 9B of Central Excise Rules, 1944 by getting the Bond executed from the Firm covering the duty amount and without applying his mind, with undue haste he approved the classification list No.29/89-90 on 21.8.89 which was put up by the office on the same day for reasons best known to him. The failure on the part of said Shri S.N. Singh, has caused huge loss of revenue to the extent of Rs.14,38,871/- to the Government exchequer.
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> Thus, inaction on the part of Shri S.N. Singh, then Asstt. Collector, Central Excise Division, Lucknow is highly deplorable thereby indicating dereliction of duty with ulterior motive causing

loss of Government revenue, thereby contravening the provisions of Rule 3 (1) (i) & (ii) of the C.C.S. (Conduct) Rules, 1964."

10. Applicant demanded certain documents but the relevant documents have not been furnished to him. Applicant further represented to the Minister of Finance through his representation dated 26.6.2000, challenging the memorandum on account of inordinate delay. Applicant's promotion has been withheld which was due to him w.e.f. 6.6.2000 on account of pendency of the disciplinary proceedings whereas juniors have been accorded promotion.

11. Respondents appointed Inquiry Officer (IO) by their letter dated 4.5.2001. Applicant being aggrieved impugned the chargesheet in OA-1637/2001 wherein by an order dated 9.7.2001, respondents have been directed to dispose of the representation of the applicant and not to proceed with the inquiry.

12. Respondents by an order dated 10.10.2001, rejected the request of the applicant for dropping the proceedings, giving rise to the present OA.

13. Learned Senior Counsel Shri Rao by placing reliance on a decision of the Tribunal in Collector of Central Excise v. Muzzafar Nagar Steels Ltd., 1989 (44) ELT 552 and also on a decision of CEGAT in Gujarat Fertilizer v. Collector, 1994 (69) ELT 403 stated that approval of classification list is a quasi-judicial functions. In this backdrop it is stated that the decision of the quasi-judicial authority cannot be fettered by administrative instructions including directions issued under Section 37-B of Central Excise Act. It is also

stated that Section 35 of the Central Excise Act, 1944 provides for an appeal against the decision of Assistant Collector within three months. The correctness of classification list was not assailed by the Department in any appeal which has deemed the acceptance of approval of classification list by the applicant. It is further stated that as per Rule 173-B (5) of the Central Excise Act, 1944 inherent powers have been vested with the Revenue Authorities to re-open the approval, which also has not been exercised. In this backdrop it is stated that as per the decision of the Apex Court in CCE Kanpur v. Flock (India) Pvt. Ltd., 2000 (120) ELT 285 (SC) it is not open for the Department to open the correctness of decision having not appealed the same. By placing reliance on a decision of the Apex Court in Zunjarao Bhikaji Nagarkar v. Union of India, 1999 (112) ELT 772 (SC) =1999 (4) SCALE 480 it is contended that in order to maintain a chargesheet against a quasi-judicial authority apart from alleging a mere mistake of law some extraneous consideration influencing quasi judicial order is to be alleged. As there is no allegation in the impugned memorandum that the applicant has shown undue favour to the assesses the decision of Nagarkar (supra) has also taken note of the decision in Union of India v. K.K. Dhawan, (1993) 2 SCC 56. The Apex Court laid down the following situations where a quasi-judicial authority is to be subjected to a disciplinary proceeding;

> (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
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> (ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) If he has acted in a manner which is unbecoming of a Government servant;

(iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) If he had acted in order to unduly favour a party;

(vi) If he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke said long ago "though the bribe may be small yet the fault is great".

14. According to Shri Rao, no material was before the disciplinary authority to establish that the applicant has acted neglegently or recklessly. There is no murmur as to the reflection of his reputation or his integrity. In this view of the matter it is stated that mere an error of judgment and negligence which is not culpable does not amount to a misconduct to warrant a disciplinary proceeding. Learned Senior Counsel placed reliance on a decision of the coordinate Bench in OA-2199/1999 in Ms. Dolly Saxena v. Union of India & Others, decided on 25.1.2000, wherein placing reliance on Nagarkar's case (supra) disciplinary proceedings have been set aside. According to him in all fours the applicant is covered by the aforesaid decision.

15. Shri Rao has also impugned the chargesheet for inordinate and unexplained delay. According to him the memorandum of charges was served after a lapse of 11 years and though the lapses allegedly detected by audit party during 1993-94 examination, respondents have taken seven years to issue the chargesheet. The delay being not attributable to the applicant and remained unexplained the defence of the applicant is prejudiced on account of

non-availability of witnesses and the material in defence. He placed reliance on a decision of the Apex Court in State of Andhra Pradesh v. N. Radhakishan, AIR 1998 SC 1833 to substantiate the aforesaid plea. Learned counsel has also placed reliance on a decision of the Apex Court in State of Punjab v. Chaman Lal Goyal, (1995) 2 SCC 570 and the decision of the High Court of Delhi in O.P. Gupta v. Union of India, 1981 (3) SLR 778 to contend that if the proceedings are inordinately delayed the same are liable to be set aside.

16. Shri Rao further stated that, though the similar misconduct had come to light of the respondents, wherein the successor of the applicant Sh. R.P. Sharma, who substituted him, though approved the exactly identical classification list, has been meted out a differential treatment as no chargehseet has been issued to him.

17. It is stated that the orders passed by the respondents disposing of the representation in compliance of the Tribunal's order is without application of mind and the order is non-speaking.

18. He alleges malafides against the respondents by stating that the applicant was issued memorandum a few months before grant of non-functional selection grade, which is a promotion to the post of Additional Commissioner but deprived him of the benefit of this promotion.

19. On facts Sh. Rao stated that the allegations in the chargesheet about not holding the inquiry while proving the classification is not factually

correct. The matter was put before the applicant after it has been checked and verified and the correctness of declaration made by the assessee were examined and approved by Inspector and Excise Range Superintendent. As there was a proper inquiry no further inquiry was required to be done by the applicant in his quasi-judicial functions. As per Rule 173-B (2) ibid Proper Officer shall approve the classification after such inquiry.

20. Shri Rao denied that classification list was approved with haste. According to him, classification list was filed with Range Superintendent and after due verification by Range Superintendent duly certifying the correctness it was forwarded to revisional officer on 27.5.89. This classification list was examined in the officer for 27 days by the officers and after verification by the concerned Val branch the role of officer under Rule 173-B (1) was limited and a day's time was sufficient to examine the correctness of the ingredients. Therefore, the same was approved.

21. It is stated that the charge against the applicant is vague. After approval of the classification list it was the responsibility of the Range Superintendent for its proper implementation while making monthly RT-12 assessments and Range Superintendent should have demanded duty within six months as observed by the CEGAT in its order dated 13.3.97. It is further stated that the Department has not lost any revenue on account of any action of the applicant but the recovery could not be effected due to fault of Range Supdt. who failed to raise the demand within the period of limitation. The

respondents who did not file any appeal against the CEGAT decision cannot attribute the loss to the applicant as the assessee has wilfully suppressed the information of units at the time of clearance and assessment of goods by not declaring the same in Gate Passes and RT-12 returns, which has been admitted by them in their reply before CEGAT. This vital fact of wilful suppression of fact of value of clearance of other units in RT-12 and Gate Passes was not brought out from record by respondents although the same were correctly declared in two classification lists approved correctly by the applicant. In fact the respondents have covered their lapses to save the interested officials.

22. Shri Rao submitted that subsequently the same classification was approved by Sh. R.P. Sharma who instead of being proceeded against in a disciplinary proceeding was promoted as Joint Commissioner on 28.6.2000. Applicant has been singled out for disciplinary proceedings, which is a hostile discrimination under Articles 14 and 16 of the Constitution of India.

23. Respondents, represented through Shri R.V. Sinha denied the contentions of the applicant and took a preliminary objection as to the maintainability of the OA at an interlocutory stage of disciplinary proceedings. It is stated that though under Section 35 of the Central Excise Act, 1944 respondents can file an appeal but more efficacious instrument was used, i.e., provisions of Section 11-A of Central Excise Act, 1944 for recovery of duty short paid/levied.

24. Shri Sinha stated that it is indeed the responsibility of the Range Superintendent to properly assess under Rule 173 but this is dependent upon the classification list approved by the Assistant Collector as a Proper Officer. Superintendent cannot override the approval accorded by Collector under Rule 173-B, which is binding. It is stated that the assesses before claiming exemption of concessional rate of duty has submitted the classification list as per the rules and declared every thing. Being the very first document the classification list should contain documents first to be approved by the Assistant Collector. This list should contain description of goods manufactured, rates of duty assessee intends to pay, exemption notifications he wants to avail and the turn over of his company. Unless this classification receives the approval of the Proper Officer, assesses cannot clear the goods under duty rates claimed by him. In the instant case the assessee submitted all the required information and details in the classification list. Applicant approved the list in a wrongful manner by extending the exemption. This was detected by the audit party but was too late, resulting in setting aside of the demand by the CEGAT on limitation. The fact remains that substantial revenue was lost only because of wrong approval of classification list which continued and did not abate. Dropping of demand by CEGAT does not in any way lessen the complicity of the applicant. Merely because another officer has not been proceeded would not amount to discrimination under Articles 14 and 16 of the Constitution of India. It is further stated that the applicant has derelicted his duty as the

ulterior motive has been found. He is trying to shift his liability upon a subordinate. The learned counsel has referred to the following decisions:

i) Secretary to Government, Prohibition & Excise Department v. L. Srinivasan, (1996) 3 SCC 157.

ii) Food Corporation of India & Anr. v. V.P. Bhatia, (1998) 9 SCC 131

iii) Union of India & Anr. v. Ashok Kacker, 1995 Supp (1) SCC 180.

iv) M. Rivaz Khan v. Municipal Corporation of Delhi & Ors., 74 (1998) DLT (DB) 645.

v) Dy. Inspector General of Police v. K.S. Swaminathan, (1996 (1) SCC 498.

vi) Shantharaju N. v. State Bank of Mysore & Another, 1999 (II) LLJ 173 (Karnataka).

It is contended that the competent authority has taken a conscious decision to initiate disciplinary proceedings against the applicant and after issuance of the chargesheet applicant has to face the inquiry where he would be accorded reasonable opportunity to defend himself. It is stated that since the applicant has denied the charges he may produce his defence and other material to prove his innocence. The relevant documents have already been served upon him.

25. In so far as delay is concerned, Shri Sinha stated that the decisions of the Apex Court are not applicable to the case of the applicant and the delay is not attributable on their part. It is because of his representation from time to time delayed the initiation of proceedings. Shri Sinha further stated that in view of the decision of the Apex Court of a larger bench in K.K. Dhawan's case (supra) and Nagarkar's case (supra) would have to give way as per the doctrine of precedent envisaged under Article 141 of the Constitution of India. It is lastly stated that the case of the applicant falls within the ambit of the conditions enumerated in Nagarkar's case (supra). The applicant has acted in a manner unbecoming of Government servant and by his negligence omitted the prescribed conditions which are essential for the exercise of statutory powers. Applicant has acted in order to unduly favour a party. As such the proceedings cannot be quashed at this interlocutory stage.

26. We have carefully considered the rival contentions of the parties and perused the material on record. Before we proceed to adjudicate on the issue, it is pertinent to enumerate the settled position of law in cases where a disciplinary proceeding is under challenge for allegations of alleged misconduct in exercise of quasi-judicial functions.

27. In the larger Bench decision in K.K. Dhawan's case (supra) the conclusions have been derived at enumerating the cases where disciplinary action can be taken against:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) If he has acted in a manner which is unbecoming of a Government servant;

(iv) If he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) If he had acted in order to unduly favour a party;

(vi) If he had been actuated by corrupt motive, however, small the bribe may be because Lord Coke said long ago "though the bribe may be small yet the fault is great".

28. It is also pertinent to refer to the law laid down by the Apex Court in Nagarkar's case (supra):

> "40. When we talk of negligence in a quasi-judicial adjudication, it is not negligence perceived as carelessness, inadvertence or omission but as capable negligence. This is how this Court in State of Punjab v. Ex-Constable Ram Singh interpreted "misconduct" not coming within the purview of mere error in judgement, carelessness or negligence in performance of duty. In the case of K.K.Dhawan the allegation was of conferring undue favour upon the assesses. It was not a case of negligence as such. In Upendra Singh case the charge was that he gave illegal and improper directions to the assessing officer in order to unduly favour the assesses. The case of K.S.Swaminathan was not where the respondent was acting in any quasi-judicial capacity. This Court said that at the stage of framing of the charge the statement of facts and the charge-sheet supplied are required to be looked into by the court to see whether they support the charge of the alleged misconduct. In M.S.Bindra case where the applicant compulsorily retired this Court said that judicial scrutiny of an order imposing premature compulsory retirement is permissible if the order is arbitrary or mala fide or based on no evidence. Again in the case of Madan Mohan Choudhary which was also a case of compulsory retirement this Court said that there

should exist material on record to reasonably from an opinion that compulsory retirement of the officer was in public interest. In K.N.Ramamurthy case it was certainly a case of culpable negligence. One of the charges was that the officer had failed to safeguard government revenue. In Hindustan Steel Ltd. case it was said that where proceedings are quasi-judicial penalty will not ordinarily be imposed unless the party charged had acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. This Court has said that the penalty because of any negligence on his part but he said it was not a case of imposition of penalty. We are, however, of the view that in a caselike this which was being adjudicated upon by the appellant imposition of penalty was imperative. But then, there is nothing wrong or improper on the part of the appellant to form an opinion that imposition of penalty was not mandatory. We have noticed that the Patna High Court while interpreting Section 325 IPC held that imposition of penalty was not mandatory which again we have said is not a correct view to take. A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.

41. When penalty is not levied, the assesses certainly benefits. But it cannot be said that by not levying the penalty the officer has favoured the assesses or whom undue favour to him. There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. The record in the present case does not show if the disciplinary authority had nay information within its possession from where it could form an opinion that the appellant showed "favour" to the assesses by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi judicial authority. It must be kept in mind that being a quasi judicial authority he is always subject to judicial supervision in appeal.

42. Initiation of disciplinary proceedings against an officer cannot take place on information which is vague or indefinite. Suspicion has no role to play

in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent official. Merely because penalty was not imposed and the Board in the exercise of its directed filing of appeal against that order in the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty. 29. In the light of the legal position stated above we would like to examine the charge levelled against the applicant. Applicant has been charged of his failure to function as proper and responsible Revenue Officer inasmuch as he derelicted his duty with ulterior motive causing loss to the Government as during the period when he was Assistant Collector, Central Excise Division at Lucknow he approved the classification list furnished by M/s Rajshi Foam Terms & Packs. The aforesaid firm was having a sister unit. This classification list was effective from 20.7.89 for approval of the Assistant Collector, inter alia, claiming SSI exemption under notification No.175/86 dated 1.3.86 readwith notification No.53/88 dated 1.3.88 for payment of nil rate of duty for the first clearance upto 15 lakhs and 10% advance plus five per cent Excise Duty for the next clearance upto 75 lakhs and thereafter full rate of duty after exceeding clearance of Rs.75 lakhs. It has been declared in the classification list by the firm that they have another unit at Raibareily being Central Excise Duty from the beginning of the financial year. It is on the basis of their own declaration by the firm it is alleged that the applicant should have ordered an enquiry to ascertain whether the firm was eligible for claiming exemption when the clearance of both the sisters unit was to be clubbed together. Instead the approval was made by the applicant as per the notification dated 1.3.86 or in view of the fact that other sister unit was paying duty. It is in this backdrop further alleged that this led to loss of revenues to the Government. It is also alleged that the applicant has failed to function as a Proper Officer without resorting to provisions of Rule 9-B and 173-B of the Central Excise Rules, 1994 as he failed to get a bond executed from the firm covering duty to safeguard revenue interest and rather undue haste was shown in approving the list. Applicant had cleared both the classification lists.

> 43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of the quasi judicial officer like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, i.e., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal."

30. It is not disputed that in the reply filed before the CEGAT the firm has clearly admitted to have wilfully suppressed value and clearance of their other units at the time of clearance of assessment of goods by not declaring in gate passes and RT-12 assessments. As per the provisions of 173-B as per sub rule (4) of Rule 173-B of the Rules revenue authorities have inherent powers to re-open the approved classification list by way of review but the same has not been exercised by the respondents. Moreover, under Section 35 of the Central Excise Act, an appeal is provided by the Department of Revenue against the quasi judicial approval of the classification list. The respondents have also not resorted to this provision to prefer an appeal against the decision of the applicant. In so far as levying of the duty upon the firm is concerned, by exercising the powers under Section 11-A a duty has been levied which was challenged in the CEGAT and was accordingly set aside on account of delay.

31. It is not disputed that in view of the various decisions ~~of the~~ of Excise where approval of classification list has been held to be a quasi judicial functions, the department if at all aggrieved by the decision of the applicant it was open to reopen the same under Section 173-B (5) of Central Excise Rules and at this stage it is not open to the respondents to question the correctness of the decision which has not been appealed against.

32. As per the decision of the Apex Court in State of Punjab v. Ram Singh, 1992 (4) SCC 54 it was held that mere error in judgment, carelessness or negligence in performing the duty cannot be said to be a misconduct and in Nagarkar's (supra) it was held that if every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed.

33. When a charge is questioned before the court it is to be essentially ascertained as to whether allegations alongwith the statement of imputation constitute culpable negligence or any misconduct. In our considered view the allegations without any dispute pertain to the quasi judicial exercise of jurisdiction of the applicant while action as a proper officer approving the classification list whether the applicant has gone wrong while performing the quasi judicial functions cannot be

proceeded against unless the culpable negligence is apparent. Merely because no enquiry has been held and the applicant has not acted in accordance with the Rule 9-B and 173-B could it be said that it was a case of misconduct for which the applicant is liable to be proceeded against.

34. There is no iota of material or allegation in the impugned memorandum to indicate that the applicant shown any undue favour to the assessee. The classification list has been placed before the Inspector and Excise Superintended where it is duly checked and verified as to the correctness of declaration made by the assessee and is further examined and recommended for approval by Inspector Valuation and Superintendent Valuation only then the quasi judicial powers are exercised by the applicant. As there has been a proper enquiry there was no reason to disbelieve that after the details furnished by the assessee were checked and verified no further enquiry was required. Enquiry as per Rule 173-B is to be held if it is deemed fit by the Proper Officer but where the enquiry has already been held and as per admission of the firm they have wilfully suppressed the information no further inquiry could be held. Even after the approval of the classification list under Rule 173 (1) it was the responsibility of Range Superintendent to have properly implemented the list while making monthly RT-12 assessment and Superintending should have demanded duties within six months. This observation has forthcome in the decision of the CEGAT in its order dated 13.3.97. Moreover, the department has not lost any revenue on account of any action of the applicant but due to their delay in raising the demand within the period of limitation which ~~has~~ is not at all attributable to the applicant no

penalty could be levied on the assesses. The CEGAT decision was also not appealed against. We also find that the assessee has wilfully suppressed the information of other units at the time of clearance by not declaring in gate passes and RT-12 returns but there was no suppression about the value of clearance of other units in the classification list. This suppression was not brought on record while issuing the demand from show cause notice dated 13.4.93 against the assessee, rather it was suppressed wilfully, although the same were correctly declared in two classification lists approved by the applicant. We find that there was nothing improper on the part of the applicant to have approved the classification list which has not been shown to be either deliberate or actuated by malafides. By not enquiring and levying the duty it cannot be said that the applicant has favoured the assessee or shown undue favour. There should be some material for the disciplinary authority to reach such conclusion even prima facie. There is nothing on record that the disciplinary authority has any such information in his possession to form such an opinion. Applicant may have wrongly exercised his jurisdiction but that role can be corrected in appeal provided under Section 35 of the Act ibid but the respondents chose not to exercise their right of appeal. It must be kept in mind that being a quasi judicial authority ~~has~~ applicant is always subjected to judicial supervision in appeal. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent official. If every error of law is to constitute a charge of misconduct it would impinge upon the independent functioning of quasi-judicial officers. Since in sum and substance the misconduct of the applicant is

that having committed an error of law the chargesheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In order to sustain any chargesheet against a quasi judicial authority some thing additional than the alleged ~~then the mere~~ mistake of law, i.e., some extraneous consideration influencing the quasi judicial order should be shown. As nothing has been alleged the charge-sheet cannot be sustained and if it is so it will impinge upon the confidence and independent functioning of a quasi-judicial authority, rendering the entire system of administrative adjudication whereunder quasi-judicial powers are conferred on administrative authorities ~~would~~ fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings.

35. Having regard to the allegations alleged against the applicant his case does not fall within the exceptions quoted in Dhawan's case (supra) by the Apex Court. As the applicant had acted in discharge of his quasi judicial functions the disciplinary proceeding cannot be sustained and are liable to be set aside.

36. Another factor which vitiates the proceedings is inordinate and unexplained delay in holding the disciplinary proceedings. It is pertinent to note that the allegations against the applicant pertain to the year 1989-90 and the lapse had been detected by the audit party during the 1992-93 examination. A show cause notice seeking explanation from the applicant was issued on 23.11.93. Thereupon it took seven years to the respondents

to issue a chargesheet dated 23.1.2000. This delay in examination of the matter remained unexplained though the entire record was in the custody of the applicant yet they took 11 years to hold a disciplinary proceeding against the applicant. This delay is unreasonable, unexplained and inordinate. Due to this delay we are of the considered view that the applicant's defence has been jeopardised as at this point of time it would not be possible for the applicant to make the defence witnesses available and by a test of common prudent man no-one is expected to remember the dates and events happened 11 years before. The Apex Court in Radhakishan's case (supra) made the following observations:

> "In the present case we find that without reference to records merely on the report of the Director General, Anti-Corruption Bureau, charges were framed against the respondent and ten others, and all in verbatim and without particularizing the role played by each of the officers charged. There were four charges against the respondents. With three of them he was not concerned. He offered explanation regarding the fourth charge but the disciplinary authority did not examine the same nor dit id choose to appoint any inquiry officer even assuming that action was validly being initiated under 1991 Rules. There is no explanation whatsoever for delay in concluding the inquiry proceedings all these years. The case depended on records of the Department only and Director General, Anti-Corruption Bureau had pointed out that no witnesses had been examined before he gave his report. The Inquiry Officers, who had been appointed one after the other, had just to examine the records to see if the alleged deviations and constructions were illegal and uauthorised and then as to who was responsible for condoning or approving the same against the bye-laws. It is nobody's case that respondent at any stage tried to obstruct or delay in the inquiry proceedings. The Tribunal rightly did not accept the explanations of the State as to why delay occurred. In fact there was hardly any explanation worth consideration. In the circumstances the Tribunal was justified in quashing the charge memo dated July 31, 1995 and directing the State to promote the

respondent as per recommendation of the DPC ignoring memos dated October 27, 1995 and June 1, 1996. The Tribunal rightly did not quash these two later memos."

37. Moreover, the Apex Court in Chaman Lal Goyals' case (supra) quashed the memorandum of charges on account of inordinate and unexplained delay of five and half years in serving the memo of charge. From the reply of the respondents we do not find any explanation tendered for such an inordinate delay. The delay remains unexplained. The delay is also not attributable to the applicant. Contention of the respondents that the delay is on account of representations made by the applicant and his non-cooperation in the enquiry cannot be countenanced as the applicant had never approached the Court and obtained the stay which could have prevented the respondents from issuing a memorandum immediately after the issue of show cause notice in 1993. The enquiry was initiated with the issue of the memorandum only on 21.3.2000. The period between 1993 and 2000 has not at all been explained satisfactorily. In this view of the matter and having regard to the decision of the Apex Court the chargesheet issued to the applicant is not sustainable for inordinate and unexplained delay.

38. In the result and having regard to the reasons recorded above, we allow this OA. The chargesheet dated 21.3.2000 is quashed and set aside. Applicant shall also be entitled to all consequential benefits. These directions shall be complied with by the respondents within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
Member(J)

V.K. Majotra
(V.K. Majotra)
Member(A)

'San.'