

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

REVIEW APPLICATION NUMBER 01 OF 2004

IN

ORIGINAL APPLICATION NUMBER 394 OF 2003

ALLAHABAD, THIS THE 22nd DAY OF JULY, 2004

Nathoo Lal son of Late Shri Kewal Ram,
Mohalla Chunni, Chandausi,
District- Moradabad.

.....Applicant

(By Advocate : Mrs. Mahima Kushwaha)

V E R S U S

1. Union of India through the Secretary, Ministry of Custom and Central Excise, North Block, New Delhi.
2. Commissioner, Customs and Central Excise, Meerut (II).

.....Respondents

(By Advocate : Shri G. R. Gupta)

O R D E R

Respondents have filed Review Application against the order dated 05.05.2003 whereby a direction was given to the respondents to complete the inquiry within a period of 4 months from the date of receipt of a copy of the order. Applicant was also directed to co-operate in the inquiry so that it may be completed within the stipulated period.

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2. In the review application, respondents have stated that the inquiry officer completed the enquiry within stipulate time of four months and submitted his report to the Commissioner Central Excise, Meerut-II vide his letter dated 08.08.2003, which was received in the office of Commissioner on 18.08.2003.



However, in the meantime applicant has been transferred from Central Excise Commissionerate, Meerut-II to Central Excise Commissionerate Meerut-I. Therefore, his disciplinary authority has changed to Commissioner, Central Excise, Meerut-I. When the inquiry report was put up before the Commissioner, Central Excise, Meerut-I, he examined the same and found there were certain discrepancies in the inquiry, therefore, he has remitted back the inquiry to the inquiry authority in view of Rule 15(1) of CCS (CCA) Rules, 1965 after recording the reasons for further inquiry, therefore, it will ~~be~~ take some more time. It is further submitted by the respondents that the charged officer is a Gazetted officer as such, obtaining of second stage advice from Central Vigilance Commission and Communication to the charged officer along with inquiry report is a precondition before finalization of the disciplinary case. Accordingly, the inquiry report along with comments is sent to the Directorate of Vigilance, New Delhi for obtaining second stage advice from Central Vigilance Commission. They have further stated that a prosecution case under the provision of Prevention of Corruption Act is pending against the charged officer in the court of Special Judge, C.B.I. Dehradun. Therefore, inquiry was not ~~been~~ held ^{earlier} so that it may not ~~be~~ prejudiced him in the criminal case. In view of the facts as explained above, they have prayed that the judgment dated 05.05.2003 may be modified by giving ^{further} time till finalisation of the prosecution case, and obtaining the Central Vigilance Commission advice in the matter, which will take some time. They have further submitted that after receiving the report from inquiry officer on 30.01.2004, the matter has been referred to the Director General, New Delhi for obtaining the second stage advice on 15.04.2004. They have further submitted that since the ~~the~~ criminal case is still pending against the applicant even if the final orders in the inquiry are passed, he would still

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not been entitled to get his promotion in view of the Government of India instruction dated 14.09.1992.

3. Counsel for the original application has placed on record the letter dated 06.11.2003 written by Superintendent of Police, C.B.I./S.P.E./Dehradun and addressed to the Deputy Commissioner Customs and Central Excise, Dehradun wherein they had clearly stated that department may proceed with the RDA as directed by CAT irrespective of the facts that a criminal case is pending in trial. She therefore, submitted that pendency of criminal case cannot be made a ground to delay the inquiry proceedings in the department. She also submitted in her counter that even a second part of inquiry was completed on 30.01.2004 after the matter was remitted back to the inquiry officer but thereafter again nothing ~~action~~ has been communicated to the applicant. Therefore, some directions may be given to the respondents to pass the orders within some stipulated period.

4. I have heard both the counsel and perused the pleadings as well.

5. Perusal of the order dated 05.05.2003 shows that the order was passed on the first date and respondents were not given any chance to file their counter affidavit. A direction was given by this court only to complete the inquiry within 4 months, which respondents have stated that has already been complied with within the stipulated period. Since the subsequent actions to be taken by the respondents are in accordance with rules, therefore the order was passed very cautiously by directing respondents only to complete the inquiry and no direction was given by the court to give promotion to the applicant. Therefore, that is not the scope of the O.A. at all as that prayer was already given by the counsel for the applicant. If on reading the inquiry



report, disciplinary authority held that inquiry required to be further probed and he has passed order to that effect, no fault can be found with that because after the inquiry is completed, respondents have to process the case for finalisation by referring the case to CVC and UPSC as well.

6. It is seen that this review application has not been filed because there was any error apparent on the face of record but because the respondents felt that some more time would be required to finalise the case, if we see the strict meaning of Review Application, no error apparent on the face of record has been pointed out by the respondents and respondents could have filed an application for extension of time because the direction was limited for completing the enquiry within stipulated period, No direction was given for subsequent processing of the case. However since respondents have tried to place on record the correct facts and have given valid reasons for seeking some more time to complete the proceedings in accordance with rules, this review application is being entertained.

7. Law is well settled by Hon'ble Supreme Court that disciplinary proceedings can be held simultaneously and in this case even C.B.I. has given their opinion that department can proceed with the R.D.A. case, therefore, there is no need to wait for the outcome of criminal case. Respondents can always pass the final orders in disciplinary case.

8. It is clarified that now that further inquiry has also been completed on 30.1.04, respondents shall process the case in accordance with rules and pass the final orders thereon expeditiously.

9. In view of the above, Review Application is allowed.
in terms of para 8.18


Member-(J)

shukla/-