

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.298/2014

This the 24th day of September, 2021.

**Coram : Hon'ble Shri Jayesh V.Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

Shri Bachubhai Bhaijubhai Patel
Aged : 59 years (DoB being 01.06.1955)
Son of Shri Bhaijubhai Bhikabhai Patel
Presently serving as Inspector of Central Excise & Customs
Under Deputy Commissioner of Central Excise, Customs & S.Tax
Vapi Division & Presently residing at No.44 OMKAR Society
Village & Post : Athalia, Taluka : Gandevi
Dist : Navsari, Gujarat. Pin – 393 360..... Applicant

(By Advocate : Shri M.S.Rao)

VERSUS

1. Union of India
Notice to be served through its Secretary to Govt. of India
Department of Revenue, Ministry of Finance,
Govt. of India, North Block, New Delhi – 110 001.
2. Central Board of Excise and Customs
(Notice to be served through the Chairman,
The Chairman, Central Board of Excise and Customs
Department of Revenue, Ministry of Finance,
Govt. of India, North Block, New Delhi – 110 001.
3. The Chief Commissioner of Central Excise, Customs &
Service Tax, Vadodara Zone,
(Cadre Controlling Authority)
2nd Floor, Central Excise Building
Race Course Circle,
Vadodara – 390 007.
4. Shri Deepak Arora
Commissioner of Central Excise, Customs &
Service Tax, Daman Commissionerate
(Designated Disciplinary Authority)
O/o. The Commissioner of Central Excise, Customs &
Service Tax, Daman Commissionerate (Stationed at Vapi)

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IIIrd Floor, Adarshdham Building
Opp. Town Police Stn., VAPI-DAMAN Road,
Vapi, Gujarat – 396 191..... Respondents.

(By Advocate : Shri H.D.Shukla)

ORDER (ORAL)

Per : Hon’ble Shri J.V. Bhairavia, Member (J)

1. In the present OA, it is noticed that on 03.06.2014, while the applicant herein was working as Inspector in Central Excise & Customs, was served with the impugned Charge Sheet No.II/39(Vig.35)/09-10-PT.I dated 03.06.2014 in terms of Rule 14 of CCS(CCA) Rules, 1965 for the alleged charge that: *“while the applicant was posted in Range-Atul, Valsad Central Excise Division of Daman Commissionerate as Inspector during the period from June 2004 to June, 2005 abused his officer position as public servant and facilitated M./s. Devi Synthetic, GIDC, Killa Pardi, Valsad to avail Cenvat credit on the basis of forged documents using the same as genuine. Thus, by his said acts, omission and commission failed to maintain absolute integrity had shown lack of devotion of duty, whereby contravention the provisions of sub-rule (i)(ii)(iii) of Rule 3(1) of CCS (Conduct) Rules, 1964.”*
2. Being aggrieved by the said charge memorandum dated 03.06.2014, the applicant has filed the present OA seeking relief to quash and set aside the said charge memorandum and further pray for issuance of

appropriate direction to the respondents that as and when the DPC is held in pursuance to the communication dated 23.05.2014 issued by the respondent No.3 for considering the eligible candidate for the post of Assistant Commissioner of Central Excise and Customs, the said DPC shall ignore the impugned charge sheet and without following the sealed cover procedure in the peculiar facts and circumstances of the present case.

3. The applicant herein by filing the present OA in the month of June, 2014, challenged the legality and validity of the charge memorandum dated 03.06.2014 mainly on the ground of *mala fide* action of the Disciplinary Authority in issuance of the charge sheet as also on the ground that the applicant as such not committed any misconduct while discharging his duty. After issuance of the notice in this OA, the respondents had filed their reply and on receipt of rejoinder of the applicant, the respondents have filed their sur-rejoinder dated 18.11.2014 since then the present OA remained pending for final hearing due to one reason or other. It is contended that the respondents had taken undue advantage of not grant of any interim relief and nearly a year after initiation of disciplinary proceedings in June, 2014, the Disciplinary Authority when the applicant was due to retire on 31.5.2015, appointed the inquiry authority to inquiry into charges vide order dated 11.5.2015. Thereafter, in the month of May, 2015, the applicant had retired

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from the service and he was relieved vide order dated 29.5.2015 (Annexure A-11).

4. Learned counsel Shri M.S.Rao for the applicant submits that during the pendency of the present OA, the applicant retired on attaining the age of superannuation. His all retrial dues have been withheld due to pendency of the said departmental proceedings initiated against him. He was granted only provisional pension.
5. It is submitted that during the pendency of present OA, the applicant has participated in the departmental inquiry. He had submitted his objection and defense before the Inquiry Officer.

On conclusion of the said departmental inquiry, the I.O. submitted his inquiry report 19.7.2016 wherein he recorded its finding that the charges leveled against the applicant has been established. On receipt of the said inquiry report, the applicant has submitted his representation and denied the correctness of findings of the Inquiry Officer. (Copy of Inquiry Report & copy of representation filed by the applicant are produced by the applicant by way of additional affidavit in this OA).

6. The main thrust of the Ld. counsel for the applicant is that since the applicant has retired, in terms of Rule 9 of the CCS (CCA) Rules, 1965, the President would become the Disciplinary Authority and on receipt of inquiry report as also the representation of the

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applicant dated 17.10.2016, the same is required to be considered to pass final order on the departmental proceedings initiated against the applicant. However, till date, the Disciplinary Authority has not taken any final decision in the departmental proceedings initiated against the applicant. All retiral dues of the applicant have been withheld since 2015. He placed reliance on judgment passed by the Hon'ble Apex Court in the case of *Prem Nath Bali v/s. Registrar* and submits that inordinate delay has been caused in finalizing the disciplinary proceedings initiated against the applicant that too without any fault of the applicant herein. Therefore, interference of this Tribunal is required for issuance of appropriate direction in the interest of justice.

7. Per contra; on receipt of instructions, Ld. Standing counsel for the respondents, Shri H.D.Shukla, submits that after receipt of the representation of the applicant on the report of Inquiry Officer, the case of the applicant was referred for UPSC advice on 23.5.2018 and the Disciplinary Authority is awaiting for the said advice.
8. It is noticed that disciplinary proceedings was initiated against the applicant under the provisions of Rule 14 of CCS (CCA) Rules, 1965. On conclusion of the departmental inquiry and on receipt of inquiry report, and the representation of the C.O., if any, the DA has to follow further procedure to conclude the disciplinary proceedings as stipulated in Rule 15 of the said CCS (CCA) Rules, 1965. At this

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stage, it is appropriate to refer the law laid down by the Hon'ble Apex Court in the case of *Prem Nath Bali v/s. Registrar*, reported in **(2015) 16 SCC 415** wherein it has been held that *"it is duty of the employer to ensure that the departmental inquiry initiated against the delinquent employer concluded with the shortest possible time by taking priority measure where it is not possible for the employer to conclude due to unavoidable causes arising in the proceedings within the time framed then effort should be made to conclude the proceedings within reasonable period depending upon the cause and nature of the inquiry but not more than a year."*

In the present case, it can be seen that undisputedly, the departmental proceedings was initiated against the applicant in the year 2014, the Inquiry report was submitted by the Inquiry Officer to the Disciplinary Authority on 19.07.2016 and applicant herein had submitted his representation thereon on 17.10.2016. Thereafter, as per the contention of the respondents, the DA had referred his case to the UPSC's advice on 23.5.2018 and due to non receipt of advice from the UPSC, the DA could not concluded the said disciplinary proceeding initiated against the applicant by following the provision of Rule 15 of CCS (CCA) Rules, 1965. Till date, the respondents not able to place on record any details about progress in the said pending disciplinary proceeding.

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9. In view of the aforesaid factual matrix and in light of law laid down by the Hon'ble Apex Court in the case of *Prem Nath Bali (supra)*, we deem it fit to dispose of the present OA by directing the respondent Nos.1 & 2 to follow the provisions stipulated in Rule 15 of CCS (CCA) Rules, 1965 and decide & pass appropriate order in the pending disciplinary proceeding initiated under Charge Memorandum dated 03.06.2016 (Annexure A/1) against the applicant herein expeditiously not later than six months from the date of receipt of a copy of this order. It is made clear that in case, the representation dated 19.10.2016 with respect to inquiry report and other representation filed by the applicant is decided in his favour, all his retiral dues which are stated to be withheld, the same shall be released forthwith.
10. With the above direction, the OA stands disposed. No order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)

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