

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**
Original Application No.187/2015
Dated this the 27th day of May, 2021

Reserved on : 20.01.2021
Pronounced on : 27.05.2021

CORAM:

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

By Advocate Shri M S Rao

V/s

- 1 Union of India,
(To be represented through its Secretary
to the Government of India,
Department of Revenue, Ministry of Finance,
Government of India, North Block, New Delhi – 110 001.)

2 Central Board of Excise & Customs,
(Through its Chairman, CBEC,
Department of Revenue, Ministry of Finance,
Government of India, North Block,
New Delhi – 110 001.)

3 The Commissioner of Customs (Preventive),
O/o. The Commissioner of Customs (Preventive),
Department of Central Excise & Customs,
Ministry of Finance, Govt. of India,
“Sarda House”, Bedi Bunder Road,
JAMNAGAR - 361 008.

4 The Director General of Vigilance,
Customs & Central Excise,
Samrat Hotel, 2nd & 3rd Floors,
Kautilya Marg, Chanakyapuri,
New Delhi – 110 021.

5 Central Vigilance Commission,
(to be represented through its Director,
Central Vigilance Commission,
Satarkta Bhawan, GPO Complex,
Block A, INA,
New Delhi – 110 023. ... Respondents.

By Advocate Shri H D Shukla

ORDER (ORAL)

Per Shri Jayesh V Bhairavia, Member(J)

1 The applicant has filed the present OA under Section 19 of the AT Act 1985 seeking following reliefs:-

- "8(A) quash and set aside (i) the respondent no.4's U.O. Note bearing F.No.V-599/07/09/467, dated 22.01.2015 at Annexure A/1 hereto, (ii) respondent no.5's Office Memorandum bearing No.010/CEX/014/275650, dated 17.02.2015 at Annexure A/2, (iii) respondent no.4's Communication bearing No.V.599/07/2009/Vol-II)/827 dated 20.02.2015 at Annexure A/3 hereto and (iv) respondent no.3's Notice Memorandum being No.11/10(A)/CON/3/2009 dated 01.04.2015 at Annexure A/4 hereto, holding and declaring the same to be arbitrary, unreasonable, without authority of law and violative of the applicant's fundamental rights guaranteed by the Articles 14, 16 and 21 of the Constitution of India.
- (B) issue appropriate directions commanding the respondents herein to (i) forthwith drop ongoing departmental disciplinary proceedings initiated with the issuance of the Charge Memorandum dated 24.09.2009 and (ii) forthwith release to the applicant herein all his retiral dues such as regular pension, DCRG, Commutation of Pension, etc. etc., alongwith interest thereon at the rate of 18%.
- (C) impose an exemplary cost of Rs.50,000/- on the respondents for compelling the applicant herein to resort to this otherwise avoidable litigation.
- (D) grant such other and further relief/s as may be deemed fit and proper in the peculiar facts and circumstances of the present case."

2 The brief facts as stated by the applicant are as under:-

- 2.1** While applicant was working as Superintendent, at P.U., Amreli, Custom Division, a charge memorandum dated 24.09.2009 for major penalty under Rule 14 of CCS (CCA) Rules 1965 (hereinafter referred as "CCA Rules") was issued against him by the Disciplinary Authority i.e. respondent no.3 herein, [Commissioner of Customs (Preventive), Jamnagar with regard to certain alleged misconduct on

the part of applicant pertaining to the period from 01.07.2008 to 22.6.2009 when he was posted at Alang Cell, C.D., Bhavnagar (Ann. A/5).

- 2.2** Applicant retired from the service on 30.09.2009 on attaining the age of superannuation as Superintendent of Custom.
- 2.3** On receipt of charge memorandum dated 24.09.2009, the applicant had submitted his interim reply dated 18.11.2009 and dated 04.12.2009 and thereafter on the basis of the available record he had submitted his statement of defence dated 24.12.2009 before the Disciplinary Authority him.
- 2.4** Since applicant had denied the charges and the explanation submitted by him was not found satisfactory, the DA decided to initiate departmental enquiry. Accordingly, the DA proceeded to nominate an Inquiry Officer (IO) and a Presenting Officer (PO) vide his order dated 13.01.2010.
- 2.5** The IO held hearings on various dates, the applicant participated in the said departmental enquiry and submitted his detailed written statement to the IO on 18.02.2011 (Ann A/6). The PO had submitted his PO brief on 31.05.2011 (Ann A/7) and the applicant had submitted his Defence Brief on 16.06.2011 (Ann A/8).
- 2.6** Meanwhile, applicant was not being paid the provisional pension. Therefore he submitted a representation dated 09.08.2011. He had also submitted another representation in the month of August, 2011 (Ann A/10) pointing out that though a considerable time had elapsed after the submission of his defence brief on 16.06.2011, the disciplinary proceedings were not completed and making a request for early completion of the said inquiry.
- 2.7** The applicant had submitted various representations between 24.02.2012 and 26.06.2013 requesting the disciplinary authority and other respondents for early finalisation of the pending departmental enquiry and release of his leave encashment and other retiral dues which were withheld by the respondents (Ann A/11 to Ann A/22).

- 2.8** It is stated that though the IO had submitted his Inquiry Report dated 11.11.2011(Ann A/24), holding that the charges of criminal misconduct and gross negligence were "NOT PROVED", the DA did not act upon it ; instead the said authority was waiting for the outcome of show cause notice dated 14.07.2009 issued to the importer. It was only after the aforesaid SCN was dropped by the adjudicating authority in the department by its Order in Original dated 31.03.2014 (Ann A/23). followed by the acceptance of the same by the department, that the DA referred the applicant's case to the Director General of Vigilance, Customs and Central Excise, New Delhi, accepting the findings and conclusion of the IO as recorded in the Report dated 11.11.2011.
- 2.9** On receipt of recommendation of the DA, the respondent no.4 i.e. Director General of Vigilance, Custom and Excise had chosen to disagree with the findings and conclusion of the IO as also recommendation of the DA and referred the case to the CVC for its second stage advice vide its **UO Note dated 22.1.2015 (Ann A/1 impugned herein)** recommending the imposition of major penalty against the applicant. It is stated that before the said reference of the applicant's case to the CVC, he was not served with a copy of the IO report.
- 2.10** On receipt of U.O. Note dated 22.1.2015 from the respondent no.4, the Central Vigilance Commission i.e respondent no.5 herein vide its **OM dated 17.02.2015 (Ann A/2 impugned herein)** had chosen to accept the recommendation of DGoV for imposition of major penalty on the applicant herein. Upon receipt of the second stage advice from the CVC, the DGoV vide its communication **dated 20.02.2015 (Ann A/3 impugned herein)** had advised the respondent no.3 that before imposition of major penalty he shall supply a copy of IO report to the applicant along with the tentative disagreement note. Pursuant to the said advice of DGoV, the respondent no.3 herein issued an **Notice Memorandum dated 01.04.2015 (Ann A/4)** by supplying the copy of Inquiry Report dated 11.11.2011 and copy of second stage advice

from CVO/CVC dated 17.02.2015 with direction to the applicant to submit his written representation or submission to the Disciplinary Authority i.e respondent no.3 herein. Aggrieved by the said order, the applicant has filed the present OA.

3 The learned counsel Shri M S Rao for the applicant mainly submitted as under:-

- 3.1** Applicant herein has already retired from the government service and the President has become the disciplinary authority for the applicant under Rule 9(2) of the CCS (Pension) Rules 1972. If the respondent authorities are permitted to drag the ongoing disciplinary enquiry in the manner as narrated hereinabove, it would undoubtedly take at least two more years for the final outcome of the inquiry to fructify in as much as the respondent no.4 DGoV herein upon his representation in response to impugned Notice Memorandum dated 01.04.2015 will have to send his report thereon to the President who in turn is required to consult UPSC for its advice before any final decision on the inquiry can be taken. Consequently, the applicant herein is made to wait further for receipt of his retiral dues. As such, the respondents herein have submitted serious incurable illegalities and irregularities in the conduct of enquiry after their receipt of the IO report thereby vitiating the entire procedure.
- 3.2** The ongoing departmental disciplinary enquiry which is being continued for an unduly long period of more than five years is arbitrary, unreasonable and discriminatory even after the receipt of the a positive report from Inquiry Officer in November 2011 and therefore the same deserves to be dropped forthwith. In this regard it is further submitted that right from the stage of nomination of IO and PO to the stage of the conclusion of the Inquiry Proceedings on 18.02.2011 followed by submission of his Defence Brief on 16.06.2011, the applicant had cooperated in the Inquiry Proceedings and never contributed to any delay in holding and concluding the said Inquiry.

The unexplained delay on the part of respondent no.3 for not taking any action and keeping the report of Inquiry Officer under wrap vitiates the disciplinary proceedings in terms of Rule 9 of the CCS Pension Rules. Even otherwise, the continued delay in concluding the disciplinary proceedings is contrary to the ratio laid down by the Hon'ble Apex Court in the case of Premnath Bali v/s Registrar reported in (2015) 16 SCC 415: AIR 2016 SC 101.

- 3.3 The respondent no.4 i.e. DGoV Custom & Excise, committed illegality in disagreeing with IO report since it is only the President being the applicant's Disciplinary Authority, who can agree or disagree with the IO report.
- 3.4 It is submitted that as per the instructions/guidelines issued by the CVC vide its office order No.26/4/04 dated 16.04.2004 (Ann A/25), in the event of a disagreement between the Disciplinary Authority and the CVO i.e. the DGoV in the present case, on the findings in the IO report then the said case has to be referred in the first instance to the Secretary of the Ministry or Head of the Department for his intervention and it is only where the said differences could not be resolved with the intervention of the said authorities that the CVC's advice is to be resorted to.

However, in the case of applicant, the respondent no.4 DGoV, without referring the applicant's case to the Secretary of the Ministry or the HOD, straightaway referred the case to the CVC for its second stage advice. In this regard the counsel for the applicant placed reliance on the common order dated 29.04.2009 passed by this Tribunal in OA 341/342 of 2007 (Ann A/26), pertaining to the same department.

- 3.5 It is submitted that as per the provision of Rule 9 of the CCS (Pension) Rules 1972, since the applicant retired on 30.09.2009, it is only the President who can issue the final order for which he is required to consult UPSC for its advice.
- 3.6 The learned counsel also vehemently argued that in the present case prior to the issuance of the charge sheet dated 24.09.2009, it was the

admitted position that the CVC was not consulted for its first stage advice in as much as the matter pertaining to the cadre of Superintendents of Customs and Central Excise, Group ‘B’ officers, was not required to be referred to the CVC as per the CVC letter dated 16-4-2004(Annex A25). In support of said submission the learned counsel placed reliance on Circular No. 17/12/12 dated 7th December, 2012 issued by CVC and submitted that the respondent no.4 had committed grave error in referring the applicant’s case to the CVC for its second stage advice. The said action on part of respondent no.4 had been actuated by malicious motive/consideration with a view to ensure that the applicant herein continued to receive only the provisional pension and remained deprived of his right to receive other retiral dues. Even otherwise, in its impugned UO Note dated 22.1.2015, the DGoV has traversed beyond the realm of the charge memorandum dated 24.09.2009 by making an observation that “*the missing of copy of bill of entry depicts the sorry state of affairs of the office and is a strong indicator of mala fides.*” Therefore, the impugned UO Note dated 22.01.2015 (Ann A/1) deserves to be quashed and set aside.

- 3.7** The impugned decision of respondent no.3 dated 01.04.2015 (Ann A/4), amounts to depriving the opportunity of his case being placed before UPSC, which is a statutory, mandatory and impartial consultative authority. It is submitted that even in case where the President of India had an occasion to disagree with the IO report, he had to seek the advice of UPSC. But in the present case, UPSC’s role has been completely given a goby.
- 3.8** Applicant’s challenge to the impugned communication of CVC dated 20.02.2015 (Ann A/3), is in the nature of dictating the respondent no.3 herein. In other words, the DGoV i.e. respondent no.4 herein has chosen to act as an authority superior to respondent no.3, conveniently forgetting the fact that a disciplinary authority is a quasi judicial authority and he cannot be subjected to any commands or direction by any authority. The very act of DGoV in referring the applicant’s case

to the CVC for its second advice is without any authority and runs counter to the CVC's own guidelines.

- 3.9** The impugned Notice Memorandum dated 01.04.2015 (Ann A/4), has been blindly issued by the respondent no.3 on dictates of the DGoV. As a matter of fact, on a close perusal of the finding and observation contained in the IO report as also the Adjudicating Authority's Order in Original dated 31.03.2014 discloses that the applicant herein has not committed any misconduct as alleged or otherwise. The respondent no.3 had not acted independently and impartially and instead had chosen to act as per the direction of DGoV. Therefore, the impugned Notice Memorandum is illegal and deserves to be quashed and set aside, the learned counsel argued.
- 3.10** It is stated that the applicant is of 71 years of age, is a senior citizen. By virtue of continued pendency of the departmental enquiry he is made to suffer not only in terms of finance but also in terms of image in the society, even though he has come out clean in the enquiry proceeding followed by the respondent no 3's acceptance of the applicant's innocence. Due to, ongoing departmental enquiry all these years the applicant's constitutional right to live with dignity guaranteed under Constitution of India is violated.
- 3.11** The respondents deliberately the ongoing departmental enquiry in an illegal and irregular manner with an expectation the even if such an illegal course of action on their part is challenged by the applicant, it will only lead further delaying the ongoing proceedings. Therefore, counsel for the respondent submit that in the interest of the justice, equity direct the respondent to drop the ongoing proceeding against the applicant.
- 3.12** The learned counsel also argued that in the present case, the respondent had acted in discriminatory manner. In this regard it was submitted that even though the co-delinquent Mr Jitendra R. Nair, Superintendent who faced similar charges in the very same case had been left out by the DGoV on the specious ground that the charges against him were not proved correctly as he was not the assessing

officer and issue of rate of exchange did not come within his domain of work and that he had not violated any rule or instruction or order in the matter and that the charge of undue haste was not proved.

4 Per contra the respondent contested the plea of applicant by filing their counter reply. Based on the said reply, the learned standing counsel Mr. H. D. Shukla for the respondents mainly submitted as under :-

4.1 The disciplinary proceeding for major penalty was initiated against the applicant herein while he was working as Superintendent and also against other 3 officers (Group – B officer) based on first stage advice of CVO dated 18.09.2009 and the charge sheet was served under the provision of 14 of the CCA (CCS) Rules, 1965 for failure to ascertain and to ensure that all required documents were filed by the importer along with the bill of entry and for having deliberately and knowingly suppressed many material facts and for having shown undue haste to provide financial accommodation to the importer, thereby causing huge loss of revenue to the Government Exchequer on account of revised exchange rate being effective from 01.10.2008. The applicant herein had signed the T.R. 6 Challan on 30.09.2008 without verifying the essential documents said to have been enclosed with the Bill of Entry before noting and assessment of Bill of Entry, thereby committing gross misconduct and negligence in discharge of his duties from 01.07.2008 to 22.06.2009 and thus violating the provision of Rule 3 (1)(i)(ii) and (iii) of the CCS (Conduct) rules, 1964.

For the aforesaid irregularities, major penalty proceedings were also initiated against one Shri P.C. Phadke, the then Assistant Commissioner (Group – A) based on CVC first stage advice and the charge sheet came to be issued on 18.03.2010 against said Shri P.C. Phadke.

4.2 The charge memorandum bearing no. II/10/(A)/(CON)-03/2009/478 dated 24.09.2009 was issued by respondent no. 3 herein against the applicant. Thereafter, he retired on 30.06.2009 on attaining the age of superannuation pending departmental disciplinary enquiry.

4.3 The applicant herein participated in the departmental enquiry and on its conclusion, submitted his written defence brief on 16.06.2011. Thereafter, the IO submitted report on 11.11.2011 to the respondent no. 3 holding the charges levelled against the applicant were not proved. Further, it is pleaded that the department had issued show cause notice (SCN) dated 14.07.2009 to the importer with regard to not following requisite procedure in submitting his Bill of Entry, the said SCN was subsequently dropped by the Adjudicating Authority (AA) by its Order In Original dated 31.03.2014 (Ann. A/23).

Since, the facts and circumstances of the issuance of the SCN to the importer and the charge sheet issued to the applicant were same, it was natural and appropriate for the authority to wait for the outcome of the said SCN.

The department had accepted the order of AA dated 31.03.2014 and by accepting the finding and conclusion recorded by the IO in his report dated 11.11.2011, the DA (respondent no. 3 herein) had referred the case of applicant with his recommendation to the Director General of Vigilance, Custom and Central Excise, New Delhi (respondent no. 4 herein).

- 4.4** On receipt of recommendation of the DA, the respondent no.4 DGoV chose to disagree with the finding and conclusion of IO as also the recommendation of the DA. Since the disciplinary proceedings was initiated after the first stage advice of CVC against Assistant Commissioner Mr. Phadke with regard to same incident / transaction as alleged against the applicant, the DGoV referred the case the CVC for its second stage advice vide its UO Note dated 22.01.2015 recommending the imposition of major penalty. The said action on the part of respondent no. 4 is stated to be in consonance with the extant instructions and policy on the issue. Accordingly the respondents denied the submission of the applicant that respondent no. 4 had not followed provision of Pension Rules.
- 4.5** It is further submitted that upon receipt of aforesaid UO Note from DGoV, the CVC (respondent no. 5 herein) vide impugned OM dated

17.02.2015 (Ann. A/2) confirmed the recommendation of CVO, CBEC with the advice of imposition of major penalty on applicant herein as also Shri Hitesh Shah, Senior Tax Assistant and Yogesh Yadav, Inspector. Pursuant to said second stage advice of CVC dated 17.02.2015, the DGoV vide its communication dated 20.02.2015 (Ann. A/3 impugned herein) informed the respondent no. 3 that CVC had advised in its second stage advice, to initiate major penalty proceedings against the applicant herein and other officers and further directed that before imposition of major penalty, Disciplinary Authority was mandatorily required to supply a copy of the Inquiry Report to the charged officer along with tentative disagreement note so that the charged officer could make effective representation. Accordingly, the DA, i.e., respondent no. 3 issued its disagreement note with regard to finding of IO vide impugned Notice Memorandum dated 01.04.2015 (Ann. A/4) by supplying the copy of Inquiry Report dated 11.11.2011 and copy of second stage advice of CVC dated 17.02.2015 and called upon the applicant to submit his reply/representation.

On the aforesaid events, counsel for the respondents vehemently submitted that the respondent no. 3 had followed the provision of Rule 9 (2) (a) of Pension Rules and before submitting its report / passing order of imposition of penalty the applicant had been given due opportunity to submit his representation to the disagreement note. But the applicant chose to file the present OA without exhausting the remedy available under the Rules because, as such the DA had not passed any order imposing penalty on the applicant. The proceedings were at the hearing stage. Therefore, it was premature for the applicant to file the present OA and also, he was not entitled for the relief sought therein.

- 4.6** It is submitted that the applicant was making hypothetical arguments regarding time limit in finalising the disciplinary proceedings. The applicant participated in departmental inquiry, without any objection with regard to competency of respondent no. 3 as DA in the present

case. Not only that the applicant insisted that the respondent no. 4 & 5 ought to have accepted the finding and conclusion of the IO and the recommendation of DA and up to that stage, the applicant had no grievance against the respondent no. 3. However, the respondent no. 4 & 5 disagreed with IO Report and directed the DA for taking action against the major penalty by issuing the disagreement note, and at this stage now the applicant was raising the grievance against the competency of DA since he was now a retired employee. The counsel argued that the said submission of the applicant was contrary to the provision of rules and showed varying conduct of the applicant.

- 4.7 The counsel for the respondent also submits that the applicant himself had admitted in his pleadings that, in the case of retired Government Servants, the President of India in consultation with UPSC, would pass final order. As such the final order would have been passed by the President but the applicant herein himself caused delay by filing such litigation instead of following the statutory procedure stipulated under the rules.
- 4.8 It is submitted that on receipt of representation in response to Notice Memorandum dated 01.04.2015, the respondent no. 3 had forwarded the case to the President. In fact the applicant had requested the respondent no. 3 for extension of time for making representation vide his application 27.04.2015 and same was accepted by granting more time to the applicant. However, till date the applicant has not filed his representation. Thus, the case of the applicant has not been forwarded to the President till date. The applicant is not entitled to any relief as sought in this OA.
- 5 The applicant has filed rejoinder and denying the submission of the respondent, he has reiterated his pleading and ground stated in the OA. Additionally, it is submitted that it was absolutely preposterous on the part of the respondent to contend that it was natural for the respondent to wait for the finalization of the SCN issued to the importer with regard to non-supply of Inquiry Report to the applicant as also regarding not referring the case of the applicant to DGoV for long time.

- 5.1 Further, learned counsel for the applicant submitted that he had filed his written submission in support of prayer sought in this OA.
- 6 Heard the learned counsel for the parties and perused material on record.
- 7 It is noticed that while applicant was working as Superintendent, P.U. Amreli, Customs Division, Bhavnagar (Group-B officer), he was served with memorandum/charge sheet dated 24.09.2009 under Rule 14 of CCS (CCA)1965 for major penalty with respect to charges framed against him under the article of charge and statement of imputation of misconduct. Since, the applicant retired on 30.09.2009 on attaining the age of superannuation pending departmental disciplinary enquiry, the said departmental proceedings are deemed to be proceeding under the provision of Rule 9(2)(a) of CCS (Pension) Rules, 1965. The said rule 9 reads as under :

“ Rule 9. Right of President to withhold or withdraw pension

[(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement :

Provided that the Union Public Service Commission shall be consulted before any final orders are passed :

Provided further that where a part of pension is withheld or withdrawn the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy-five per mensem.]

(2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service :

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

- 8 It can be seen that as per the aforesaid Rules 9(2)(a) departmental proceedings instituted against the Government Servant before his retirement shall, after his retirement be continued and concluded by the authority by which they were commenced in the same manner as if the Government Servant continued in his service. The said Rule further mandates that in case

of the departmental proceeding instituted by an authority subordinate to President, that authority shall submit a report recording its finding to his President. On receipt of the said report the President shall pass final order with regard to withholding pension or gratuity or both if the Government Servant is found guilty of grave misconduct or negligence during the period of service in terms of Rule 9 (1) of Pension Rules.

In the present case, undisputedly before the applicant retired, disciplinary proceeding was initiated by respondent no. 3 and after his retirement said Disciplinary Authority, i.e., respondent no. 3 was under statutory obligation to conclude the proceeding and to submit a report recording its finding to the President in terms of Rule 9 (2) (a) of CCS (Pension) Rules. Since, the said DA after receipt of second stage advice of CVC issued disagreement note on IO Report and called upon the applicant (delinquent) to submit his representation vide impugned order dated 01.04.2015. The said decision in our considered view is in consonance with provision of Rule 9 (2) (a) of CCS Pension Rules.

9 As far as the decision of respondent no. 4, i.e., DGoV on disagreement with IO Report and recommendation of the DA to refer the case to CVC is concerned, we find that the said decision is also in consonance with terms of Office Order No. 26/4/04 dated 16.04.2004 (Ann. A/25) issued by CVC. It is appropriate to reproduce the said Office Order which reads as under:

*“No.98/VGL/15
Government of India
Central Vigilance Commission*

*Satarkta Bhawan, Block ‘A’,
GPO Complex, I.N.A.,
New Delhi – 110 023
Dated the 16/04/2004*

Office Order No. 26/4/04

To

***The Secretaries of All Ministries/Deptts. Of Government of India,
The Chief Secretaries to all Union Territories
The Comptroller & Auditor General of India
The chairman, Union Public Service Commission
All Chief Vigilance Officers in the Ministries/Departments,
Autonomous Organisations/Societies etc.***

President Secretariat/Vice-President's Secretariat/Lok Sabha Secretariat/Rajya Sabha Secretariat/PMO.

Subject : Jurisdiction of the Central Vigilance Commission in relation to the officers of the level of Group-B, Gazetted.

Attention is invited to para 5.4, Chapter I of the Vigilance Manual, Volume-1 on the above subject, requiring that vigilance cases of the Gazetted officers of the Central Government and its equivalent grade in other Government organisations might be referred to the Commission for advice.

2 Keeping in view the large increase in number of cases being referred to the Commission for advice, the Commission has decided that, henceforth, only cases of officers of the level of Group 'A' and above of the Central Govt. and Members of All India Services in connection with the affairs of the Union and Group 'A' of the Central Govt may be referred to the Commission for advice. It is, however, clarified that the Commission's advice would be necessary in respect of all officers of the Central Government irrespective of their level, if they are involved in the same matter in which an officer of the level of Group 'A' or above is involved. The Commission's advice would also be necessary in cases of difference of opinion between the disciplinary authority and the CVO with regard to the action to be taken against officers who are not within the jurisdiction of the Commission if these differences cannot be resolved with the intervention of the Secretary of the Ministry or Head of the Departments.

3 While delegating the powers to the concerned Ministries/Organisations with regard to gazetted officers below Group 'A' of Central Government, the Commission expects that (i) appropriate expertise would be available to the CVOs; (ii) the CVO would be in a position to exercise proper check and supervision over such cases and would ensure that the cases are disposed off expeditiously within the time norms stipulated by the Commission; and (iii) the punishment awarded to the concerned employee would commensurate with the gravity of the misconduct established on his/her part. In order to ensure that the Commission's expectations are fully met, the Commission may depute its officers to conduct vigilance audit through onsite visits and also through the monthly information system (monthly reports etc.). If the commission comes across any matter, which in its opinion has not been handled properly, it may recommend its review by the appropriate authority or may give such directions as it considers appropriate.

4 In respect of cases involving Gazetted officers below Group 'A' of the Central Government, in which the Commission has tendered its first stage advice before issue of these instructions, the matter need not be referred to the commission for second stage advice if the disciplinary authority, on conclusion of the disciplinary proceedings, proposes to impose a penalty which coincide with the Commission's first stage advice, provided that none of the officers involved in the matter is an officer of All India Service or Group 'A' officers. The case, however, may be referred to the Commission for its advice if the disciplinary authority proposes to take action, which does not coincide with the Commission's first stage advice, (or it differs with the recommendation of the CVO with regard to the quantum of punishment to be imposed).

Sd/-

*(Anjana Dube)
Deputy Secretary”*

- 10** It can be seen from the CVC letter dated 16-4-2004 that normally only cases of officers of the level of Group-A and above of the Central Government and members of All India Services may be referred to the CVC advice. However, there is one exception to the effect that Commission's advice should be necessary in respect of all officers of the Central Government irrespective of their level, if they are involved in the same matter in which an officer of the level of Group-A or above is involved. Further, the Commission's advice would also be necessary in cases of difference of opinion between the DA and the CVO with regard to the action to be taken against officers who are not within the jurisdiction of Commission if these differences cannot be resolved with the intervention of the Secretary of the Ministry or the Head of the Department. In the present case, it is noticed that, in the matter of accepting the Bill of Entry of the importer, the applicant herein who is gazetted officer Group-B was issued with the charge sheet along with other officers including Mr Phadke, a Group-A officer who too was issued with a charge-sheet. In other words, the applicant along with other Group 'B' Officers were alleged to be involved in the same matter in which Shri Phadke a Group 'A' officer was involved. Therefore, as per the instructions contained in Office Order dated 16.04.2004 (Ann. A/25) the Commission's advice became necessary irrespective of fact that the CVO/DGoV disagreed with the Report of IO and the recommendation of DA. In view of this factual matrix, the submission of the counsel for the applicant that the respondent no. 4 DGoV erroneously referred the matter to CVC is not tenable. The order and judgement relied upon by the counsel for the applicant is also not much helpful to the applicant.
- 11** It is noticed that admittedly, considerably long time has elapsed after initiation of disciplinary proceeding against the applicant. But at the same time the disciplinary proceeding cannot be dropped without its logical and lawful conclusion. We see that the applicant has been receiving the provisional pension during the pendency of the disciplinary proceeding.

Under the circumstances, we do not find any procedural omission or failure in complying with the rules and instructions or infirmities in impugned notice memorandum dated 01.04.2015 whereby applicant has been called upon to submit his representation to the disagreement note OA. Evidently there is no case of not affording to the applicant reasonable opportunity to make his submission in his defence. As noted hereinabove, after receipt of representation of applicant delinquent, the DA shall have to consider it independently and thereafter submit his report to the President and thereafter the President will pass final order in terms of Rule 9 of Pension Rules. In view of above mentioned facts and discussion, we do not find any infirmities in decision making process. Hence, we are not inclined to interfere with the impugned decision. Considering the age of applicant and the inordinate delay on part of respondents in concluding this proceeding, we dispose of the present OA with the following directions:-

- The applicant shall respond to the notice memorandum dated 01.04.2015 issued by the respondents within 4 weeks from today;
- a direction to respondent no. 3 to consider the representation of the applicant expeditiously if filed by him within the time directed above and submit the report thereon as per the stipulated procedure, within 60 days from the date of receipt of representation of the applicant and conclude the matter by a speaking order within four weeks thereafter.

12 OA stands dispose of with above directions. No costs.

(A K Dubey)
Member(A)

abp

(Jayesh V Bhairavia)
Member(J)