

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
O.A. No. 050/00235/2020**

Date of Order: 20th January, 2021.

C O R A M

**HON'BLE MR M.C. VERMA, MEMBER [J]
HON'BLE MR. S.K. SINHA, MEMBER [A]**



Binod Kumar Sinha, Aged about 59 years, Son of Late Sindhu Sharan Sinha, Superintendent, Central Goods, Service Tax & Central Excise, Ministry of Revenue, Government of India, Gaya Range Gaya (Bihar) Resident of House No.B-205, Millennium Homes, Bind Toli, Sheikhpura, P.O. – B.V. College, P.S. – Shastri Nagar, Town & District – Patna, PIN Code – 800014 (Bihar).

..... Applicant.

By Advocate :- Shri M.P. Dixit.

-Versus-

1. The Union of India through the Secretary, (Revenue), Government of India, Ministry of Finance, Department of Revenue, New Delhi – 110021.
2. The Chairman, Central Board of Excise & Customs, Ministry of Finance, Government of India, North Block, New Delhi – 110021.
3. The Director General of Vigilance, Ministry of Finance, Department of Revenue, Government of India, Central Board of Excise and Customs, 1st & 2nd Floor, Hotel Samrat, Kautilya Marg, Chanakyapuri, New Delhi – 110021.
4. The Chief Vigilance Officer, Ministry of Finance, Department of Revenue, Government of India, Central Board of Excise and Customs, HUDCO, Vishala Building, Bhikaji Cama Place, R.K. Puram, New Delhi – 110021.
5. The Chief Commissioner, Central Goods, Service Tax & Central Excise (Ranchi Zone), Central Revenue Building, Birchand Patel Path, Patna.
6. The Commissioner of Central Goods, Service Tax & Central Excise, Ministry of Revenue, Government of India, 143, New Baradwari, Sakchi, Jamshedpur – 831001.
7. The Joint Commissioner of Central Goods, Service Tax & Central Excise (P & V), Ministry of Revenue, Government of India, 143, New Baradwari, Sakchi, Jamshedpur – 831001.
8. Sri Mahfuzar Rahman, the Commissioner of Central Goods, Service Tax & Central Excise (P & V), Ministry of Revenue, Government of India, 143, New Baradwari, Sakchi, Jamshedpur – 831001.
9. Sri Pratyush Gorai, the Assistant Commissioner (Prev), Central Goods, Service Tax & Central Excise, Outer Circle Road, Bishtupur, Jamshedpur.

..... Respondents.

By Advocate :- Shri H.P. Singh.

ORDER (ORAL)

Per M.C. Verma, Member [Judl.]



1. Applicant, an Superintendent of Central Goods, Service Tax & Central Excise, being aggrieved by orders dated 13/05/2020 & 7/5/2020 whereby Common Disciplinary and Inquiry Authority have been appointed relating to Charge-sheet dated 18/10/1996 issued to applicant, has preferred instant OA pleading that Departmental Proceeding relating to said Charge-sheet had to be deemed to be quashed in view of order dated 24.09.2014 passed in O.A. 170/2012. Applicant has made prayer to quash aforesaid orders dated 13/05/2020 & 7/5/2020. After issuance of notice, respondent contesting the OA has filed the written statement.

2. Indisputable facts which has emerged as admitted from the pleadings are that applicant presently is working on the post of Superintendent in the department of respondents and during his earlier assignment, as Inspector of Central Excise, Dhanbad, Charge-sheet dated 18/10/1996 was issued to applicant, that allegations leveled in Charge-sheet are that he with four other officers/official demanded & accepted the bribe and illegal gratification. That on the basis of same allegations already a case, being RC. case No. 10(A) 93 (D) had been registered against the applicant and some others by the CBI. That CBI later on did submit final form which was accepted by the Court. That common disciplinary proceeding was initiated against the applicant and some others. That upon the report of enquiry officer, the Disciplinary Authority awarded punishment of reduction of pay of the

applicant for one year by two stages, applicant preferred departmental appeal and departmental Appellate Authority remitted back the case to Disciplinary Authority for conducting afresh systematic departmental enquiry. That applicant in year 2012 did file OA No. 170/2012 challenging the virus of disciplinary proceeding and on contest said OA was disposed of on 24/09/2014 with direction relating to the disciplinary proceeding. After order dated 24/09/2014 passed in OA No. 170/2012 except issuance of aforesaid impugned orders of July 2020 of instant OA, no other step to conclude the disciplinary proceeding by respondent is there.



3. Learned counsel Shri M.P. Dixit Advocate while pressing the O.A. submits that applicant is at the verge of superannuation, is going to superannuate on 31st March, 2021 and that disciplinary proceeding relates to charge memorandum dated 18.10.1996 and the so called act to which charge memorandum relates has been alleged to be of year 1992-93 and thus is about 28 year old. He urged that the respondents want to drag the applicant in departmental proceeding, which departmental proceeding has since become non-est as per order dated 24.09.2014 passed in O.A. 170/2012 and submitting so learned counsel invited our attention to Para-7 of Order dated 24.09.2014 passed in O.A. 170/2012 wherein the direction of the Tribunal, qua departmental proceeding in issue are there.

4. Learned counsel also submits that no inquiry officer as was directed was appointed within six weeks of the order rather the inquiry officer was appointed after about seven years i.e. on 13.05.2020 and 07.05.2020 and that inquiry officer now has issued

letter to the applicant to appear and participate in the departmental inquiry. He urged that as per order of the Tribunal decision to appoint Common Inquiry Authority for conducting a fresh disciplinary proceeding has not been complied with by the respondents within six weeks, the disciplinary proceeding against the applicant thus is terminated proceeding.

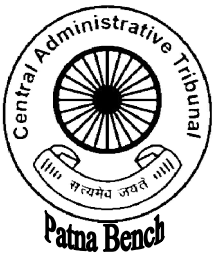


5. Mr. Dixit argued further that in fact it is a case of Contempt of Court, the departmental inquiry had become non-est and treating that departmental inquiry and charge memorandum as alive and issuance of any Order/Notice tantamount to disobedience of Tribunal's order but in spite of that applicant, who still is in service did not come by way of contempt petition and he to represent his grievance opted to prefer the O.A. He urged to allow the O.A., to declare the departmental proceeding as non-est and to quash order dated 05.05.2020 & 13/5/2020.

6. Learned counsel Shri H.P. Singh Advocate, appearing for respondents vehemently opposed the relief as has been prayed for in the O.A. and urged that allowing of the OA in terms of prayer made therein will have its repercussion on co-delinquent's inquiry also. He added that it is not only the present applicant but four other officers are also involved in the commission of demand of bribe and accepting of gratification and out of those four, one has expired & three have retired. That the racket was being run by a group and a joint inquiry was needed in this case. He, upon inquiry informed that out of those five presently, in addition to applicant inquiry against one Bharat Bhushan is going on and that Bharat Bhushan has since retired. He

claimed ignorance whether the inquiry against other two officers, who has retired, is pending or not.

7. Mr. H.P.Singh also submits that from bare reading of charge memorandum it reflects that allegations against the applicant are grave in nature. He urged that merely lapse of long time cannot be a ground for quashing of the departmental proceeding and that applicant is also responsible for delay in finalization of the inquiry. He also referred the procedure provided under Rule 18 of CCS(CCA) Rules 1965 stating that it is time taking procedure and there is no latches on the part of respondents in appointing Common Disciplinary Authority etc. He to explain the delay referred Para 10 to 15 of the written statement.



8. Considered the submissions made at Bar. After passing of order by appellate authority when applicant came before this Tribunal in OA No 170/2012, this Tribunal after considering the matter in entirety passed a comprehensive order on 24/9/2014. The Tribunal issued direction that if decision to appoint Common Inquiry Authority for conducting a fresh disciplinary proceeding is not taken by the respondents within six weeks, the disciplinary proceeding against the applicant shall terminate and even in case the inquiry officer is appointed within stipulated time granted above, the inquiry had to be concluded within six months. The direction are in Para 7 of said decision dated 24/9/2014. Para 7 of said decision, for ready reference is reproduced herein below:-

“7. In view of the above, this Tribunal holds as below:-

[I] The prayer of the applicant to set aside the orders of the appellate authority dated 03.06.2011 [Annexure A/7], solely and merely on grounds of inordinate delay is not allowed given the fact that the charges against the applicant along with other officials are extremely grave. Further, that the orders for conducting a fresh Inquiry are based on grounds of procedural and documentary lapses and not on merits relating to the guilt/innocence of the charged officials.

[II] The respondents are granted a period of six weeks from the date of receipt/ communication of this order to appoint a common Inquiry authority for conducting a fresh disciplinary proceedings. It has been famously said in the past that no decision is also a decision. As such, if the respondents fall to take a decision within the period stipulated herein, it will be assumed that they have no intention to continue with the disciplinary proceedings and the same, against the applicant, shall stand terminated.

[III] In the eventuality, the respondents appoint a common Inquiry authority within the time frame stipulated in [II] above, they shall ensure the completion of the entire disciplinary Inquiry within a period of six months thereafter.”



9. Learned counsel for respondents has urged that there is no laches on the part of the respondents and to explain the delay he has referred Para 10 to 15 of the written statement. Referring said Para respondents has tried to show that the time taken in appointing Common Inquiry Officer was procedural requirement and there is no delay and laches. We had a glance of said Para, mutatis mutandis the averment made in Para 10 to 15 of the written statement speaks about procedure for appointment of Common I.O./P.O. It is true that some time for compliance of such necessary formalities is needed but the O.A.170/2012 was disposed of on 24.09.2014, almost seven years

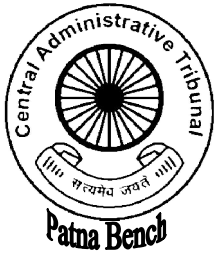
have passed thereafter, whatever formalities were required cannot be said to need seven years of time. Anyhow, if the respondents were having some impediments for non fulfillment of compliance of order and were not in a position to appoint a Common Inquiry Officer within the given time, they could have approach the Tribunal at relevant time in O.A.235/2020, for extension of time and the Tribunal after considering the entirety would pass appropriate order in that case.



10. We, at the cast of repetition reiterates herein that Tribunal in O.A.170/2012 gave six weeks time to appoint Common Inquiry Officer but the Common Inquiry Officer was appointed on 07.05.2020 and 13.05.2020, vide order which has been impugned in the instant O.A. It is also worth noting that during hearing of instant OA, inviting attention to aforesaid Para 7 of order dated 24.09.2014 passed in O.A.170/2012 it was inquired from learned counsel Mr. H.P. Singh whether during this period of seven years at any time respondents had preferred any M.A. or have made any request in O.A.170/2012 for extension of time and learned counsel fairly answered that no such approach was made by the respondents and no application for extension of time was given, however, he added that in written statement of this OA request has been made for extension of that time. It is of no use to request for extension of time in this O.A.

11. Taking note of submission and pleadings, especially the order passed in O.A.170/2012, we have no hesitation to arrive on conclusion that in view of order dated 24.09.2014 passed in OA No. 170/2012, the departmental proceeding after expiry of stipulated time

granted in that Order has assumed the status of a terminated departmental proceeding, has become non alive and that the respondents department without getting extend the time limit given in O.A.170/2012 has issued orders dated 07.05.2020 and 13.05.2020 for appointment of common disciplinary and enquiring authority relating to the departmental proceedings, which cannot be said to be alive. Impugned orders dated 07.05.2020 and 13.05.2020 thus are not legally sustainable and hence are liable to be quashed and accordingly are hereby quashed.



12. The OA, to the extent observed above is allowed. No order as to cost.

Sd/-
[Sunil Kumar Sinha]
Member [A]
sks/-

Sd/-
[M.C. Verma]
Member [J]