

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK**

ORIGINAL APPLICATION NO. 328 OF 2000
Cuttack this the 18th day of June, 2000

A.K. Patnaik ... Applicant(s)

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Applicant(s)

-Versus-

Union of India & Others ... Respondent(s)

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? **75.**
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? **No.**

(SOMNATH SOM)
VICE-CHAIRMAN

(G. NARASIMHAM)
MEMBER (JUDICIAL)

18-6-0 9.

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH : CUTTACK

ORIGINAL APPLICATION NO. 328 OF 2000
Cuttack this the 18th day of June, 2001

CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRI G.NARASIMHAM, MEMBER (JUDICIAL)

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Shri Amiya Kanti Patnaik, aged about 46 years,
S/o. Late Subal Ch. Das, at present working as
Superintendent, Central Excise & Customs,
Bhubaneswar-1, Commissionerate,
Bhubaneswar, Dist - Khurda

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By the Advocates

Applicant
M/s.A.K.Mishra
J.Sengupta
B.B.Acharya
D.K.Panda
P.R.J.Dash
G.Sinha

-VERSUS-

1. Union of India represented through its Secretary, Government of India, Ministry of Finance, Department of Revenue, New Delhi
2. Commissioner, Central Excise & Customs, Bhubaneswar-1, Commissionerate, Bhubaneswar, Dist - Khurda
3. Shri B.K.Mallick (Technical Officer) Judicial Cell C/o. Joint Director (Administration) Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, North Block New Delhi-1

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By the Advocates

Respondents
Mr.S.B.Jena,
Addl.Standing Counsel
(Central) (Res.1 & 2)

O R D E R

MR.G.NARASIMHAM, MEMBER (JUDICIAL): Applicant, Amiya Kanti Patnaik, Superintendent, Central Excise & Customs, in this Application prays for quashing the charges framed against him in Memo dated 21.6.1995 (Annexure-1) under Rule-14 of the C.C.S.(CCA) Rules, 1965, mainly on two grounds : (i) the alleged incident having taken place in December, 1989, the

charges could not have been framed more than five and half years, ^{thereafter} at a belated stage and (ii) slow progress in the enquiry because of non-cooperation of the Presenting Officer and non-attendance of witnesses.

On 28.12.1989, while serving as Inspector in the Central Preventive Unit of Central Excise & Customs, Bhubaneswar, applicant had seized 40 documents from M/s. Precision Engineering Works, Rourkela, which revealed duty evasion to a tune of Rs.1.5 crores. The allegation against the applicant is that though he took charge of the documents and brought them to Bhubaneswar on 31.12.1989, he did not take up the required follow up action and did not process the case. Though he was required to submit the seizure report after scrutiny of the document within 24 hours of the search under the rules, he did not submit any such report. He also did not enter the offence in 335 ~~act~~ J Register with an ulterior motive. Though he was promoted to the rank of Superintendent on 19.2.1990, he did not handover the charge of the documents to another Inspector and so much so the seized registers are not traceable and as a result, the concerned Firm was left ~~scat~~ free from paying the duty and thereby the Government lost huge revenue.

As already stated, the grievance of the applicant is that there was abnormal delay in framing the charges. The Inquiring Officer and the Presenting Officer were appointed after his explanation was received on 30.9.1996. On 12.5.1997 the documents listed were supplied. On 27.6.1997, the applicant requested for supply of additional documents relevant for the purpose of his defence. Though the Inquiring Officer, on 20.5.1998 addressed to the Disciplinary Authority permitting

supply of those additional documents, on 25.1.1999, the Inquiring Officer denied supply of those documents. On 22.4.1999 it was pointed out to the applicant that he could only give the name, of witnesses for further cross-examination on the documents supplied by the Presenting Officer in a later date. On 16.7.1999, he represented to the Disciplinary Authority complaining about the slow progress of the enquiry and non-cooperation of the Presenting Officer for not producing the witnesses. Thereafter, for no fault of hiw, the enquiry had undergone several adjournments till 5.4.2000, on which date the evidence of the witnesses for the Department was closed. Thereafter upto 19.6.2000 the enquiry had undergone several adjournments, for cross-examination/re-examination of defence witnesses.

2. In the counter filed on 29.9.2000 it is pointed out by the Department that the charges are serious in nature and as such for finalization of the proceedings, it would take sometime. In fact the Inquiring Officer has taken all efforts to take steps and as soon as the Inquiring Officer submits its report, final decision will be taken. In fact the applicant is also responsible for the delay in conducting enquiry inasmuch as only during enquiry he applied for supply of documents. Considering the gravity of the charges no inordinate delay has occurred in framing the charges.

3. In the rejoinder the applicant has pointed out that for the self-same charge the C.B.I. instituted a case against him, which ultimately ended in acceptance of final report by the learned Special Judge, Bhubaneswar, in his order dated 5.2.1999 in R.C. No.8 (A) of 1993 (Annexure-A).

According to instructions of the Government of India, departmental enquiry has to be concluded within six months from the date of appointment of I.O. as well as P.O. Since the enquiry is still continuing it should not be permitted to continue any further.

4. We have heard Shri A.K.Mishra, the learned counsel for the applicant and Shri S.B.Jena, learned Addl. Standing Counsel appearing for the Respondents. Also persued the records.

5. The charges were framed on 21.6.1995. This Original Application has been filed on 24.7.2000, i.e., five years thereafter praying for quashing those charges. Though this prayer has been made much beyond the prescribed period of limitation, no application/petition for condonation of delay has been filed, as required under Rule-8(4) of the C.A.T.(Procedure) Rules, 1987. In Ramesh Chandra Sharma vs.Udham Singh reported in AIR 1999 SC 3837 the Apex Court held that since no petition for condonation of delay was filed the Tribunal was not right in deciding the Original Application on merits, overlooking the statutory provisions under the A.T.Act, 1985. In other words, the legal position is that in case there is delay in preferring an Original Application, the same should be accompanied by a petition for condonation of delay; and unless delay is condoned, the application cannot be admitted for hearing on merits. Viewed from this angle, prayer for quashing the charges framed on 21.6.1995 is clearly barred by time on 24.10.2000, when the Original Application was filed. Even otherwise, as the pleadings reveal, we do not come across any abnormal

or inordinate delay. In the rejoinder itself the applicant has admitted that there has been a C.B.I. case against him. Naturally the relevant documents/papers must have been in the custody of C.B.I. for sometime. When allegation is loss of Government revenue to the tune of Rs.1.5 crores, as reflected in the 40 seized documents and when the C.B.I. was in ~~charge~~ session of the case for sometime, delay of about five and half years in framing the charge, in our view, would not amount to inordinate delay deserving quashing of the charges.

6. The other grounds urged for quashing the charge is delay in the progress of the enquiry. We are not inclined to quash the proceedings on this ground. It cannot be said that the applicant at no point of time was at fault in this regard. The charges were framed on 21.6.1995. Yet in Para-6 of the Original Application it is averred by the applicant that his explanation was submitted on 30.9.1996. In other words, the applicant himself took more than one year in submitting the written statement. The Apex Court in State of Andhra Pradesh vs. N.Radhakishan reported in 1998 (3) SLJ 162, held that mere delay in finalization of proceedings cannot be a cause to quash it. It is only when the proceeding is not finalized for long years without any default of the employee and without any explanation for delay, the same can be quashed. As already pointed out, the applicant himself has been at fault in delaying the matter by submitting his explanation at a belated stage. Even for examination of his own witnesses there was delay of two months vide Para-15 of the Original Application. It is not his case that this delay occurred on

account of non-cooperation of the Inquiring Officer and/or the Presenting Officer. In the rejoinder filed on 16.2.2001 the applicant has pointed out that by January, 2001, the Presenting Officer had already submitted his written brief. It is not clear from the rejoinder on which date the applicant submitted his defence brief, if any. So, it is clear, excepting ^{by} on submission of enquiry report, the enquiry is complete in all respects. Hence, at this stage, more particularly in a case of this nature, we are not inclined to drop the proceedings.

7. We are aware that there is some controversy in regard to non-supply of documents, as averred in the Original Application. However, we are not inclined to give any finding on this issue, ^{and that is} whether in case of non-supply of any such document the applicant is prejudiced thereby, as the proceeding is at the final stage, if not already completed. However, we make it clear that in case the applicant is held guilty, he will be at liberty to agitate this issue in a separate Original Application.

8. In the result, while dismissing this Original Application, we direct the respondents (Department) to finalize the proceedings within a period of 90 (ninety) days from the date of receipt of this order, if not finalized in the meanwhile. There shall, however, be no order as to costs.

*Somnath Som
(SOMNATH SOM
VICE-CHAIRMAN & CEO)*

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(G. NARASIMHAM)
MEMBER (JUDICIAL)

B.K.SAHOO//