

**CENTRAL ADMINISTRATIVE TRIBUNAL
Jodhpur Bench: JODHPUR.**

Original Application No.54/2004

Date of decision: 08.06.2004.

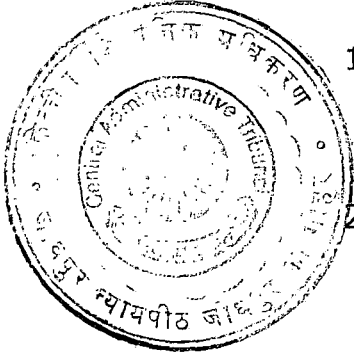
**The Hon'ble Mr. J K Kaushik, Judicial Member
The Hon'ble Mr. M K Misra, Administrative Member.**

B.R. Gagnani, s/o Shri Hasa Ram Ji aged about 48 years,
r/o 7 Custom Colony, Paanch Batti, Ratanada, Jodhpur.
(Rajasthan)

: Applicant.

Rep. By Mr.S.K. Malik & Mr. Dayaram: Counsel for the applicant.

Versus



1. Union of India, through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise and Custom, New Delhi.
2. Commissioner, Central Excise, Jaipur-1 New Central Revenue Building, Statue Circle, C-Scheme, Jaipur 302 005

: Respondents.

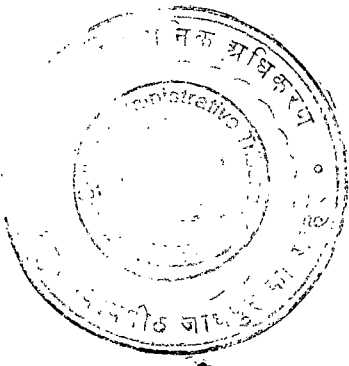
Mr. P.R. Patel : Counsel for the respondents.

ORDER**PER J.K. KAUSHIK, JUDICIAL MEMBER**

Shri B.R. Gagnani, has inter alia assailed the charge sheet under Rule 14 of the CCS(CCA) Rules, 1965, issued vide memo dated 07.07.2003 (Annex. A/1) and order dated 13/14.02.2004 (Annex. A/2) by which his representation came to be rejected. It has further been prayed that the respondents be directed to consider the case of the applicant for promotion to the post of Assistant Commissioner, with all consequential benefits., etc.

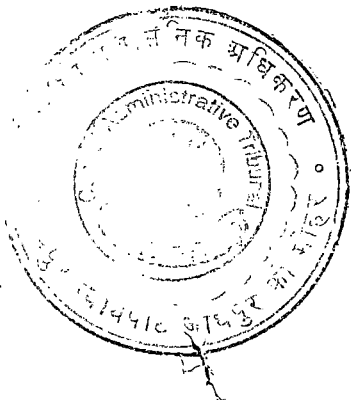
2. With the consent of the learned counsel for both the parties, we heard the arguments for final disposal at the admission stage keeping in view the urgency of the matter and have carefully considered the pleadings and records of the same.

3. Filtering out the unnecessary details, the indubitable material facts, as deduced from the pleadings of the parties are that the applicant has been issued with a charge sheet under Rule 14 of the CCS (CCA) Rules, 1965, dated 07.07.2003, alleging that he failed to maintain devotion to duty and acted in a manner unbecoming of a Government servant. The allegations are of carelessness and negligence while dealing with the matters of M/s Pushgpa Silk Mills Pvt. Ltd, Dungarpur and the charge sheet has been issued after a period of almost four years. He has submitted his reply to the charge sheet denying the



allegations and submitted the documentary proof to show that the allegations are contrary to the facts on record. Instead of dropping the charges, an inquiry officer was appointed to inquire into the matter. He was intimated vide order dated 13/14.02.2004 that his request has been turned down. The O.A has been filed on a number of grounds which shall be dealt with in the later part of this order.

4. As regards the variances, the respondents in their reply have averred that there has been delay in the issuance of the charge sheet since the matter had to pass through number of channels as it was relating to vigilance case of a gazetted officer. Hence the same had to be referred to D.G. Vigilance for obtaining first advice from CVC. The matter relating to negligence which caused huge loss to the public ex-chequer. The charge sheet was issued soon after the receipt of the advice of the CVC. The factual aspect of the charge sheet has also been narrated in the reply.



5. The learned counsel for the applicant, Mr S K Malik, has reiterated the facts and grounds narrated in the pleadings of the applicant. He has contended that the applicant has not committed any misconduct and one can not be subjected to disciplinary action merely for negligence or carelessness and there has to be culpable misconduct as per the law propounded

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by the Apex Court in case of **Zunjarao Bhikaji Nagarkar vs. Union of India and others**. [1999 SCC (L&S) 1299] He has placed heavy reliance on the decision of the Supreme Court in case of **State of Madhya Pradesh Vs. Bani Singh and Another** [1990 (2) SLR 798.] He vigorously contended that the incident relates to the year 1999 and by the time the charge sheet came to be issued, about 4 years had elapsed. There is an inordinate delay in institution of the very disciplinary case and there no explanation forthcoming for such delay. Therefore, on the ground of delay itself, the said proceedings can be quashed. Lastly, it was contended that the whole exercise is meant to deprive the applicant of his due promotional benefits and to damage his service career due to some extraneous reasons best known to the respondents.

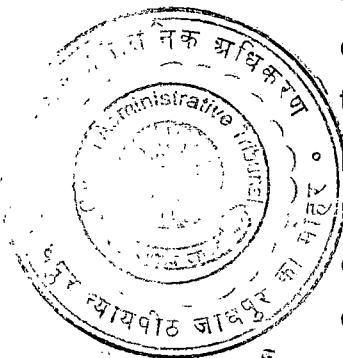
6. Per contra, Mr.P.R. Patel, the learned counsel for the respondents has strenuously opposed the contentions raised by the learned counsel for the applicant and reiterated the defence of the respondents as noticed above. Mr. Patel contended that the charges against the applicant are very grave and the same cannot be brushed aside on the ground of technicalities. He reiterated the grounds of defence as set out in the reply.

7. As regards the submissions of the learned counsel for the applicant that the applicant has not committed any misconduct


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and the charge sheet itself is uncalled for, we may point out the scope of judicial review. We consider it expedient to search out the law of judicial review in disciplinary proceedings. We find that the relevant issue came for adjudication before the Supreme Court in case of **Union of India v Upendra Singh** 1994 SCC (3) 357 = JT 1994 (1) 658, wherein their Lordships have held as under (para 6):-

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in **H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal v. Gopi Nath & Sons**. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus: (SCC p. 317, para 8)



"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact.

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The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter, which it is authorized by law to decide, a conclusion, which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

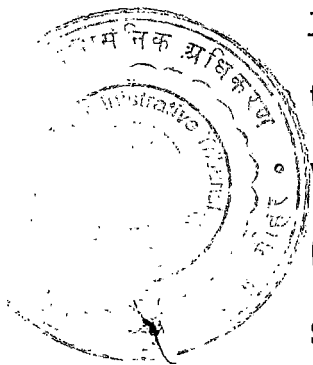
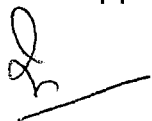
8. Applying the aforesaid proposition of law to the facts of this case- as far as, the contentions of Mr. Malik that the applicant has not committed the culpable negligence as per the decision in case of **Zunjarao Bhikaji Nagarkar vs. Union of India and others** (supra,) is concerned, we find that the allegations against the applicant are not simply of negligence or carelessness, the action of the applicant has resulted to enormous loss to the state. The facts of that case are distinguishable. In that case where the competent authority was exercising the quasi judicial powers and it has been held that wrong interpretation of law cannot be a ground of mis-conduct. The authority may have exercised the jurisdiction wrongly, but the wrong can be corrected in appeal since the quasi-judicial authority is always subject to judicial review in appeal. But in the instant case, the applicant was not discharging any quasi judicial functions. We are neither impressed nor persuaded with his submissions and the said decision is of no help to the applicant.



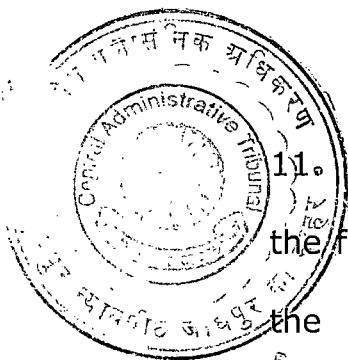
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9. Now adverting to the other issue, we notice that the essence of the matter is that the Court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay. In considering whether delay has vitiated the disciplinary proceedings the Court/Tribunal has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice, to the delinquent employee then it is writ large on the face of it. These principles on the point have been lucidly enunciated in catena of judgments of the highest court of the country. To quote a few of them, a reference may be made to **State of Punjab and others V. Chaman Lal Goyal (1995) 2 SCC 570, State of A P V. N Radhakrishan [(1998) 4 SCC 154,] State of M.P Vs. Bani Singh and Another [1990 (2) SLR 798.]** The same issue has been extensively dealt with by Rajasthan High Court in case of **Kuldeep Sharma V. State of Rajasthan & ors [RLW 1999(1) 168.]**

10. Now we venture to test the factors in favour of the applicant. In the instant case the allegations against the

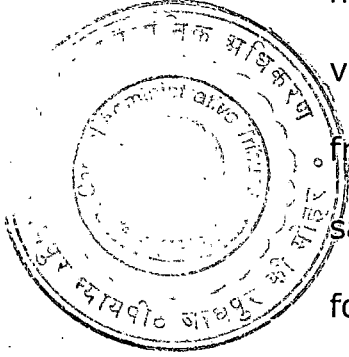


applicant are that carelessness and negligence which has resulted into huge loss to the government exchequers. The alleged offence is definitely of a grave nature especially once the matter involves financial losses to the public ex-chequer which can hardly be overemphasized. However, we are also conscious that there has been an abnormal delay in the matter and the delay is neither attributable to the applicant nor any proper explanation is forthcoming from the respondents for the same. We also find that the concept of speedy trial has also been propounded in criminal case by the apex court in **A R Antulay V. R S Nayak** [(1992) 1 SCC 225] and the principles enunciated therein are broadly applicable to the plea of delay in the disciplinary proceedings.



11. Considering the entire facts and circumstances, we are of the firm opinion that there is no sufficient justification in putting the disciplinary proceedings to an end in the instant case. However, a balance has to be struck up between the two extremes and we are required to find some via media so the proper justice can be imparted to both the parties. We cannot brush aside the matter of such a grave matter but simultaneously the applicant also can not be allowed to remain under the Damocles' sword for uncertainty.

12. In the circumspect of the aforesaid discussion, we come to an inescapable conclusion that the Original Application deserves to be partly accepted. The respondents are directed to finalising the disciplinary case instituted against the applicant vide memo dated 7.7.2003 (A/1) within a period of five months from the date of communication of this order, failing which the same shall be treated as dropped and applicant shall be entitled for all consequential benefits. However, in the facts and circumstances, the parties are directed to bear their respective costs




(M K/MISRA)
Administrative Member


(J.K. KAUSHIK)
Judicial Member

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RLC
11/6/04
Done
(DARARAM)
Adv