

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**Original Application No.497/2013**

Wednesday, this the 9<sup>th</sup> day of March, 2016

**CORAM:**

**HON'BLE Mr. JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER  
HON'BLE Mrs. P. GOPINATH, ADMINISTRATIVE MEMBER**

M.I.Mary, W/o.Sam T George,  
Assistant Commissioner (Retired),  
Commissionerate of Customs (Preventive),  
C.R.Buildings, I.S.Press Road, Cochin – 18.  
Residing at Panackal House, Kuppiodu,  
Marutha Road P.O., Palakkad - 678 007.

Applicant

**(By Advocate Mr.R.Sreeraj)**

**V e r s u s**

1. Union of India  
represented by its Secretary to Government of India,  
Ministry of Finance, Department of Revenue,  
New Delhi -110001.
2. The Member (Personnel & Vigilance),  
Central Board of Excise & Customs,  
North Block, New Delhi -110 001. ....Respondents

**(By Advocate Mr.N.Anilkumar,Sr.PCGC [R])**

This application having been heard on 11<sup>th</sup> February 2016, the  
Tribunal on ....<sup>9<sup>th</sup> March 2016 delivered the following :</sup>

**O R D E R**

**HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER**

The applicant retired from service on superannuation on 30.9.2012 as  
Assistant Commissioner of the Department of Customs & Central Excise.  
She was promoted as Assistant Commissioner as per the Board's order



No.206/2002 dated 10.12.2002. As a consequence of an incident that occurred in the year 2001, disciplinary proceedings were initiated against her in the year 2005 under Rule 14 of the CCS (CCA) Rules. Though an Enquiry Officer was appointed and the preliminary hearing of the enquiry was held in the year 2006, further sittings of the enquiry could be held only in the year 2008, because the respondents served her, the copies of the documents mentioned in the Memo of Charges, only then, despite the specific directions of the Enquiry Officer in this regard in the first sitting itself. The Enquiry Officer submitted an Enquiry Report on 7.7.2009 fully exonerating her of the charges. The respondents slept over the report for two years and on 7.7.2011 served on her a Disagreement Note to which she immediately replied. There was no action on the part of the respondents on the matter. The applicant submitted a reminder in December 2011, pointing out that she would be retiring from service on 30.9.2012. Still there was no response from the respondents compelling her to approach this Tribunal by filing O.A which was disposed of by granting the respondents three months time to complete the proceedings against her, failing which, the proceedings would stand quashed. The time limit fixed by this Tribunal expired without the respondents passing final orders in the matter. The proceedings against the applicant thus stood quashed by virtue of the rider in the order of this Tribunal. Thereafter though the respondents sought extension of time to pass final orders in the proceedings, this Tribunal declined to extend the time limit. The respondents approached the Hon'ble High Court which

A handwritten signature, appearing to be 'S', is located at the bottom left of the page.

granted them time till 30<sup>th</sup> September 2012 to pass orders in the proceedings against the applicant. Accordingly, the respondents issued Order No.26/2012 (F.No.C14011/60/2004-Ad.V/4249) dated 24/25.9.2012 imposing the penalty of 'censure' on the applicant. 'Censure' is a minor penalty, and among the minor penalties itself, it is the lowest one. Still it is a penalty. The proceedings initiated against the applicant was a major penalty proceedings. It was over an incident of the year 2001. The initiation of the proceedings itself was in the year 2005, ie., 4 years after the incident. It got prolonged for 7 ½ years due to reasons solely attributable to the respondents. But for the intervention of this Tribunal at the instance of the applicant, the same would not have been over even on the retirement of the applicant. The applicant was exonerated by the Enquiry Officer as early as on 7.7.2009. In reality the applicant was made the scape goat to save the skin of those really responsible. The inordinate delay in finalizing the disciplinary proceedings coupled with the imposition of the penalty of 'censure' at the very last minute, evidently for the sake of awarding some penalty and thus saving face, caused not only serious prejudice to the applicant but also resulted in perpetual injury to her. Because of the inordinate delay in finalizing the disciplinary proceedings against the applicant, she lost her chance to be promoted as Deputy Commissioner as well as Joint Commissioner. Law requires the cases of those against whom disciplinary proceedings are pending to be placed in the sealed cover and on culmination of proceedings to implement the recommendations of the

A handwritten signature, possibly 'B', is located at the bottom left of the page.

Departmental Promotion Committee, if the concerned person has been exonerated of the charges. The earlier view was that 'censure' not being time regulated, is no bar for promotion. But after the Supreme Court's decision in Mohanan's case, the position is that a person who has been censured can be considered by the next DPC only. Even in such a case, had the proceedings been finalized within the reasonable period normally available for completing the disciplinary proceedings, the applicant's case for promotion as Deputy Commissioner and Joint Commissioner would have been considered by the Departmental Promotion well before her retirement and she would have retired from a higher post with higher emoluments and would have been drawing a higher pension now. Reliefs sought by the applicant is to quash Annexure A-4 punishment order and direct the respondents to consider her for promotion as Deputy Commissioner, Customs & Central Excise and as Joint Commissioner, Customs & Central Excise with effect from the date of such promotion of her juniors and to grant her such promotions with all consequential benefits.

2. Respondents in their reply submit that the applicant while working as Appraiser (Internal Audit Department or IAD) Customs House, Cochin, received a CRA Memo dated 28.5.2001, indicating a short collection of duty amounting to Rs.12,56,691/- in a case of import of specified goods on 29.5.2001. The 6 month limit for demanding the aforesaid duty was to expire on 11.6.2001. The parallel CRA memo filed put up by the Office

A handwritten signature in black ink, appearing to be a stylized 'C' or 'R'.

Superintendent (IAD) on 30.5.2001 to the Appraiser, IAD, ie. applicant for onward forwarding of the same to the Appraising Section (Import) through DC(IAD) for necessary action for raising of the demand on the importer. The said file was signed by the applicant on 4.6.2001 ie., 7 days before the dead line of 11.6.2001. The office of the DC (IAD) received the said file on 13.6.2001 which was two days after the aforesaid dead line. No demand letter therefore could be issued, resulting in proportionate loss to the government revenue. As the applicant had caused delay in forwarding the file and also did not take any further steps thereafter to ensure that the said file reached the concerned section in time, disciplinary proceedings for major penalty accordingly were initiated against the applicant vide charge memo dated 7.3.2005. After denial of charges by the applicant, the matter was inquired into and the Inquiry Officer in his report dated 7.7.2009 held the article of charge as NOT PROVED. Finding itself in disagreement with the IO's report, disagreement note was issued by the disciplinary authority to the applicant on 7.7.2011, requesting the latter to submit her representation, if any. Applicant submitted her representation on 27.7.2011. Finding no merit in the applicant's representation matter was referred to UPSC for its advice. The Commission vide its letter dated 19.7.2012 held that the article of charge stood PROVED against the applicant to the extent that she failed to take a proactive approach to ensure that the aforesaid file was cleared on time so that demand letter could be issued to the importer by 11.6.2011 ie., within the stipulated period of six months. Penalty of Censure was

A handwritten signature or mark, appearing to be a stylized letter 'G' or a similar shape, is located at the bottom of the page.

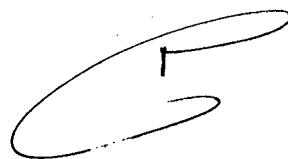
recommended by the Commission. After taking into consideration all the facts on record along with the UPSC advice, imposed the minor penalty of 'Censure' on the applicant vide impugned order dated 24/25.9.2012. The respondents submit that the penalty order being impugned, as the Annexure A-4 reply is a fair and well reasoned order. Subsequent to the issuance of the charge sheet the proceedings were conducted in accordance with the prescribed procedure and the applicant was given adequate opportunity to defend herself. In this background, at the threshold of the matter, no cause has accrued to the applicant to feel aggrieved.

3. Arguments were heard and documents perused. The issue for consideration is whether injustice has been caused to the applicant due to delay in issuing the disagreement note and the subsequent punishment order thereby denying her the promotions due. Applicant contends that the respondents have rested the responsibility of delay of CRA Memo on the applicant so that the levy of duty was not time barred. A similar responsibility of the DC(IAD) for the delay of the CRA Memo is nowhere indicated. No reference on this aspect of responsibility of the senior is made by either UPSC or the respondents, though DC(IAD) was the final level for clearance of CRA Memo. Applicant would also bring to our notice that it was an assumption on the part of the respondents that because the Deputy Commissioner signed the file on 13.6.2001, the file reached his office on the said date thereby fixing responsibility on the applicant. The

A handwritten signature, likely belonging to the respondent, is placed here. The signature is written in black ink and is somewhat stylized, appearing as a series of loops and lines.

applicant would also point out the two year delay in issuing the disagreement note. Had the said disagreement note been issued within reasonable time of 1-3 months, the case would have been decided without inordinate delay in a manner that on completion of punishment/debarment, the applicant would have been eligible for promotion. The applicant also points to a second option available for short recovery which allowed the respondent department to issue the demand notice within 5 years instead of 6 months which could have been invoked in the case. By imposing the lowest punishment of censure the respondents are also convinced that there is no justification for the extensive and delayed disciplinary proceedings and the punishment which followed thereon.

4. The respondents brushes aside the stand of delay in the case by stating that the issue has already been addressed by the Tribunal in O.A.No.148/2012 filed by the applicant. The delay has also been addressed in the appeal of the respondents before the Hon'ble High Court against the three months time granted by Tribunal to complete the proceedings. The High Court after considering the facts and circumstances of the case allowed the respondent time upto 30.9.2012 to pass the final order against the applicant. Neither the CAT nor the High Court was inclined to drop the disciplinary proceedings or terminate it mid way and favoured the completion of the same. The respondents also hold that the penalty order is a reasoned one based on facts and circumstances of the case. Applicant's

A handwritten signature in black ink, appearing to read 'S. S. S.' or a similar sequence of initials.

responsibility was not confined to signing the file on the 4<sup>th</sup> June 2001. The responsibility extended to ensuring that the recovery order was issued before the expiry of the six month period. Respondent also avers that collective responsibility or watering down of the responsibility cannot be used as a cover to reduce the responsibility of the applicant. The applicant has not corroborated the contention that in order to save others up or down the line of responsibility, she had been made a scape goat. Applicant, post retirement, is using the sympathy factor to claim relief.

5. Two important factors come out in the arguments placed before us. In the long chain of responsibility command, the applicant alone has been chosen for fixing responsibility as she came as the second last person in the command chain. The last person in the command chain or any person down the line could have been held as equally responsible as the applicant. The second is regarding the delay in finalizing the case, particularly the delay in the disagreement note to the inquiry report which could have been expedited. The disagreement note has only brushed aside the Inquiry Officer's contention of collective responsibility and the Deputy Commissioner's in-charge responsibility on the ground that the applicant as the Appraising Officer had the additional responsibility of ensuring that the demand is issued in time. Second reason for disagreement was that the charged officer had also post audited the subject B/E and failed to detect the short levy which was later pointed out by the CRA and the earlier lapse put

A handwritten mark or signature, appearing to be a stylized 'F' or a similar character, enclosed within a roughly drawn oval shape.

additional responsibility on the charged officer to ensure that the demand notice was issued in time. So only two short points of disagreement were observed and noted and these did not merit a two year time period for recording and communicating. Logically the said activity could have been completed in a three month period which would have expedited the issue of punishment order and the completion of the period of punishment thereby entitling the applicant to further promotions in her career. The applicant brings to our notice an order passed by this Tribunal in O.A.No.526/2007 wherein the issue of a similar penalty of censure imposed had been addressed and the applicant had challenged that the pendency of the abandoned disciplinary proceedings affected his promotional chances. In the said O.A also there was a period of hibernation wherein the proceedings had stagnated which left the matter hanging without any decision as in the current O.A of two year hibernation of the disagreement note. In O.A.No.526/2007 the Tribunal had held that :-

“9. ....interest of justice would be met if the penalty of censure is treated as imposed within six months from the date of issue of charge sheet which would mean that the penalty of censure would have the sting till September 2000 and not thereafter. If so, the applicant's case for promotion could be considered on the basis of the recommendations of the DPC held after September 2000.”

6. On a similar analogy the respondents will treat the penalty of censure as having been imposed within 6 months of the Enquiry Report dated 7.7.2009 ie. on 7.1.2010. The penalty of censure will have

A handwritten signature or mark, appearing to be a stylized 'P' or a similar character, is written in black ink on a separate line below the numbered list.

.10.

the sting till 6.1.2011. Thereafter the applicant be given all due promotions subject to the conditions with which her immediate junior/juniors had been promoted. The O.A is allowed to the extent indicated above. No costs.

(Dated this the 9<sup>th</sup> day of March 2016)



**(P. GOPINATH)**  
**ADMINISTRATIVE MEMBER**



**(N.K. BALAKRISHNAN)**  
**JUDICIAL MEMBER**

asp