

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.502/10

Friday this the 1st day of October 2010

C O R A M :

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Mr.K.GEORGE JOSEPH, ADMINISTRATIVE MEMBER

P.D Mangalanandan
Deputy Commissioner of
Central Excise & Customs (Rtd.)
Pulliyath House, Eroor West P.O.,
Ernakulam District - 682306

...Applicant

(By Advocate Mr.C.S.G Nair)

V e r s u s

1. Union of India
Represented by its Secretary
Department of Revenue
North Block, New Delhi-110 001.
2. Member (Personnel & Vigilance),
Central Board of Excise & Customs
North Block, New Delhi - 110 001
3. Central Vigilance Commissioner
Satarkka Bhavan, G.P.O Complex INA
New Delhi - 110 023
4. Chief Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S Press Road, Cochin-682 018
5. Commissioner of Central Excise & Customs
Central Revenue Buildings
I.S Press Road, Cochin - 682 018.

...Respondents

(By Advocate Mr.M.K Aboobacker,ACGSC)

This application having been heard on 1st October 2010 this Tribunal
on the same day delivered the following :-



ORDER**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER**

The applicant a retired Deputy Commissioner of Central Excise & Customs filed this O.A, aggrieved by the initiation of disciplinary proceedings and continuation of the proceedings without any finality and also on the basis of the non-payment of his pensionary benefits. The applicant mainly prays as follows:-

(i) To direct the respondents to issue final Pension Payment Order and make the payments of gratuity, commutation value of pension and all other retirement benefits within a stipulated period;

(ii) To direct the respondents to revise the Pension and family pension on the basis of Sixth Pay Commission Report with effect from 01.01.2006;

2. Few facts which are necessary for a decision of the O.A are as follows:- the applicant while working as Assistant Commissioner of Central Excise and Customs at the Customs House, Kochi, was served with a Memo of Charges dated 31 Aug 2004 with imputation to the effect that applicant had approved the proposal of Appraiser Group VII and referred nine provisionally assessed Shipping Bills dated 09.03.1999 of M/s.Cannon Steels Pvt. Ltd, 864, Industrial Area-A, Ludhiana 141003 and recommended credit under the Duty Entitlement Pass Book Scheme to the Special Investigation Branch of Customs House, Kochi. Further, imputation is that he approved recommendations of Appraiser as aforesaid proposing that since the Customs House, Kochi is not in a position to conduct enquiries at Ludhiana, the issue may be referred to Directorate of Revenue Intelligence for making investigation at Ludhiana and to find out



exact sale price of the products at the local markets and the file was forwarded to the Special Investigation Branch. On referring the matter to the Directorate of Revenue Intelligence, New Delhi, the Special Investigation Branch at Customs House, Kochi, proposed that the valuation is felt to be on higher side and requested verification of the value declared by the shippers. On these allegations of charges the applicant was directed to give an explanation which he has already filed. While on filing the explanation and just start of the enquiry, the applicant retired from service on 30.09.2004. Though the enquiry authority sat for two days and taken some evidence, till this date no final order has been passed or any report has been filed concluding the charges levelled against the applicant. Under the above circumstances, the applicant filed this O.A.

3. The application has been admitted by this Tribunal and notices ordered to the respondents. In pursuance to the notices received, the respondents have filed a reply statement dated 14.09.2010. The stand taken in the reply statement is that none of the grounds urged in the OA are sustainable and further it is stated that no gratuity can be paid to the applicant as per Rule 69(1)(c) of the Pension Rules and also under Rule 9 of the CCS Pension Rules of 1972 before concluding the disciplinary proceedings initiated and started against the applicant. It is further stated in the reply statement that the Charge Memo has been issued to the applicant before his retirement and there was no willful delay or laches on the part of the respondent to complete the enquiry and it is further stated that though the Charge Memo does not show any financial loss to the

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Government that by itself is not a reason for dropping of the proceedings. So the delay as alleged by the applicant is not correct and not applicable to the facts and circumstances of the case.

4. We have heard the learned counsel appearing for the applicant, Mr.C.G.S Nair and also learned counsel appearing for the respondents, Mr.M.K Aboobacker,ACGSC. The contentions of the learned counsel for the applicant are three fold. Firstly, the counsel submits that the Charge Memo (a copy of it was produced as Annexure A-2) does not show that by the alleged misconduct the Government has suffered any financial loss and as the incident for the Charge Memo has been occurred during 1999 there is a long delay for initiating the proceedings against the applicant as the Charge Memo is only of 2004. Secondly, the counsel submits that Sub Rule 2(b) of Rule 9 of the CCS Pension Rule 1972 prohibits initiation of any proceedings with regards to an incident occurred more than 4 years before such institution or framing of the charges. To substantiate this contention counsel for the applicant relies on three judgments of the Apex Court, namely, [1998 4 SCC 154] State of Andhra Pradesh vs. N.Radhakishan, [2005 6 SCC 636] PV Mahadevan vs. Managing Director T.N Housing Board and [2006 5 SCC 88] M.V Bijlani vs. Union of India and others. The counsel also relies on the judgment of the Hon'ble High Court of Kerala reported in [2001 (3) KLT 965] Vilasanandas Daniel vs. District Collector. Thirdly, the counsel for the applicant submits that Rule 69 of the CCS Pension Rules, 1972 is not applicable to the facts of the case and



the department is not justified in withholding the pensionary benefits of the applicant as there is no default on the part of the applicant to complete the proceedings before his retirement or within the period prescribed in the pension rules. To the above contentions the counsel for the respondent relying and reiterating the contentions raised in the reply statement submits that there was no willful delay caused on the part of the respondents to either initiate the proceedings against the applicant or to complete the same. However, as the Charge Memo contemplates a serious misconduct, though there was no allegation regarding any financial loss to the Government, this Tribunal will not be justified in interfering with the Charge Memo.

5. On the anxious consideration raised by the counsel appearing for the parties and the documents now produced before this Tribunal, the question to be decided by us is whether the applicant is justified in approaching this Tribunal or not. Admittedly, the incident for which Annexure A-2 Memo issued was of the year 1999, namely, 16.03.1999 and the initiation of the proceedings by giving a charge memo is only after a lapse of 5 years, namely, on 31.08.2004. There is no explanation coming forth for why such a delay had occurred for taking disciplinary action against the applicant or initiation or institution of the charge against the applicant. On this ground alone we are of the view that as per the principles laid down by Apex Court in N.Radhakishan's case cited supra, the Charge Memo has to be quashed. In the above judgment in para 19 it is clearly stated that "if the delay is unexplained prejudice to the delinquent employee is writ large on

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the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employees. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

6. Further, the same view was followed by the Apex Court in P.V.Mahadevan's case cited supra and held in para 11 as follows:-

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."



7. It was also supported by the dictum laid down and views expressed by the Apex Court in M.V Bijlani's case cited supra and as well as the judgment of the Hon'ble High Court of Kerala reported in 2001 (3) KLT 965 cited supra. The second point we have to consider is that whether Rule 69 can be applied to the facts of the case or not. We have already found that there was long delay or the statutory period of limitation has already been covered for initiation of disciplinary proceedings against the applicant. As per Rule 69 of the CCS Pension Rules payment of provisional pension shall be authorised by an Accounts Officer during the period of commencement from the date of retirement of an employee upto and including the date on which the conclusion of the departmental proceedings or judicial proceedings. But, in the facts of the case in hand, it is seen that though on the basis of Annexure A-2 Charge Memo an enquiry officer has been appointed and the enquiry authority sat for two days during 2008. Thereafter nothing was known to the applicant or nothing is turned on the disciplinary proceedings started against the applicant. If so, the continuation of such proceedings without concluding the same may not be taken as a ground for withholding the pensionary benefits, gratuity and other benefits to the applicant as we have already held that the initiation of the proceedings is itself beyond the statutory limitation and the Charge Memo does not show that by the alleged misconduct the Government sustained any financial loss. In the above circumstances, we are of the view that the insistence of the department that under Rule 69 the pensionary benefits cannot be disbursed to the applicant is not justifiable.



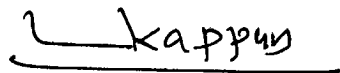
8. Lastly, we have to consider whether the continuation of the proceedings as initiated as per Annexure A-2 has to be continued or not as we have already taken a view that the entire proceedings is vitiated by long delay and beyond the statutory period of limitation condoned in the Pension Rules. We are of the view that the OA has to be allowed by quashing Annexure A-2 Charge Memo. Accordingly, we are allowing the OA. The Annexure A-2 Charge Memo stand quashed. Consequently, the respondents are directed to pass appropriate orders on the claim of the applicant for his retirement benefits and that shall be done within a reasonable time, at any rate, within 60 days from the date of receipt of a copy of this order. No costs.

(Dated this the 1st day of October 2010)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER

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JUSTICE K. THANKAPPAN
JUDICIAL MEMBER