

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No.107/2004

Dated Wednesday this the 3rd day of March, 2004.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

T.T.Omanakutty
Superintendent of Customs (Retd.)
11/251, Rohini
Vayaskara Road
Ambalapuzha
Alapuzha District.

Applicant

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

Versus

1. Union of India
represented by the Secretary
Department of Revenue
Ministry of Finance
North Block
New Delhi.
2. Commissioner of Customs
Custom House
Willington Island
Cochin.

Respondents

(By advocate Mr.George Joseph, ACGSC)

The application having been heard on 3rd March, 2004, the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

Applicant who retired on superannuation from the post of Superintendent of Customs on 31.12.2003 has filed this application impugning the memo of charges dated 31.12.2003 on the ground that under Rule 9 of the CCS (Pension) Rules, such a charge sheet cannot be maintained with regard to an incident which took place more than 4 years prior to her retirement. It is alleged in the application that the incident took place in the year 1999 and, therefore, the present memo of charges is not

sustainable. In support of this contention, the applicant has placed reliance on the ruling of the Principal Bench of the Tribunal in K.C.Brahmacharry Vs. Chief Secretary and others 1998 (1) SLJ 383 wherein the departmental proceedings initiated against the applicant therein four days prior to his retirement was held to be bad, placing reliance on Clause 2 (b) of Rule 9 of CCS (Pension) Rules 1972. The applicant has also placed reliance on the ruling of the Hon'ble High Court of Kerala in Meeran Rawther Vs. State of Kerala [2001 (1) KLJ 37] wherein it was held that delay in initiating disciplinary proceedings would result in denial of reasonable opportunity. The applicant, therefore, prays that the impugned memo of charges be set aside.

2. Though Sri George Joseph, ACGSC, took notice on behalf of the respondents, no statement has been filed.

3. We have perused the application and heard the learned counsel on either side. We find that the memo of charges dated 31.12.2003 was issued to the applicant before her retirement. There is no prohibition either in the CCS (CCA) Rules or in the CCS (Pension) Rules in initiating disciplinary proceedings against a serving official before retirement on the basis of an event which took place more than 4 years prior to the retirement. However, if the disciplinary proceeding has not been initiated before retirement, there is an embargo in initiating such proceedings on the basis of some incident which took place more than 4 years prior to the retirement. The ruling of the Kerala High Court having been rendered under totally different fact situation has no application to the instant case. The ruling of

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the Principal Bench of the Tribunal in K.C.Brahmachari Vs. Chief Secretary and others (1998(1)SLJ 383) to the effect that a disciplianry proceedings initiated four days prior to the retirement on the basis of an incident which happened more than four years ago cannot be continued under Rule 9 of CCS (Pension) Rules does not appear to be in accordance with the provisions of Rule 9(2)a of the CCS (Pension) Rules. The four years period is prescribed only in respect of proceedings initiated after retirement as is seen from Sub Rule 2 of Rule 9. Therefore, this decision does not reflect the correct legal position and was rendered per incurium.

4. In the light of what is stated above, we do not find anything in this application requiring its admission and further deliberation. Therefore, we reject this application under Section 19 (3) of the Administrative Tribunals Act, 1985.

Dated 3rd March, 2004.

12.6.20

H.P. DAS
ADMINISTRATIVE MEMBER

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A.V. HARIDASAN
VICE CHAIRMAN