

# CENTRAL ADMINISTRATIVE TRIBUNAL ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 120 OF 2008

Dated the 24<sup>th</sup> September, 2008

CORAM:-

HON'BLE Dr. K.S. SUGATHAN, MEMBER (ADMINISTRATIVE)

Raju George,  
Additional Commissioner of Central Excise (Rtd),  
Nedumkallel House,  
7/408, Kundannoor,  
Cochin-682 304.

.. Applicant

[By Advocate: Mr CSG Nair)  
-Versus-

1. Union of India,  
Represented by its Secretary,  
Department of Revenue,  
Ministry of Finance, 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, GPO Complex INA,  
New Delhi-110 023.
4. The Commissioner of Central Excise,  
Central Revenue Buildings,  
IS Press Road, Cochin-18.
5. Pay & Accounts Officer,  
Central Excise, Central Revenue Building,  
IS Press Road, Cochin-18.
6. Controller of Accounts,  
Central Pension Accounting Authority,  
New Delhi-110 066.


.. Respondents

[By Advocates: Mrs Mini R Menon, ACGSC)

This application having been heard on 3<sup>rd</sup> September, 2008 the Tribunal delivered the following -


ORDER

The applicant was working as Additional Commissioner of Central Excise & Customs, Cochin. He retired on superannuation on 31.12.2007. He is aggrieved by the non-finalization of his pensionary benefits on the ground that departmental proceedings are pending against him. Two charge sheets under Rule 16(1) of the CCS(CCA) Rules were issued to the applicant. The first charge sheet under Rule 16(1)(b) was issued on 31.8.2004 (Annexure-A6). The Article of Charges relate to finalization of assessment of shipping bills without examining the reason for having kept it provisional. The applicant replied to the charge sheet and denied the charges vide his letter dated 28.9.2004 (Annexure-A7). No decision was taken by the respondents on the reply submitted by the applicant till his superannuation. In July 2006 another charge sheet under Rule 16(1) (a) of CCS (CCA) Rules, in respect of different shipping bills was issued to the applicant (Annexure-A8). The applicant replied to the said charge sheet on 09.8.2006 (Annexure-A9). However, no decision was taken by the respondents before superannuation of the applicant. The present OA is filed for quashing the two charge sheets, i.e. Annexures A6 and A8 and seeking also finalization of the pensionary benefits. After filing of this OA respondents issued the order dated 02.4.2008 appointing an Enquiry Officer to enquire into the charges leveled against the




applicant (Annexure-A13). The OA therefore was amended to include the prayer (Annexure-A13) also.

2] In support of the reliefs claimed by the applicant, he has relied on the letter dated 28<sup>th</sup> February, 1981 issued by the Ministry of Home Affairs which stipulates that since grave misconduct or negligence cannot be established as a result of minor penalty proceedings, action under Rule 9 of CCS (Pension) Rules, 1972 for withholding or withdrawing pension etc. cannot be taken against a pensioner in respect of whom minor penalty proceedings had been instituted and have been continued after retirement. The disciplinary authorities are expected to take steps to see that minor penalty proceedings instituted against Government servant, who are due to retire are finalized quickly and in time before the date of retirement, so that the need for continuing such minor penalty proceedings beyond the date of retirement does not arise. It is also contended that the lapses mentioned in the charge sheets relate to the period 1999 and therefore, there is considerable delay in the issue of charge sheet. He has referred to the judgment of the Hon'ble Supreme Court in *DV Kapoor-v- Union of India & Ors, (1990)14 ATC 906*. The applicant has also referred to the circular issued by the Central Vigilance Commissioner specifying time limit for completion of different types of enquiry. It is the contention of the applicant that the time limit stipulated by the Central Vigilance




Commissioner is not adhered to by the respondent (Annexure-A10).

3] The respondents have contested the OA and filed their reply statement. It is contended on behalf of the respondents that the applicant was charge sheeted for his failure to act in a prudent manner inasmuch as he had issued the final assessment in respect of shipping bills about which special investigation was under way. Finalisation of the assessment could have led to the loss of revenue to the Government. The Directorate General of Vigilance after due inquiry consulted the Central Vigilance Commission (CVC) about the lapses. The Central Vigilance Commission by their OM dated 11.5.2004 advised Minor Penalty Proceedings against the applicant and two other officers and major Penalty Proceeding against two Officers. The Competent Authority after due consideration of documents on record and the advice of the Central Vigilance Commission decided to accept the advice of the Central Vigilance Commission and initiated inquiry against the applicant under Rule 16(1)(b) of the CCS (CCA) Rules, 1965 vide Memorandum dated 31.08.2004. Although the applicant had replied to the Memorandum of charges by his letter dated 28.09.2004, since there were other officers also involved in the case, it took some time to receive their replies to the Memorandum of Charges, consideration of their written statement of defense etc. and finally it was decided to conduct open inquiry and Inquiry officer is now appointed vide order dated 11.4.2008.



4] Second charge sheet also relates to final assessment of shipping bills by the applicant. In this case also it was found that these shipping bills were under investigation because of suspected over valuation of the consignment. However, even before the completion of investigation by the DRI the applicant finalized the Shipping Bills on 19.11.99. Even if the applicant was not aware of the DRI investigation he should have enquired into the reasons for the provisional assessment, which is a prerequisite for finalizing any assessment. The applicant had replied to the charge sheet and denied the allegations vide his letter dated 09.8.2006. Since the applicant retired in 2007 the proceeding have been automatically converted into proceedings under Rule 9(1) of the CCS (Pension) Rules and an opportunity by way of show cause notice is being issued to the applicant as to why a penalty of cut in pension be not imposed on him before a decision is taken in the matter. The letter dated 28.2.1981 relied on by the applicant has since been superseded by OM dated 31.7.1987, in which it was clearly stipulated that the Government of India has the power to withhold or withdraw pension even as a result of minor penalty proceedings instituted, while the charged officer was in service and which was continued after his retirement, provided grave misconduct or negligence is established. It has been further stated that the delay in finalization of the disciplinary case is not intentional and the delay has also not prejudiced the applicant's case. Mere delay does not make the case illegal. The respondent in this regard




relied on the Hon'ble Supreme Court decision in ***PD Agarwal -v- State Bank of India & Ors.***

5] I have heard Mr. CSG Nair, learned counsel for the applicant and Mrs. Mini R Menon, ACGSC for the respondent and have also carefully perused the documents.

6] The issue for consideration in this OA is whether there is any valid ground that warrants for quashing the charge sheets issued to the applicant vide OM dated 31.8.2004 and 11.7.2006 and subsequent order appointing the Inquiry Officer.

7] The applicant has mainly relied on the OM dated 28.2.1981 issued by the Department of Personnel & A.R. It stipulates that minor penalty proceedings instituted against officials due for retirement should be finalized before retirement. This OM also states that as grave misconduct or negligence under Rule 9 of CCS (Pension) Rules, 1972 cannot be established in a minor penalty proceeding, action under Rule 9 of the CCS (Pension) Rules cannot be taken against a pensioner on the basis of a minor penalty proceedings. The second ground taken by the applicant is that there has been long delay in not only initiating the departmental proceeding but also in finalizing the proceeding. The alleged lapses took place in the year 1999 and the charge sheet was issued in 2004 and 2006 and there is, therefore, delay of 5 to 7 years in issuing the charge sheet. Though the applicant replied to the charge sheets well in time the respondents did not take any steps




during the last about 4 years for completing the proceeding in spite of specific instructions from the CVC about finalization of the disciplinary proceeding in time. The OM dated 28.2.1981 has been subsequently withdrawn by the Government. As per the revised OM dated 31.7.1987 issued by the Department of Personnel minor penalty proceedings can be continued even after retirement of an employee. The relevant extracts of the OM are reproduced below:

"This Department's Office Memorandum No.134/10/80-AVD.I dated the 28<sup>th</sup> Feb, 1981 may be treated as cancelled.

2. It is clarified that, in terms of Rule 9(2) (a) of the CCS (Pension) Rules, 1972, the Central Government has the power to withhold or withdraw pension even as a result of a minor penalty proceedings instituted while the charged officer was in service and which was continued after his retirement, provided grave misconduct or negligence is established.

3. The question whether the procedure followed in the conduct of a minor penalty proceedings would amount to affording a reasonable opportunity to the charged officer so as to impose the penalty of withholding or withdrawing his pension has also been considered. It is clarified that, even though there is no statutory requirements in Rule 9(1) *ibid* for giving a show cause notice, the principles of natural justice would have to be followed. This would require giving an opportunity to the pensioner to represent against the proposed penalty. It would, therefore, be necessary to issue a show cause notice to the pensioner and to take his representation into consideration before obtaining the advice of the Union Public Service Commission and passing the final order. However, there is no need to issue a show cause notice, reasonable opportunity to defend his case, was held.

4. It is, however, reiterated that it would be the endeavour of the disciplinary authority to see that a minor penalty proceeding instituted against a Government servant, who is due to retire, is finalized quickly and normally before his retirement so that the need for continuing such proceeding beyond the date of retirement does not arise. "



8] I have also perused the Rule 9 of CCS Pension Rules which reads as follows:

**"9. Right of President to withhold or withdraw pension.**

(1) The President reserves to himself the right of withholding a pension or gratuity, or both, either in full or in part, or withdrawing a pension in full or in part, whether permanently or for a specified period, and of ordering recovery from a pension or gratuity of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of service, including service rendered upon re-employment after retirement:

Provided that the Union Public Service Commission shall be consulted before any final orders are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pensions shall not be reduced below the amount of rupees three hundred and seventy five (Rupees One thousand nine hundred and thirteen from 1.4.2004 - see GID below Rule 49) per mensem.

(2)(a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

- (i) shall not be instituted save with the sanction of the President,
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

(3) Deleted

(4) In the case of Government servant who has retired on attaining the age of superannuation or otherwise and against whom any departmental or judicial proceedings are instituted or where departmental proceedings are continued under sub-rule (2), a provisional pension as provided in Rule 69 shall be sanctioned.

(5) Where the President decides not to withhold or withdraw pension but orders recovery of pecuniary loss from pension, the recovery shall not ordinarily be made at a rate exceeding one-third of the pension admissible on the date of retirement of a Government servant.

(6) For the purpose of this rule,-

(a) Departmental proceedings shall be deemed to be instituted on the date on which the statement of charges is issued to the Government servant or pensioner, or if the Government servant has been placed under suspension from an earlier date, on such date; and

(b) Judicial proceedings shall be deemed to be instituted-

(i) In the case of criminal proceedings, on the date on which the complaint or report of a Police Officer, of which the Magistrate takes cognizance, is made, and

(ii) In the case of civil proceedings, on the date of plaint is presented in the Court."

It is evident from a plain reading of Rule 9 that it does not distinguish between minor penalty and major penalty proceedings.

9] The applicant has relied on the judgment of the Hon'ble Supreme Court in *DV Kapoor -vs- UOI, 1990 (14) ATC 906*. I have perused the said judgment. However, the facts of that case is distinguishable. In that case the enquiry was completed and the penalty of cut in pension was imposed by the President and thereafter the Hon'ble Supreme Court held that there was no finding of grave misconduct. In the present case, the enquiry has not yet been completed and there is no finding so far whether the misconduct is grave or not. In view of the above discussion and clear cut provision in Rule 9 of the CCS Pension Rules, I am unable

to accept the contention of the applicant that Minor Penalty Proceeding cannot be continued after retirement.

**10]** As regards the second ground, viz. delay in finalization of the proceedings, I have carefully perused the reply filed by the respondents. Admittedly, there is a delay of 5 to 7 years in issuing the charge sheet to the applicant. The alleged lapse took place in the year 1999 and the first charge sheet was issued on 31<sup>st</sup> August, 2004. The second charge sheet was issued even later i.e. on 11<sup>th</sup> July, 2006, though the alleged lapse referred to in that charge sheet also took place in the year 1999. While first charge sheet was issued under Rule 16(1)(b) of the CCS (CCA) Rules, 1965 the second charge sheet was issued under Rule 16(1)(a) of CCS (CCA) Rules, 1965. According to Rule 16(1)(b) no Minor Penalty as specified in Rule 11 shall be imposed except after holding an enquiry in the manner laid down in sub-rule (3) to (23) of Rule 14, in every case, in which the disciplinary authority is of the opinion that such inquiry is necessary. In accordance with these provisions the respondents have now decided to hold a regular enquiry against the applicant. Rule 16(1)(a) provides for only issue of show cause notice. Therefore in respect of the second charge sheet there is no scope for holding an oral enquiry.

**11]** The question of delay in finalizing departmental proceedings has been the subject matter of many judicial pronouncements. The respondents have relied on the recent decision of the Hon'ble Supreme Court in *P.D. Agarwal -v- State Bank of India & Ors*, (2006) 8 SCC 776. In the said judgment, Hon'ble Supreme Court



has referred to a decision of the Apex court in *State of Punjab and Ors -v- Chaman Lal Goyal (1995) 2 SCC 570*, in which it was stated that -

"9. Now remains the question of delay. There is undoubtedly a delay of five- and-a-half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the tasks of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, male fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."

"In Additional Supdt. Of Police -vs- T Natarajan (1999 SCC (L&S) 646) this Court held :

"In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer. In this case, such a stage as to examine that aspect has not arisen."

I have considered the facts of the present case keeping in mind the above observations of the Hon'ble Supreme Court.

12] On the question of delay, the respondents have stated in the reply that -"The Directorate General of Vigilance after due inquiry consulted the Central Vigilance Commission (CVC). The CVC vide their OM dated 11.05.2004 advised Minor Penalty Proceedings against the applicant and two other Officers and Major Penalty Proceedings against two officers. The Competent Authority, after

due consideration of documents on record and the advice of the CVC decided to accept the advice of the CVC and accordingly initiated inquiry against the applicant under Rule 16(1)(b) of the CCS (CCA) Rules, 1965 vide Memorandum dated 31.08.2004. The applicant denied the allegations in the Memorandum of charge vide his letter dated 28.09.2004. Since there were other officers also involved in the case, it took some time to receive their replies to the memorandum of charges, consideration of their written defence etc. Finally it was decided to conduct open enquiry in the case. Inquiry Officer in the case was appointed vide order dated 11.4.2008 and the enquiry is in progress."

**13]** They delay of 3  $\frac{1}{2}$  years is explained in terms of getting replies from other officers involved in the case. This explanation cannot be accepted in the context of specific guidelines laid down by the Central Vigilance Commission (CVC) and the Department of Personnel regarding the time-schedule to be adhered to in departmental proceedings. In their letter dated 23.5.2000 the CVC has specified certain time limits for completing various stages of a departmental enquiry. The following extract from the letter of the CVC dated 23.5.2000 (Annexure-A10) is extracted below:


"Delays in disposal of disciplinary cases are a matter of serious concern to the Commission. Such delays also affect the morale of the suspected/charged employees and others in the organisation. The Commission has issued instructions, vide its communication No.8(1)(g)/99(3) dated 03.03.1999, that departmental inquiries should be completed within a period of six months from the date of appointment of Inquiry Officers. Regarding other stages of investigation/inquiry, the time schedule, as under, has been laid down in the Special Chapters on Vigilance Management in Public Sector Banks/Enterprises, which are applicable to the employees of public sector banks/enterprises. The Commission desires that these time-

limits should also be adhered to by the Ministry/ Departments of Government of India, autonomous organisations and other Cooperative Societies, in respect of their employees, so as to ensure that the disciplinary cases are disposed of quickly."

**14]** The following extract from the letter dated 16.2.2004 (A/11) of the Department of Personnel is also relevant:

"Ministries/Departments are also requested to bring the above cited provisions of the Conduct Rules and CCA Rules to the notice of all the officers and officials in the Ministries/ Departments (proper) and in the organizations/ offices under their administrative control to clarify that if they are found responsible for wilful delay in disposal of the various types of cases dealt with them, finally leading to delay in decisions making, they shall be liable for disciplinary action in terms of the relevant provisions referred to in para 2 and 3 of this OM. "

**15]** As per the time-schedule laid by the CVC the minor penalty proceedings should have been completed within a period of 12 months from the date of the complaint. In the present case the alleged misconduct relates to the year 1999. Therefore the minor penalty proceeding should have been completed by the end of 2000. Instead even after nearly 9 years it is still going on. It is not possible to accept the contention of the respondents that the guidelines laid down by the Departmental of Personnel are to be followed only as far as practicable within the constraints in which the Department functions. Of course, one can understand marginal deviations from the time-schedule, but in this case even after 8 years, the minor penalty proceeding is not finalised. In particular, the inability of the Department to finalise the proceeding for  $3\frac{1}{2}$  years after the applicant submitted his reply to the charge sheet is totally unacceptable. The charge against the applicant is that he finalised certain assessments without trying to find out the



reasons why these were initially assessed as provisional. It is important to note that the charge sheet dated 31.8.2004 also mentions that the applicant "although unaware of the above reference made by the appraising group VII Department to the Special Investigation Branch, Customs, Cochin, finalised the assessment of seven shipping bill Nos.629, 633, 635, 636, 638, 639, 641 dated 9.3.1999 put up by the appraiser group VII without enquiring the reasons for provisional assessment - a pre-requisite for finalising any provisional assessment." This kind of a charge could have been proved or disproved on the basis of available records. Even if an oral enquiry was required it should have been completed before his retirement, as stipulated in the OM dated 31.7.1987 issued by the Department of Personnel & Training and also relied on by the respondents in their reply (extracted above). The respondents knew very well that the applicant is due to superannuate on 31.12.2007. There was therefore no justification for the respondents to prolong the proceedings for such a long time. No endeavour appears to have been made by the respondents, as stipulated in the aforesaid OM, to finalise the proceedings before his retirement. It is nobody's case that punishment should not have been imposed for the alleged misconduct. But keeping the decision pending for more than three years after receiving the reply from the applicant is totally against the all the guidelines and instructions of the CVC and the Department of Personnel. As per the time-schedule set by the CVC, the final orders in this case should have been issued within



two months from receiving the reply from the applicant. The applicant's reply to the first charge sheet was received in September 2004. The reply to the second charge sheet was received on 9.8.2006. But even after a more than three years/two years, no decision has been taken about the penalty. The letter from CVC dated 10<sup>th</sup> August 2004 (Annexure-A12) underlines the importance and seriousness with which the time-schedule should be implemented. The following extract from the Office Order NO.51/08/2004 dated 10.8.2004 (A/12) is ample proof of the importance attached to the time schedule.

*" Subject: Adherence to time-limits in processing of disciplinary cases.*

*It has been observed that the schedule of time limits in conducting investigations and departmental inquiries laid down in Commission's letter of even number dated the 23<sup>rd</sup> May 2000 are not being strictly adhered to. In this context, attention is invited to Departmental of Personnel & Training OM No.11013/2/2004-Estt(A) dated the 16<sup>th</sup> February, 2004 regarding accountability for delay in decision making (copy enclose for ready reference).*

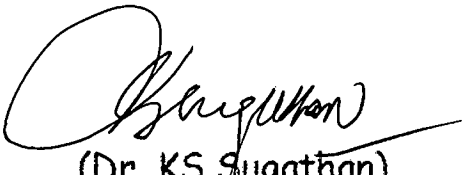
**16]** In the matter between ***PV Mahadevan vs. Tamil Nadu Housing Board (2005 (4) CTC 403***, the Hon'ble Supreme Court held that protracted disciplinary enquiry against a government employee should be avoided. The following extract from the judgment of the apex Court in that case is very relevant:

"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 dispute 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 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 but he Department in the procedure for initiating the Disciplinary proceedings, the appellant should not be made to suffer."

**17]** In view of the above discussion and the totality of the circumstances surrounding this case I am of the considered view that prolonging the minor penalty proceedings against the applicant is totally unjustified and illegal. The charge against the applicant does not involve corruption, misappropriation or moral turpitude. The respondents had ample time to decide the matter, but they chose to delay it inordinately resulting in the non-settlement the pensionary benefits to the applicant.

**18]** For the reasons stated above, the OA is allowed. The impugned charge sheets dated 31.8.2004 and 11.7.2006 (A/6 and A/8) are quashed and set aside. Consequently the order appointing an inquiry officer dated 2.4.2008 (A/13) is also set aside to the extent it relates to the applicant. The respondents are directed to settle the retirement benefits of the applicant in full within a period of three months from the date of receipt of copy of this order. There is no order as to costs.

  
(Dr. KS Sugathan)  
Member (Administrative)