

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.270/05

MONDAY....., this the ..28TH day of November 2005

C O R A M :

**HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

T.T.Omnakutty,
Superintendent of Customs (Rtd.),
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 – 110 001.
2. Commissioner of Customs,
Custom House, Willington Island,
Cochin – 9.
3. Director General (Vig),
Central Board of Excise & Customs,
North Block, New Delhi – 110 001.

...Respondents

(By Advocate Mrs.Aysha Youseff,ACGSC)

ORDER

HON'BLE MRS.SATHI NAIR, VICE CHAIRMAN

The applicant is a retired Superintendent of Customs. On the eve of retirement she was served with a charge sheet for an alleged incident which took place in 1999 wherein she had failed to verify the genuineness of shipping bills produced by an exporter and allowed export of the goods stuffed in the containers. The applicant then filed O.A.107/04 before this Tribunal for quashing the charges which was rejected at the time of admission itself. A Writ Petition was filed before the Hon'ble High Court of

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Kerala in WP No.13838/04 and the Hon'ble High Court directed the respondents to complete the disciplinary proceedings within a period of four months. An inquiry was conducted in the matter and as there was delay in completing the inquiry, the time granted by the Hon'ble High Court got over. Therefore the respondents filed an I.A for extension of time and the Hon'ble High Court granted time up to 22.2.2005 for finalising the case. Meanwhile the applicant retired from service on 31.12.2003. The applicant alleges that the disciplinary proceedings has not been finalised so far and she has not received any retirement benefits. She also alleges that the respondents had not completed the disciplinary proceedings within the time fixed by the Court and therefore they cannot continue with the disciplinary proceedings and the President can exercise power under Rule 9 of the CCS Pension Rules only if the pensioner is found guilty of grave misconduct and negligence during the period of service. She has relied on the judgment of the Hon'ble Supreme Court in D.B.Kapoor Vs. Union of India [1990 SCC (L&S) 696] and the order of the Principal Bench of this Tribunal in K.C.Brahamacharry Vs. Chief Secretary and others [SLJ 1998 (1) 383]. Aggrieved by the above inordinate delay the applicant has filed this application seeking the following reliefs :-

1. To direct the 2nd respondent to disburse all the retiral benefits within a stipulated period.
2. To direct the 2nd respondent to pay interest on the total retiral benefits at 12% per annum.

and has also prayed for an interim order to direct the payment of leave and CGEIS amount due to the applicant.

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2. In the reply statement, respondents have pointed out that the charge sheet was served on the officer on 31.12.2003 itself before the retirement of the officer. The charge sheet was based on the report of the CBI which was received by the respondents only on 29.12.2003. The charge was that the applicant while posted as Preventive Officer at Cochin Customs House permitted exports of goods covered by shipping bills/Transference copies marked as received from Mangalore ICD without verifying whether an ICD exists at Mangalore and whether Cochin Port is a gateway port to Mangalore. This had enabled the exporter to file a claim for draw back which he was not otherwise eligible. The other officers listed as accused by CBI in their report have also been charge sheeted and inquiry is being held against them. The inquiry officer submitted the inquiry report on 15.2.2005 and the same has been forwarded to the applicant. Since the inquiry was over within the extended time granted by the Hon'ble High Court the applicant cannot contend that the further proceedings are not sustainable. The proceedings against the applicant was commenced under Rule 14 of CCS (CCA) Rules before retirement and upon her retirement the same got converted to proceedings under Rule 9 of CCS (Pension) Rules and now the President of India becomes the disciplinary authority in her case. Since the due procedures have to be completed under Rule 9 of CCS (Pension) Rules the reliefs sought for by the applicant cannot be granted and hence the O.A may be dismissed.

3. The applicant filed a rejoinder stating that the copy of the inquiry report was forwarded to her only on 11.5.2005 (Annexure A-8) and that no grave misconduct or negligence is alleged and no major penalty can be imposed. The reply to the inquiry report has also been submitted to the

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respondents which has been received by them on 18.5.2005 (Annexure A-11). Even now no decision has been taken by the respondents and the delay is deliberate and only to harass the applicant.

4. We have heard counsel on both sides. We had already given an interim direction that the payment due to the applicant towards leave salary, CGEIS and any other payment except pension and gratuity shall be paid to her, therefore, the only relief that remains is disbursal of the retiral benefits and the payment of interest on the total retiral benefits at 12% per annum. The point regarding the validity of the charge sheet and the reliance placed by the applicant on the ruling of the Principal Bench was already dealt with in the order of this Tribunal in O.A.107/04 which has also been upheld by the Hon'ble High Court. The contention regarding non completion of the inquiry within the time granted by the Hon'ble High Court is also not valid at this point of time as the inquiry is completed and the submission of the applicant that she has received a copy of the inquiry report and also submitted her reply thereto ^{confirming} ~~contesting~~ the same. During the arguments, counsel for the respondents submitted that in accordance with the rule position of the CCS (Pension) Rules, the President of India has become the disciplinary authority and therefore the procedures prescribed in Rule 9 would have to be followed which is taking more time than what was stipulated earlier and any delay in passing the final order is only on that account and not due to the fact as submitted by the applicant that no major penalty can be imposed as the lapses noticed are minor in nature. It is seen that the rule position as stated by the respondents is contained in Rule 9(2) (a) of the CCS (Pension) Rules and proviso which is reproduced as under :-



(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.

5. It has been clarified by the Government of India under various instructions that under Rule 9(2) (a) of Pension Rules the disciplinary proceedings instituted against an official during the course of his service automatically becomes presidential proceedings after the retirement of the official and the disciplinary authority if it is subordinate to the President is required to submit a report recording his finding to the President. If the disciplinary authority comes to the conclusion that the action under Rule 9 of the Pension Rules is not justified, it can drop the proceedings but in case the Government considers that action has to be taken it shall be done in consultation with the U.P.S.C and necessary orders will be issued in the name of the President. Therefore the position as explained by the counsel for the respondents that the disciplinary authority is not in a position to complete the proceedings under Rule 14 which have now been converted to proceedings under Rule 9 and that action is being taken as prescribed under Rule 9 (2) is well within the frame work of rules and cannot be faulted. Another ground taken by the applicant that charges against her were not of grave nature is not a question before the Tribunal at this stage and the inquiry officer has submitted his report holding the charges as proved and it is for the disciplinary authority and the President to come to a conclusion about the gravity and proof of the charges. As regards the findings, this is also not an aspect covered by the reliefs prayed for by the

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applicant. The relief asked for is only for disbursing her retirement benefits and since retiral benefits cannot be paid in full till the disciplinary proceedings are concluded, indirectly this aspect has also come to the pleadings of the defence. Moreover we also find that provisional pension is being paid to the applicant during the pendency of the disciplinary proceedings. The Rules stipulate that only provisional pension can be paid at this stage and the question of disbursal of benefits or payment of interest of any delay arising in the matter which are the reliefs prayed for by the applicant do not arise for consideration during the pendency of the disciplinary proceedings. Therefore the prayers of the applicant at this stage have no merit and the O.A is dismissed. No order as to costs.

(Dated the .28TH day of November 2005)



GEORGE PARACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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