

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 296 of 2011

Monday, this the 21st day of November, 2011

CORAM:

**HON'BLE MR. JUSTICE P.R. RAMAN, JUDICIAL MEMBER
HON'BLE MR. K. GEORGE JOSEPH, ADMINISTRATIVE MEMBER**

P.A. Gangadharan, aged 59 years,
S/o. Late P.V. Appukutty Pillai,
Deputy Commissioner of Central Excise,
Head Quarters Office, Kochi,
Residing at 'Saaketham', Thekkummuri,
Tirur - 676 705.

..... Applicant

(By Advocate – Mr. Shafik M.A.)

v e r s u s

1. Union of India, represented by Chairman,
Central Board of Excise and Customs,
New Delhi.
 2. The Under Secretary to the Govt. of India,
Central Board of Excise and Customs,
Department of Revenue,
Ministry of Finance New Delhi : 110 011
 3. The Commissioner of Central Excise & Customs,
Cochin Commissionerate, Cochin : 682 018
- Respondents

(By Advocate – Mr. George Joseph, ACGSC)

This Application having been heard on 11.11.2011, the Tribunal on 21.11.2011 delivered the following:

ORDER

By Hon'ble Mr. George Joseph, Administrative Member -

The applicant in this O.A. is aggrieved by Annexure A-1 charge sheet dated 28.02.2011 proposing to conduct an enquiry against him for an incident



that happened during the year 2005-06 and also by the refusal on the part of the respondents to promote him to the post of Joint Commissioner, Central Excise.

2. The applicant is presently working as Deputy Commissioner, Central Excise. Earlier he was issued with a charge memo dated 18.06.2009 relating to an incident in 2006. Although he had submitted his written statement of defence on 24.08.2009, no further action was taken. Therefore, he approached this Tribunal in O.A. No. 905/2010, which was allowed directing the respondents to complete the enquiry on or before 31.03.2011 failing which further proceedings against the applicant shall stand dropped. As the enquiry was not completed by 31.03.2011, it stood dropped. While so, the present Annexure A-1 charge sheet dated 28.02.2011 was issued to the applicant for another similar incident alleged to have happened in 2005-06. Aggrieved, he has filed this O.A. for the following reliefs:

- (i) To call for the records leading to the issue of Annexure A-1 to Annexure A-7 and to quash Annexure A-1;
- (ii) To direct the respondents to consider and promote the applicant to the level of Joint Commissioner of Central Excise, notwithstanding A-1 charge memo, with effect from the date of promotion of his juniors with all consequential benefits, if found suitable;
- (iii) To issue such other appropriate orders or directions this Hon'ble Tribunal may deem fit, just and proper in the circumstances of the case; and
- (iv) To grant the costs of this Original Application.

3. The applicant submitted that the Annexure A-1 charge sheet is issued deliberately for the purpose of denying him promotion. The delay in issuing



the Annexure A-1 charge sheet cannot be attributed to the applicant and the applicant cannot be denied his rightful promotion. The issue involved in the said charge sheet relates to wrong classification done at the time of clearance of baggage at Air Cargo Complex, Karippur. The applicant is being singled out for issuing charge sheet for major penalty while all those who have been doing the same thing before him are being let off with warning and minor penalty proceedings which will not hamper their promotion prospects. The delay in issuing the charge sheet and proceeding with enquiry has already affected the applicant as his juniors are already promoted in the year 2009.

4. In the reply statement, the respondents submitted that no cause of action has accrued to the applicant to be aggrieved as initiation of disciplinary proceedings does not amount to final order and the applicant would get adequate opportunity to defend himself. Vide his letter dated 09.03.2011, the applicant had requested for supply of certain documents for preparation of his written statement of defence. Although he had submitted his preliminary reply, vide letter dated 30.03.2011 denying all the charges, efforts are being made to supply to the applicant the documents at the earliest. As the final reply is yet to be submitted by the applicant and the decision in the matter can be taken by the Disciplinary Authority after the receipt of his final reply, it is premature on the part of the applicant to blame the Disciplinary Authority for the alleged inaction. The Charge Memo No. 07/2011 dated 28.02.2011 being impugned in this O.A. has been issued to the applicant for misconduct, which is all together different from the case in O.A. No. 905/2010. Both the cases are independent of each other. Mere delay in issuance of charge memo cannot in itself be a sufficient reason to drop the proceedings. There was no



deliberate delay on the part of the respondents.

5. In the rejoinder filed by the applicant it was stated that the disciplinary proceedings initiated against the applicant were intended only to deny legitimate promotion due to him. In case the direction of this Tribunal in O.A. No. 905/2010 had been implemented, he would have been promoted long back. In counter signing the bill of entries, the applicant had only followed the procedure that was being followed from November, 2005 to 28.02.2006 in the Air Cargo Complex, Karippur. Two Assistant Commissioners had been let off with administrative warning. Only the applicant has been charge-sheeted for a major penalty.

6. We have heard Mr. Shafik M.A, learned counsel for the applicant and Mr. George Joseph, learned ACGSC appearing for the respondents and perused the records.

7. The crux of the charge against the applicant is that he had countersigned undervaluation of certain goods. The applicant had filed O.A. No. 905/2010 challenging a similar charge pertaining to an incident in the year 2006, which was allowed by this Tribunal. The relevant part of the said order is extracted as under :

"5. Admittedly the incident took place as early as in 2006 and there was an adjudication proceeding against the parties whose goods alleged to have been undervalued. This proceeding has been completed in the year 2006 itself. No reasons are stated as to why more than 3 years time was taken even to initiate a disciplinary action against the applicant. At any rate this Tribunal has subsequently referred to in the earlier order that



at least in 2007 they could have initiated the disciplinary proceedings. Therefore, by an interim order the respondents were given time for completing the disciplinary proceedings by 31.1.2011. But the respondents did not even decide as to whether the explanation submitted by the applicant is satisfactory or whether it can be accepted. The officer is due to retire by June, 2011 and because of the pendency of the disciplinary proceedings his promotional avenues are stalled. One is sure that he will not be getting his promotion even if he is found suitable because of the pendency of the disciplinary action. In such circumstances the authorities ought to have expedited the finalization of the proceedings now initiated against the applicant. It may be true that they may have to comply with certain formalities but there is no justification for initiating an action belatedly and then taking shelter under such procedure to cause further delay. In such circumstances and having considered all the aspects of the matter we allow this OA with the following directions:-

We direct the respondents to take a decision on the explanation submitted by the applicant and if they are not satisfied with the explanation and decided to proceed with the inquiry the whole inquiry shall be completed on or before 31.3.2011, failing which the further proceedings shall stand dropped.

6. Original Application is allowed as above. No order as to costs. Issue urgent copies to the counsel for the parties."

8. The applicant has retired on 30.06.2011 on attaining the age of superannuation. He retired without the benefit of promotion in case he is found fit by the DPC. Just 4 months prior to his retirement, he is served with a charge-memo over an incident that occurred 5 years ago. A similar charge sheet dated 18.06.2009 was challenged by the applicant before this Tribunal in O.A. No. 905/2010 which was disposed of as above. The decision of this Tribunal in O.A. No. 905/2010 was upheld by the Hon'ble High Court of Kerala vide judgement dated 24.05.2011 in O.P.(CAT)No. 1626 of 2011(Z). The



purpose of an enquiry is to arrive at truth and to punish the guilty or exonerate the innocent without loss of time. Often, enquiry becomes a farce due to long delay in initiating it or in prolonging it, once it is initiated. It becomes an instrument of harassment and torture when it pops up just in time to spike a promotion or an honourable retirement. In the instant case, the applicant might have lost a promotion in time. He retired under a cloud. His retirement benefits are not paid. Enquiry is not meant to result in such unwelcome happenings. The respondents have not provided any justification in starting an enquiry so late against the applicant for a major penalty for a transgression which merited only a warning in the case of two Assistant Commissioners. Having considered all the aspects of the case, we are of the view that in the interest of justice and fair play, the proceedings initiated against the applicant should be finalised urgently, so that his promotion, if eligible, and retirement benefits are given, without loss of time.

9. It is not clear whether the respondents succeeded in supplying the applicant the documents sought by him. In case that is not done, within 21 days of receipt of a copy of this order, the respondents shall supply the applicant with documents as per rule, failing which the proceedings initiated by the charge memo dated 28.02.2011 shall stand dropped. In case the documents are supplied, the applicant shall file his reply within 21 days from the date of receipt of a copy of this order. On receipt of the same, the respondents shall decide within next fortnight either to drop the proceedings or to go ahead with an enquiry. If they decide to hold an enquiry, it shall be completed and further action as per rule shall be taken as early as possible, at any rate within 4 months of receipt of the reply from the applicant, failing



which the enquiry stands dropped. If necessary, the enquiry should be conducted on a day to day basis. The applicant should co-operate with the respondents to expedite the enquiry, if any. Ordered accordingly.

10. The O.A. is allowed as above. No order as to costs.

(Dated, the 21st November, 2011)



K. GEORGE JOSEPH
ADMINISTRATIVE MEMBER



JUSTICE P.R. RAMAN
JUDICIAL MEMBER

cvr.