

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No. 34 of 2009

Friday, this the 13th day of November, 2009

CORAM:

Hon'ble Dr. K.B.S. Rajan, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

K.V. Balachandran (Chemical Examiner, retired from
 Custom House, Cochin), Residing at : 'Sreyas',
 Kuttanappilly House, Vennala (PO), Kochi-20.

Applicant

(By Advocate – Mr. M.V. Thamban)

V e r s u s

1. Union of India, represented by the Secretary,
 Govt. of India, Ministry of Finance, (Department
 of Revenue), North Block, New Delhi.
2. The Chairman, Central Board of Excise and Customs,
 Department of Revenue, Ministry of Finance, New Delhi.
3. The Commissioner of Customs, Custom House, Kochi-9.
4. The Director General (Vigilance), Customs and Central
 Excise, Kautilya Marg, Chanakyapuri,
 New Delhi - 21.

Respondents

(By Advocate – Mr. M.V.S. Nampoothiry, ACGSC)

The application having been heard on 09.11.2009, the Tribunal on
13-11-2009 delivered the following:

O R D E R

By Hon'ble Dr. K.B.S. Rajan, Judicial Member –

The applicant, earlier functioning as Chemical Examiner under the
 third respondent, was suspended with retrospective effect from 21-12-2004
 (from the date of his detention in respect of a criminal case), vide order

dated 24th January 2005 (Annexure A-1). He superannuated on 31st January 2005 while the suspension was in vogue. The CBI filed a refer report dated 30th August 2005, vide Annexure A-2. In which it had recommended departmental action against the applicant. Thus, no criminal case is pending against the applicant. However, no further immediate steps were taken by the respondents in regard to departmental proceedings. Yet, the applicant was paid only the provisional pension, all other terminal benefits having been withheld due to the contemplation of disciplinary proceedings. As nothing was in progress, the applicant moved Annexure A-3 representation dated 24-02-2006 for disbursement of the withheld terminal benefits. This was followed by further representations by raising the level, vide Annexure A-4 and A-5. The Commissioner of Customs, Kochi was addressed by the Department of revenue, Ministry of Finance, to expedite settlement of the applicant's accounts, vide Annexure A-6. The applicant renewed his request by communication dated 9th November 2006, vide Annexure A-8 and he was, by Annexure A-9 informed that the withheld terminal benefits could be released only after finalization of the disciplinary proceedings. While so, the applicant was issued with a charge memorandum dated 31st October, 2007, vide Annexure A-11 (impugned). As is the usual practice with any inquiry proceedings, the applicant sought for various documents enlisted in the Annexure to the charge memo and on the ground of documents being 'voluminous', supply of such documents was refused stating that all that the applicant had to respond to the charge memo is to admit or deny the charges. Reserving his right to supplement his representation, the applicant filed his representation dated 01-04-2008, vide

Annexure A-13. And, thereafter, no action has been taken by the respondents. Thus, the applicant has approached this Tribunal for quashing of the impugned Annexure A-11 order on the one hand and for a direction to the respondents to disburse the withheld terminal benefits on the other. Challenge is both on merit and on inordinate delay in initiating the proceedings.

2. The application was accompanied with an application for condonation of delay of 65 days. By a separate order, this M.A. for condonation of delay is allowed.

3. Respondents have filed their reply, though belatedly. According to them, due to a false certificate issued by the applicant in his capacity as Chemical Examiner in respect of the nature and character of alcohol, there has been a revenue loss to the tune of Rs 13.24 crores. The proceedings are on and the disbursement of terminal benefits depends upon the outcome of the proceedings.

4. The applicant has filed his rejoinder. Both the counter and rejoinder revolve around the merit in the matter relating to the charges.

5. Counsel for the applicant stated that of the two charges, one relates to a period which is more than four years anterior to the issue of charge sheet and hence, is time barred under the provisions of Rule 9(2)(b)(ii) of the CCS (Pension) Rules. As regards the other charge, the same would go to

show that there is no misconduct as alleged since the certificate given by the applicant was that the sample cannot be considered as denatured. Thus, the entire charge sheet becomes vitiated and hence, the same is liable to be quashed and set aside and directions be issued to the respondents for disbursement of the withheld terminal benefits with interest.

6. Counsel for the respondents justified the issue of charge sheet and contended that the terminal benefits cannot be released when the proceedings have not been completed.

7. Arguments were heard and documents perused. The issue for consideration is whether the applicant is legally entitled to receive the withheld terminal benefits when the charge sheet is pending. Judicial interference at the time of issue or charge sheet or prayer for quashing of charge sheet cannot be resorted to save under some exceptional circumstances, as explained in the decision of the Apex Court in the case of *Union of India v. Upendra Singh, (1994) 3 SCC 357*, in the following terms:-

6. *In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the*

disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal v. Gopi Nath & Sons. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus :

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

8. As such, it would be only appropriate that instead of going into the merits of the charges, the respondents may be directed to complete the inquiry proceedings within a reasonable time. There are in all sixteen witnesses and fifteen documents on the side of the prosecution. The applicant has his right to project any witness or documents in support of his case. The I.O. has not so far been appointed. Nor has the presenting officer been. Thus, for completion of the entire proceedings up to arriving at a decision by the Disciplinary authority on the basis of inquiry report and reaction of the applicant on the inquiry report, a period of six months would certainly be adequate. It is accordingly ordered. Respondent No. 3 shall, therefore, take necessary action to expedite the inquiry within six months from the date of communication of this order. The applicant shall cooperate with the inquiry. On the basis of the conclusion of the inquiry proceedings

by the Disciplinary authority, consideration as to the disbursement of the withheld terminal benefits be given by the respondents. As the applicant has superannuated as early as in January 2005 and is by now 64 years old, and as the charge sheet stood issued as early as 01-02-2007, if the proceedings are not concluded within the aforesaid six months, great prejudice would be caused to the applicant whose terminal benefits have not been released due to the pendency of proceedings. The Apex Court has observed in the case of *State of A.P. v. N. Radhakishan, (1998) 4 SCC 154* as under:-

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.

9. Hence, interest of justice demands that apart from calendaring the time limit for completion of proceedings, a rider is also clamped that should the proceedings be not completed despite earnest attempt within the stipulated period of six months, respondents shall approach the Tribunal before the expiry of six months from the date of communication of this order for further extension of time, in which event, action taken till the time of application for extension, the balance action to be taken, reasons for delay if any in conducting the proceedings should all be furnished. If there be no such request for extension of time before the expiry of the aforesaid six months, the proceedings shall be deemed to have been dropped, in which event the respondents shall make available the terminal benefits due to the applicant on the expiry of six months time.

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10. The O.A. is disposed of on the above terms. No cost.



(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER



(K.B.S. RAJAN)
JUDICIAL MEMBER

“SA”