

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 123 of 2006

Reserved on 15.3.2012

Date of Decision 26th March, 2012

Hon'ble Mr. Justice Alok K Singh, Member-J
Hon'ble Mr. S.P. Singh, Member-A

S.N. Lal Das, aged about 58 years, S/o late Sri Dhanush Dhari Lal Das, R/o T-IV-28, Central Excise Officers Colony, Eye Hospital Road, Sitapur, present posted as Assistant Commissioner, Central Excise Division, Sitapur.

.....Applicant

By Advocate : Sri Raj Singh.

Versus.

Union of India through the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, North Block, New Delhi.

.....Respondent.

By Advocate :Sri Q. H. Rizvi.

O R D E R

By Justice Alok K Singh, Member-J

This O.A. has been filed for the following main relief(s):

“to quash the impugned memo of charge dated 17.10.2005 (Annexure A-1).”

2. The case of the applicant is that he was functioning at the relevant time as Superintendent (Preventive), Central Excise, Patna during the year 1992 under the Assistant Collector (Preventive) Central Excise, Patna. The background facts are that the then Assistant Collector, Central Excise, Dhanbad

AC

submitted a secret information report to the Collector, Central Excise, Patna regarding clearance of Aluminum Wire by M/S Jasidih Wires on bogus gate passes. It was also mentioned that the above firm had shown the production as Nil, but at the same time cleared the aluminum wires to M/s Gilluram Gaurishanker in the same period. During the relevant period, there was no electric connection in the factory of M/S Jasidih Wires. This clearance of aluminum wire had been shown on bullock carts. This information was given to the applicant for investigation. He visited Deoghar and submitted his report. The allegation is that the applicant did not conduct any enquiry regarding the allegations made in the secret report and submitted his report giving an impression that the proper enquiry has been done. Therefore, on that basis, it is alleged by the respondents that M/S Gulliram Gaurishanker were able to claim and get the inflated refund to the tune of Rs.14,28,125/- resulting loss to the exchequer. The applicant has challenged this chargesheet mainly on the ground of inordinate delay of about 12 years and also certain other grounds mentioned in the O.A. It is said that after submission of report by the applicant, the department conducted an enquiry in the matter in 1995 in which his statement was also recorded on 13.5.1995 and he had clarified his position in that statement. However, full-fledged enquiry was again conducted by the Commissioner, who submitted his report to D.G. (Vigilance) on 19.1.1998, who, in turn, submitted to Central Board of Excise & Customs where the said report was examined and it was forwarded to CVC. The CVC did not recommend any action against the

AC

applicant to his notice. Thereafter, the matter was referred to CBI, which submitted its report in 2003. The CBI insisted for taking departmental action against Sri A.M. Sahay, the then Assistant Collector (Preventive), Central Excise. Accordingly, the department issued memorandum of charges on 12.7.2004 to Sri A.M. Sahay. Sri Sahay filed O.A. no. 232 of 2005 before Mumbai Bench of this Tribunal challenging the validity of the above memorandum of charges. During the pendency of the above O.A, memorandum of charge-dated 17.10.2005 (Annexure A-1) was served upon the applicant also. After receiving memorandum of charge, the applicant submitted a detailed representation to the disciplinary authority for quashing/withdrawal of memorandum of charge on 27.10.2005 (Annexure A-2), but he did not receive any reply. Therefore, he filed the present O.A. on 7.3.2006. It is further said that the above O.A. no. 232 of 2005 filed by Sri A.M. Sahay has been decided in favour of Sri Sahay on 28.10.2005 and the impugned charge memo issued against him has been quashed by Mumbai Bench of this Tribunal mainly on the ground of inordinate delay (Annexure A-3). The applicant has to superannuate on 30.6.2007.

3. The claim has been contested by the respondents by filing Counter reply saying that pursuant to a source information, the CBI registered a case no. RC (A)/98-Pat on 8.6.1998 in a case of alleged evasion of duty by M/s Gulliram Gaurishander, Deoghar during the year 1991-93 on the aluminum wire rods through their acts of commission and omission, against some officers of Central Excise who were in collusion with

above firm and who caused wrong pecuniary gain to the above firm. Earlier, when the matter was given to the applicant for investigation and report, he visited Deoghar and submitted his report in which the details of factories of Sri G.P. Dalmia's family and the style of their functioning was discussed, but he did not conduct any enquiry regarding the allegations made in the secret report and only created confusion. Because of this act of omission and commission on his part, the above firm was able to claim and get inflated refund to the tune of Rs. Rs. 14,28,125/. After service of chargesheet, the applicant submitted his defence vide letter in October, 2005. It has been admitted that after enquiry conducted by the Commissioner of Central Excise, Patna, the advice of CVC was sought by the Central Board of Excise & Customs. But because of on-going enquiry by the CBI, the department was asked to wait for findings of CBI. As regards judgment in O.A. no. 232 of 2005 filed by Sri A.M. Sahay is concerned, it has been said that the same is being challenged before Hon'ble Mumbai High Court. Here it may be mentioned that meanwhile Hon'ble High Court at Mumbai has dismissed Writ petition no. 1550 of 2006 Union of India & Others Vs. Arvind Mohan Sahay & Others, saying that the matter is being enquired right from 1992-1995 i.e. about 14-11 years back and it was not a case where the department was not aware of the allegations against the respondents of the Writ petition. It was further noted by the Hon'ble High Court that the matter went upto the highest level of Central Vigilance Commission, who by its advice dated 28.2.2002 did not recommend initiation of disciplinary proceedings. Therefore, considering the main ground

of inordinate delay the Hon'ble High Court did not find any ground to interfere. Then a Special Leave to Appeal was filed bearing CC 14249 of 2008 Union of India & Others Vs. Arvind Mohan Sahay, which has been dismissed on the ground of delay as well as on merits. Electrostat copies of both the above orders have been filed and taken on record. These orders are not disputed.

4. Rejoinder Reply has been filed by the applicant refuting the averments made in the Counter Reply and reiterating the averments made in the Original Application.

5. Written arguments has also been filed on behalf of applicant.

6. We have heard the learned counsel for the parties and have perused the material available on record.

7. The first limb of argument on behalf of the applicant is that on account of inordinate and unjustified delay of more than 12 years, the initiation of departmental proceedings is arbitrary which deprives the applicant of reasonable opportunity to defend himself. By the passage of time, a person is liable to forget various vital issues connected with the incident in question. On this point, the learned counsel has placed reliance on various case laws, which would be discussed hereinafter.

8. The second limb of argument is that in respect of same incident a charge sheet dated 12.07.2004 in respect of a minor punishment was issued against Sri Arvind Mohan Sahay, the then Assistant Commissioner (Preventive), Central Excise, who had

challenged that charge sheet before C.A.T., Mumbai Bench vide O.A.No.232/2005. That O.A. has been decided in favour of Sri Sahay on 28.10.2005 quashing the charge sheet mainly on the ground of unreasonable and unexplained delay of more than 12 years. The Writ Petition No.1550/2006 filed against it has also been dismissed. The department however went to Hon'ble Apex Court by filing C.C.No.14249/2008, which too has been dismissed on merits as well on the ground of delay. The Electrostat copies of both these orders are on record. Nothing adverse has been said form the other side regarding authenticity of both these orders. The submission is that though the charge sheet against Sri Sahay was for minor punishment, but the incident and the matter was same. The submission is that the aforesaid judgment order (which has attained finality) squarely applies in the case of the applicant and therefore for the same reasons, this charge sheet should also be quashed.

9. Now we come back to the first limb of argument in order to have a detailed discussion. The relevant case laws, which have been relied upon from the side of the applicant are ^{as AR}under:-

(1). **(2005) 6 SCC-636 P.V. Mahadeven Vs. MD, T.N. Housing Board**--In this case, there was an inordinate delay of 10 years in initiating the departmental enquiry for which no convincing explanation could be given by the employer. The Hon'ble Court was of the view that in these circumstances if the employer is allowed to proceed further with departmental proceedings it would be very prejudicial to the applicant. Therefore charge memo

AB

was quashed and the departmental enquiry was put to an end. The appellant was held entitled to all the retrial benefits.

(2). **1991 SCC (L&S) 638 State of Madhya Pradesh Vs. Bani Singh & Another**--This Civil Appeal arose from the judgment and order passed on 25.01.1988 and 16.12.1987 of C.A.T., Jabalpur in O.A.No.201/1986 and O.A.No.102/1987. In this case also a delay of about 12 years (as in the present case) was found in the initiation of departmental enquiry for which no satisfactory explanation was given. It was therefore, held that it would be unfair to permit the departmental enquiry to proceed at this late stage.

(3). **M.N. Qureshi Vs. Union of India and Others reported in [1989] 9 ATC-500**--In this case there was a delay of 5 years in issuance of charge sheet. The government sought to justify the delay on the ground that various authorities including the Central Vigilance Commission had to be consulted (as in the case before us). But only dates were indicated to the Tribunal without disclosing contents of references made to those authorities. Therefore, the Tribunal was not satisfied with the explanation and held that delay was unreasonable.

(4). **Shri S.R. Nim Vs. Union of India & Others reported in ATJ-594**--In this case the matter was of the year 1992 while the charge sheet was issued on 2004 i.e. after 12 years. The allegation was that a direct recruitee was appointed in place of compassionate appointee. But, there was no material to show that any malafide or corrupt motive was involved. It was held by the Tribunal that charge is not serious enough to warrant such a proceeding. Even

otherwise the delay in issuing charge sheet was also not explained therefore, charge sheet was quashed. In this case the ratio laid down in the case of **A.R. Antulay & Others vs. R.S. Nayak & Another, 1992**

(1) **SCC-225** was also taken into consideration. Similarly, the law propounded in the case of **State of Punjab Vs. Chaman Lal Goyal, 1995 (2) SCC-570** was also considered wherein it was held that the delay of 5 years was not fair because on one hand such delay also makes the task of proving the charges difficult and thus not also in the interest of administration and on the other hand delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Another case of **State of Andhra Pradesh Vs. N. Radhakrishan, 1998 (4) SCC-154** was also considered in the above case by citing the following paragraph:-

“ It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be determined each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are conclude expeditiously and he is not

made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the fact of it. It could also be seen as to how much the Disciplinary Authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that as office entrusted with a particular job has to perform his duties honestly efficiently and in accordance with the rules. If he deviates from his part he is to suffer a penalty prescribed. Normally, disciplinary proceeding 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."

(5). B. Loganthan Vs. Union of India reported in ATJ 2001 (1) page-289--In this case charge sheet was issued in the year 1997 for the irregularity committed in the year 1992 on the basis of report submitted by Vigilance and Anti Corruption Department in 1993. Authorities could not explain the inordinate delay. It was held by the Hon'ble High Court that it amounts to denial of reasonable opportunity to defend and it would be also violative of principle of natural justice if it is permitted to be continued. Accordingly charge memo was quashed. In this case also the cases of A.R. Antulay Vs. R.S. Nayak (Supra), and the case of State of Andhra Pradesh Vs. N.

Radhakrishnan (Supra) were considered. In the case before us also there is no convincing explanation for the delay which is of more than 12 years. The matter is of the year 1992. Two inquiries were held in 1995 by senior officer of the department. Further, enquiry was held in 1998 by the then Commissioner, Central Excise who submitted his report to Director General (Vigilance). But no action was taken. Then enquiry was started by C.B.I. in 1998. The CBI submitted its report in 2003 i.e. after 5 years. Then after a gap of two years, the charge sheet was served upon the present applicant in 2005.

(6). Rajbir Singh Gill Vs. State of Punjab and Another reported in 1997 (7) SLR-422---In this case delay in initiation of departmental proceeding was about 11 years. It was held that Departmental enquiry at such a belated stage would deprive the petitioner of a reasonable opportunity to defend himself as with the passage of time he would have certainly forgotten various vital issues connected with the incident.

(7). Mohanbhai Dungarbhai Parmar Vs. Y.B. Zala & Others reported in 1980 (1) SLR-324--- In this case, in the backdrop of Article-311 of the Constitution of India, it was laid down that delay in initiating departmental proceedings itself amounts to denial of reasonable opportunity and entails violation of principles of natural justice.

10. In all the above cases the preposition of law which has been laid down is that in the initiation of departmental proceedings, unreasonable and inordinate delay which has not been properly explained, vitiates the disciplinary enquiry as it amounts to denial of reasonable opportunity and it is

violative of principle of natural justice. In the case before us the matter is of 1992. As already said two enquiries were held by senior officers of the department in 1995. A full-fledged enquiry was again conducted by the Commissioner, who submitted his report to D.G. (Vigilance) on 19.1.1998, who submitted it to Central Board of Excise & Customs where the said report was examined and it was forwarded to CVC. The CVC did not recommend any action against the applicant. Thereafter, the matter was referred to CBI in 1998 which submitted its report after five years in 2003. Even thereafter the charge sheet dated 17.10.2005 was served upon the applicant after a further lapse of two years. There is no plausible or satisfactory explanation on record from the side of the respondents for such a long delay. It is also worthwhile to mention here that is no evidence that any loss much less to the tune of Rs.14,28,125/- was caused to the government exchequer on account of submission of alleged fact finding report submitted by the applicant in the year 1992. In the above judgment given in O.A.No.232/2005 also (which has attained finality from the Hon'ble Apex Court), it was found that whether there is any loss to the public exchequer is yet to be established and even after 13 years of sanction of the said refund, the department has not been able to complete first stage of adjudication. A show cause notice issued by the department for alleged erroneous refund is even before the Commissioner Central Excise, Ranchi. In the present O.A. it has also been pleaded by the applicant that he was considered to be a man of absolute integrity and only then he was given sensitive posting to land Customs Station and the

Airport. He was also given appreciation letters for meritorious service several times and his name was also recommended for the Presidential Award. It is also interesting to note that the applicant was promoted to the post of Assistant commissioner and was posted at Central Excise Division, Sitapur in the year 2002, despite submission of his above preliminary report in the year 1992 in respect of the matter in question, which according to the respondents was found to be misleading. This goes to show that probably no material was found against the applicant before his promotion to Group-'A' post and his promotion to a higher post also condones the previous misconduct, if any, it was submitted. Be that as it may. But, the preposition of law laid down in the above case lawssquarely applies in the case in hand as discussed above. The first limb of argument in favour of the applicant is therefore accepted.

11. The second limb of argument is that as to whether or not, the present case is squarely covered by the judgment given by C.A.T., Mumbari Bench in the above O.A.No.232/2005 of Sri Arvind Mohan Sahay, which has already attained finality up to the stage of Hon'ble Supreme Court. The copy of this judgment is at Annexure-A-3 which runs into 19 pages. In that O.A. the aforesaid case laws of State of Madhya Pradesh Vs. Bani Singh & Another, State of Andhra Pradesh Vs. N. Radhakrishnan, P.V. Mahadeven Vs. MD, T.N. Housing Board, State of Punjab Vs. Chaman Lal Goyal (Supra), B. Loganthan Vs. Union of India etc. (Supra) were considered at length besides some other case laws. The significant extracts of the above judgment are as under:-

“ So far as the allegation of loss of revenue is concerned, the applicant in para 2 of the rejoinder explained that no loss is caused to the public exchequer as contended by the respondents. The applicant is not concerned in any manner about erroneous refund. Refund was sanctioned by Assistant Collector, Patna in a quasi-judicial proceeding. Whether there is any loss to the public exchequer is yet to be established. Even after 13 years of sanction of said refund, the department has not been able to complete even first stage of adjudication. The show cause notice issued by the department for alleged erroneous refund is still pending before Commissioner Central Excise, Ranchi for the last 10 years. This is because in similar case of the same party the Central Excise and Customs Tribunal of Kolkata has quashed the review petition of the department for recovery of refund by its order-dated 13.07.2000. There is no denial of these facts by the respondents and therefore, it cannot be concluded that the refund was illegal or there is any loss to the public exchequer.”

“ According to the respondents, the charge leveled against the applicant relates to the year 1992. The only reasons given for 12 years delay is that the inquiry report of CBI has been received in the year 2003 only. The applicant in para 3 of the rejoinder denied the contention of the respondents that the present charge memorandum is result of revelation of CBI inquiry which has started in the year 1998 and the report submitted in 2003. The applicant has explained the factual position that the department initiated full-fledged inquiry in the year 1995 and the inquiry officer submitted his detail report to Commissioner, Patna on 27.06.1995. The Commissioner also conducted full-fledged inquiry and submitted his report to D.G. (Vigilance) vide letter dated 19.01.1998 in which he made full disclosure of role of the applicant to the Central Bureau of Excise and

Customs. The Board in turn examined the matter at highest level i.e. DG (Vigilance/ Member P&V/Chairman and forwarded full report to the CVC. The CVC by its advice dated 28.02.2002 did not recommend initiation of disciplinary proceedings against the applicant. There is no denial of these facts by the respondents. It is not the case of the department that they were not aware of the matter in the year 1992. Nothing came out against the applicant in the investigation carried out by the department and even the CVC was of opinion that no disciplinary proceedings should be initiated against the applicant. Therefore, the defence of CBI investigation taken by the respondents to explain undue delay becomes baseless. There is no satisfactory explanation for the inordinate delay. In issuance of charge sheet forthcoming from the written statement of respondents. In fact, there is hardly any explanation for our consideration. In such a situation there is no difficulty on our part to hold that the applicant has been deprived of his right of reasonable defence on account of inordinate delay in issuing charge sheet. Moreover the delay in initiation of disciplinary proceedings is bound to given room for allegation of bias, malafide and misuse of power. If the delay is too long and it is unexplained, the court may very well interfere and quash the charge sheet as held by Apex Court in case of State of Madhya Pradesh Vs. Bani Singh (Supra), State of A.P. Vs. N. Radhakrishna (Supra) , P.V. Mahadevan (Supra), State of Punjab Vs. Chamnlal Goel (Supra).

In the facts and circumstances of the case and for reasons stated above, we have no hesitation to hold that the initiation of departmental proceedings in the instant case after a lapse of 12 years was clearly arbitrary specially in the light of the fact that the alleged incident came to the knowledge and notice of authorities immediately on its occurrence i.e. on 26.05.1995. We are also of

the considered opinion that the holding of departmental inquiry at such a belated stage would deprive the applicant of reasonable opportunity to defend himself as by the passage of time he would have certainly forgotten various vital issues connected with the aforesaid incident."

12. From the above it appears that as far as the point of delay is concerned, it was almost same in above case of Arvind Mohan Sahay. In fact in the case of the applicant the delay was one year more because the charge sheet was served upon Sri Sahay in the 2004 whereas, against the applicant it was served in 2005. The matter in question was also same and in both the charge sheets the alleged loss was quoted as Rs.14,28,125/- . The only difference is that Sri Sahay was served with a charge sheet for minor punishment whereas, the charge sheet against the applicant was for major punishment. The charge against the applicant and Sri Sahay are mentioned below:-

"Statement of Article of charges against the applicant.

That Shri S.N. Lal Das, while functioning as the then Superintendent (Preventive), Central Excise, Patna during the year 1992 failed to enquire and report on the main allegation in the secret report of A.C., Central Excise Dhanbad that M/s Jasidih Wires was not functioning at the relevant time. He also failed to check and report on the genuineness of the revised returns filed by the said firm. Aforementioned failures on his part led to sanction and payment of undue refund claim to the tune of rs.14,28,125/-to M/s Gilliram Gaurishanker.

By his above said acts of commission and omission, Shri S.N.L. Das, the then Supdt. (Prev.), Central Excise, Patna failed to maintain absolute integrity, devotion to duty and acted in a manner unbecoming of a Government servant and thereby

contravened the provision of Rule 3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964."

13. The statement of imputation of misconduct and misbehavior against Sri Arvind Mohan Sahay as mentioned in judgment of O.A.No.232/2005 are as under:-

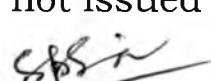
"Shri A.M. Sahay while functioning as the then Assistant Collector (Hq-Preventive), Central Excise, Patna during the year 1992. He was duty bound to properly supervise the function of his section and take steps to check the evasion of Central Excise Duty by the factories located in Patna Collectorate. That on 25.03.92 Shri D.K. Sinha, the then AC, Dhanbad submitted a secret information to Collector, Central Excise, Patna regarding showing of clearance of aluminum wire by M/s Jasidhiih wire on bogus gate passes..... This secret information was given to him by the Addl. Collector (Preventive) for enquiry. He deputed Shri S.N.L. Das for investigation and giving report..... He has not done any enquiry regarding the allegation made in said secret report and submitted his report in such a way which only (created confusion that proper enquiry has been done) Shri A.M. Sahay simply forwarded the said enquiry report to the Collector without pointing out its deficiencies. He further instead of sending the said report to AC, CE, Bhagalpur to dispose of the refund claims as per law as instructed by the Collector, he merely sent a letter to AC, CE, Bhagalpur stating that enquiry by Preventive showed that the documents filed by M/s Gulluram Gaurishankar tallied with the relevant documents available with the said firm..... further, on the complaint of M/s Morarka Cables about M/s G.G.R. Gaurishankar's false refund claims forwarded by the Finance Ministry to Collector, he gave a note that the matter was already looked into and there was no collusion of CE, Deptt. Officials in allowing the refund claims. Due to this M/s Gilluram

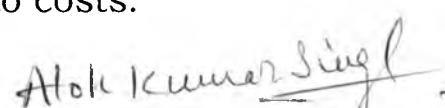
AD

Gaurishankar was able to claim and get the inflated refund report claim to the tune of 14,28,125/- which was a wrongful loss to the Central Excise."

14. From the perusal of the above, it is clear that the alleged misconduct was in the same sequence and in respect of same amount in question. Therefore, in our view the judgment given in the above case of Arvind Mohan Sahay in O.A.No.232/2005, which has already attained finality, is definitely applicable in the case of the applicant. We have no reason to disagree with the observation and findings recorded by the C.A.T., Mumbai Bench in the above case of Arvind Mohan Sahay, the then Assistant Collector, Central Excise (O.A.No.232/2005) particularly because that judgment has already attained finality upto the stage of Hon'ble Supreme Court as already mentioned. In the above case the impugned charge sheet was quashed and the O.A. was allowed holding the applicant entitled to all consequential benefits as if the charge sheet has not been issued to him. Thus, the second limb of argument also deserves to be accepted in favour of the applicant.

15. In view of the above, this O.A. is allowed. The impugned memo of charge sheet dated 17.10.2005 is hereby quashed. The applicant would be entitled to all the consequential benefits as if the charge sheet was not issued to him. No order as to costs.


(S.P. SINGH)
MEMBER-A


ALOK KUMAR SINGH
MEMBER-J

amit/-