

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 680 of 1999.

Dated this _____ the 4th day of May, 2000.

Shri S. D. Khare, _____ Applicant.

Shri G. K. Masand, _____ Advocate for the
applicant.

VERSUS

Union of India & Another, _____ Respondents.

Shri M. I. Sethna alongwith _____ Advocate for the
Shri V. D. Vadhavkar, _____ Respondents.

CORAM : Hon'ble Shri Justice R. G. Vaidyanatha,
Vice-Chairman.

Hon'ble Shri D. S. Baweja, Member (A).

- (i) To be referred to the Reporter or not ?
- (ii) Whether it needs to be circulated to other Benches
of the Tribunal ? } *us*
- (iii) Library.


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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Hon'ble Shri D. S. Baweja, Member (A).

S. D. Khare,
Commissioner (Appeals)
Central Excise, Mumbai.
Residing at -
19, Belvedere Apartment,
B.D. Road, Breach Candry Road,
Mumbai.

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Applicant.

(By Advocate Shri G. K. Masand)

VERSUS

1. Union of India through
The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

2. Central Board of Excise &
Customs, North Block,
New Delhi.

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Respondents.

(By Advocate Shri M. I. Sethna alongwith
Shri V. D. Vadhavkar).

O R D E R

PER : Shri R. G. Vaidyanatha, Vice-Chairman.

This is an application filed for quashing the charge-sheet dated 04.10.1997 and for the consequential reliefs. Respondents have filed reply opposing the application. We have heard Mr. G. K. Masand, the Learned Counsel for the applicant and Mr. M. I. Sethna alongwith Shri V. D. Vadhavkar, the Learned Counsel appearing on behalf of respondents, regarding admission.

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2. The applicant is working as Commissioner of Central Excise at Mumbai. He is challenging the charge-sheet on the ground that there is a delay of five and a half years in issuing the charge-sheet and on the ground of delay it should be quashed. It is also alleged that there is no sufficient material for issuing a charge-sheet against the applicant.

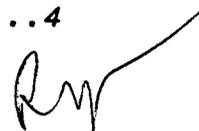
3. The respondents have taken the stand that there was some administrative delay in issuing the charge-sheet since C.B.I. was earlier in charge of the investigation and then C.B.I. recommended for issuing a departmental charge-sheet. Then there was some administrative delay in taking a decision for issuing the charge-sheet.

4. The Learned Counsel for the applicant mainly contended that the charge-sheet is bad since it is issued long after the alleged misconduct and, therefore, it is liable to be quashed. Some arguments were also addressed at the bar that there was no sufficient material for issuance of a charge-sheet and there are some mistakes or errors in mentioning the dates of incidents, etc. On the other hand, the Learned Counsel for the respondents contended that this Tribunal cannot go to the question of merits of the charge-sheet at this stage. That there was some typographical mistakes in the dates and the dates have been corrected. Even otherwise, it is pointed out that in some paras of the charge-sheet correct dates are given. Therefore, the applicant knew as to what case he has to meet and no prejudice is caused to him. Then it was explained that due to administrative reasons there was delay in issuing the charge-sheet. Then it was pointed out that applicant has come to this Tribunal after a

lapse of two years from the date of charge-sheet in filing this application and hence, it should not be entertained. It was further pointed out that now the matter has reached such a stage that disciplinary authority is in a position to take a decision one way or other and, therefore, at this stage the Tribunal should not interfere.

5. In this case, the alleged misconduct took place in March, 1992. Though there is some typographical error in showing the dates in some paras of the charge-sheet, but in other paras correct dates are shown. Therefore, merely because wrong dates are mentioned in one or two places, which has also been subsequently corrected, no prejudice is caused to the applicant, since he knew what case he has to meet.

In this case we notice that applicant has given reply to the charge-sheet. This is a minor penalty charge-sheet where there is no provision for a regular enquiry and the Disciplinary Authority can pass appropriate orders on the basis of the charge-sheet and the reply given by the officer. The charge-sheet is dated 14.10.1997 and the applicant has come to this Tribunal two years later to challenge the charge-sheet on the ground of delay. If applicant wanted to get the charge-sheet quashed on the ground of delay, he should have rushed to the Tribunal as soon as he received the charge-sheet. In these two years of delay we find that sufficient progress has taken place and the Disciplinary Authority has completed the exercise of consulting the U.P.S.C., the Vigilance Commission, etc. and now the stage is ready for the Disciplinary Authority to pass final order one way or the other. Therefore, in a matter like this,

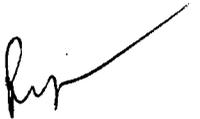


when the matter is ready for the final order to be passed by the Disciplinary Authority, we should not interfere. If the order is adverse to the applicant and the order is bad in law, the applicant will have appropriate remedy to challenge the final order of the Disciplinary Authority according to law. This is much more so when the applicant has come to the Tribunal two years after the issuance of the charge-sheet. Therefore, we feel that in the facts and circumstances of the case, this is not a case calling for interference at this stage and, therefore, on this ground alone the application should be rejected at the admission stage.

6. Some arguments were addressed at the bar regarding the merits of the case. Since we find that this is not a fit case calling for interference at this stage, we feel we should not express our view one way or the other, lest it may prejudice either the administration or the applicant. Therefore, all contentions of the applicant on merits are left open. He is free to urge them at the appropriate stage if and when any adverse order is passed by the Disciplinary Authority. If he succeeds before the Disciplinary Authority in getting the charge-sheet dropped or he is exonerated, then nothing more to be done by the applicant. Hence, advisedly we are not expressing our view on the merits of the case.

Even otherwise, in a matter like this, we should not interfere with the charge-sheet even on merits. The Tribunal's jurisdiction is not an appellate jurisdiction. We are exercising judicial review, which is meant to test the legality of the

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decision making process and not the legality of the actual decision. Therefore, we feel that we should not go into the merits of the case at this stage, which is still premature and final order is not yet passed by the Disciplinary Authority.

7. Now remains only the question of prayer about quashing the charge-sheet on the ground of undue delay in issuing the charge-sheet from the date of misconduct.

Applicant's counsel contended that the alleged misconduct is of March 1992 but the charge-sheet is issued five and a half years later in October, 1997. Applicant's counsel relied on three decisions on this point.

The first decision is found in page 223 of Swamy's Digest of 1997/1. In that case there was twelve years delay in issuing the charge-sheet and on that ground the charge-sheet was quashed. But in the present case, the delay is about five years and odd.

The second case is found at page 153 of Swamy's Digest of 1997/2, where there was a delay of one year in filing the charge-sheet and the High Court quashed the charge-sheet on the ground of delay. But on appeal, the Supreme Court reversed the order of the High Court and observed that it was not a case calling for quashing of charge-sheet where the delay was only of one year.

In our view, both the above decisions are not applicable to the facts of the present case.



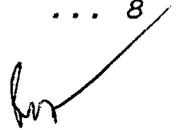
Then the next decision relied on is the case of State of Andhra Pradesh V/s. N. Radhakishan reported in 1998 SCC (L&S) 1044. In fact, in that case the Supreme Court noticed that there was delay in completion of the enquiry after the issuance of charge-sheet for number of years and therefore, confirmed the order of quashing the disciplinary proceedings by the Tribunal. In para 19 of the reported judgement, the Supreme Court has clearly observed that there is no hard and fast rule as to for how many years delay a charge-sheet can be quashed and for how many years delay a charge-sheet can be upheld. It all depends upon the facts and circumstances of the case. Therefore, the Supreme Court has clearly ruled that no rule can be laid down as to when and in what circumstances a charge-sheet can be quashed but it has to be decided purely on the basis of peculiar facts and circumstances of the case.

Now therefore we have to consider the available pleadings and the original file produced by the respondents counsel and then decide whether this is a case where charge-sheet should be quashed only on the ground of delay.

8. We have perused the original files produced by the Learned Counsel for the respondents. It is gathered from the files that the incident took place in March, 1992. Then the C.B.I. took over investigation. After some time, the C.B.I. made a report that it is a case for issuing a major penalty charge-sheet against the applicant for the alleged misconduct. Then the department had to decide as to what should be done. There was correspondence between the department and the Central Vigilance Commission. After some correspondence and exchange of

letters, it was decided that minor penalty charge-sheet should be issued against the applicant. Then there is some administrative delay in issuing the charge-sheet since the original documents and papers were with the C.B.I. There was correspondence with the C.B.I. for getting the original papers. Then there was some correspondence about some mistake in the draft charge sheet. Since the applicant is a Group 'A' officer, Presidential Order had to be passed for issuing the charge-sheet. The papers had been submitted through proper channel to the Hon'ble Minister of Finance. We have seen that the Hon'ble Minister of Finance has passed an order for issuing minor penalty charge-sheet. Therefore, we find that there are some materials on record to show that there was no wanton or deliberate delay but the delay was due to administrative reasons. Hence, it is not a fit case to quash the charge-sheet only on the ground of delay. We have already pointed out that applicant did not rush to the Tribunal for quashing the charge-sheet immediately after he received the charge-sheet in 1997. He approached the Tribunal two years later. In the meanwhile, he has already submitted his reply to the charge-sheet. We have perused the papers and find that a stage has reached where the Disciplinary Authority can pass a final order in the matter. Therefore, this is not a case where we can now interfere to quash the charge-sheet on the ground of delay.

9. One of the principle to be borne in mind is that purity in administration requires that in matters like this, Courts and Tribunals should not interfere at the threshold for quashing the charge-sheet. The question is as to what harm is caused to the applicant due to delay in issuing the charge-sheet? The applicant knows the fact and has given a detailed representation



to the charge-sheet. It is true that the charge-sheet may come in the way of the applicant's promotion, as contended before us. It was also submitted at the bar that pendency of the charge-sheet comes in the way of the applicant for being given sensitive posting or posting to important posts or being on deputation to important posts. This grievance of the applicant can be taken care of by giving suitable direction. Normally, when a charge-sheet is pending, an officer is not entitled to promotion but his case will have to be kept in a sealed cover till the enquiry is complete. Since in this case there is a delay of five and a half years in issuing the charge-sheet and though we are not inclined to quash the charge-sheet on the ground of delay, we feel that in all fairness to the applicant, the sealed cover procedure should not be adopted in case his turn for promotion has come. In case the applicant's turn has come and he is found fit for promotion by the D.P.C., then he should be given adhoc promotion, notwithstanding the pendency of charge-sheet, and that promotion can be later modified subject to the result of the departmental enquiry. Similarly, pendency of the charge-sheet should not come in the way of the applicant being considered for postings to any post.

We can also take care of the applicant's grievance about delay in the disposal of the case by providing a time limit for final order to be passed by the Disciplinary Authority.

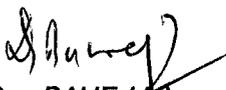


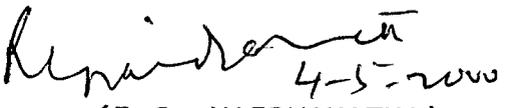
10. In the result, the application is disposed of at the admission stage subject to following directions :

- (i) While rejecting the prayer of the applicant for quashing the charge-sheet, it is hereby ordered that Disciplinary Authority should pass a final order on the basis of the charge-sheet dated 14.10.1997 within a period of two months from the date of receipt of a copy of this order.
- (ii) If no order is passed within two months as directed, due to administrative reasons or unavoidable circumstances, then no final order shall be passed by the competent authority after the expiry of two months without seeking the leave of this Tribunal. In such a case, a proper application should be filed on behalf of the Disciplinary Authority to this Tribunal seeking extension of time for passing the final order and by giving appropriate reasons. That application will be considered and will be disposed of by the Tribunal after hearing both sides.
- (iii) Pendency of the Charge-sheet dated 14.10.1997 should not come in the way of the applicant being considered for promotion, if his turn has come and if he is otherwise fit and suitable for being promoted and in which case he should be given adhoc promotion during the pendency of the disciplinary enquiry, which can be reviewed subject to the result of the departmental enquiry.



- (iv) Pendency of the charge-sheet should not come in the way of the applicant being considered for sensitive post, important post or deputation post.
- (v) Needless to say that if any adverse order is passed by the Disciplinary Authority on the basis of the said charge-sheet, the applicant can challenge the same according to law.
- (vi) All contentions on merits are left open.
- (vii) In the circumstances of the case, there will be no order as to costs.


(D.S. BAWEJA)
MEMBER (A).


4-5-2000
(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CP No.95/2002 in
OA No.680/1999

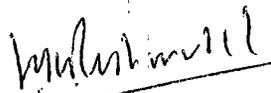
1st November, 04

None for the applicant. Respondents by Shri V.G.Rege.

2. Shri Rege states on behalf of respondents that he receivedn communication from the Department of Revenue that the promotion of the applicant has been kept in abeyance as the officer has been convicted by Mumbai High Court on a Criminal appeal filed by State of Maharashtra. Shri Rege requests that in the circumstances, the CP be filed.

3. On the last date of hearing, Shri G.K.Masand who was earlier the counsel for the applicant has withdrawn as he has no instructions from the applicant. Today also nobody is present on behalf of the applicant. The case is being considered under the provisions of Rule-15 of CAT Procedure Rules, 1987.

4. In view of the categorical statement made by the counsel for alleged contemnors that the applicant cannot be promoted, as the applicant has been convicted in a criminal case, we feel that no case is made out for contempt. The notices issued to alleged contemnors are discharged and the Contempt Petition is dropped.


(S.G. DESHMUKH)
MEMBER(J)


(ANAND KUMAR BHATT)
MEMBER(A)

abp

*Order Issued
on 29/11/04*

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