

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 323/99

Date of Decision: 21/02/2000

Manoj Kumar Sarangi

Applicant.

Shri G.K.Masand

Advocate for
Applicant.

Versus

Union of India and Ors.

Respondent(s)

Shri V.D.Vadhavkar for
Shri M.I.Sethna

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. B.N.Bahadur, Member (A),

Hon'ble Shri. S.L.Jain, Member (J).

- (1) To be referred to the Reporter or not? Yes
- (2) Whether it needs to be circulated to other Benches of the Tribunal? ~~Yes~~ Yes.

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(B.N.BAHADUR)
MEMBER(A)

21.02.2000

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.323/99.

Dated: 21st February 2000
(21-02-2000)

Coram: Hon'ble Shri B.N.Bahadur, Member (A),

Hon'ble Shri S.L.Jain, Member (J).

Manoj Kumar Sarangi,

505, Crown Jewel,

Yogi Hills,

Mulund (West),

Mumbai - 400 080.

...Applicant.

Vs.

1. Chief Commissioner of Customs,

New Custom House,

Ballard Estate, Bombay.

2. Commissioner of Customs (P),

New Customs House,

Ballard Estate, Bombay.

3. Commissioner of Customs (General)

New Customs House,

Ballard Estate, Bombay.

4. Union of India through

the Secretary,

Ministry of Finance,

Parliament Street,

New Delhi.

...Respondents.

: O R D E R :

(Per Shri B.N.Bahadur, Member (A)).

1. This is an application made by Shri Manoj

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Kumar Sarangi seeking the relief, in substance, for a direction to reinstate the applicant by quashing the impugned order dt. 21.5.98, through which order the applicant has been placed under suspension, pending contemplated disciplinary proceedings against him. In the amendments to the OA filed by the applicant, the applicant has sought certain ancillary additional reliefs, praying for calling of certain files and records, and for a direction to stop the disciplinary proceedings, on the ground of double jeopardy.

2. The facts of the case, as put forth by the applicant are, in brief, that the applicant has been put under suspension while he was posted as an Appraiser at AAI - W/H. A memo of adjudication had earlier been served on the applicant, which the applicant alleges, was based on tutored witnesses and untrustworthy opinion of hand-writing expert. The applicant contends that the Investigating Officers were not able to investigate the case properly and that he has been falsely implicated and made a scapegoat. Applicant alleges that no preliminary enquiry has been made, as required under the CCS (CCA) Rules, and as contended in the letter of Commissioner dt. 11.2.1999.

3. The applicant further alleges that there has been no independent application of mind by the disciplinary authority and that no reasons have been intimated for his being placed under suspension vide impugned order

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or for this order is being continued indefinitely. Considering the fact that he had already been transferred to a non-sensitive post on 13.5.1998, the applicant contends, this order of suspension is unnecessary. Applicant has not received any reasons for exercising his statutory right of appeal against the issue of suspension order. He had written to Chief Commissioner of Customs on 7.4.1998 and had even moved the Sessions Court for anticipatory bail.

4. An important averment made by the applicant is that even after all this time having elapsed, the respondent Department is not in a position to make out a charge against him. He states that he has come to know that the case is being investigated by CBI, and multiple investigations are resulting in great delay and harrassment. He alleges that his house has been searched repeatedly by various agencies and nothing incriminating has been found. Certain additional grounds and case law have been cited by amendments made, and it is in this background that the applicant comes up before this Tribunal seeking the relief as mentioned.

5. The respondents in this case have filed a written statement of reply, and all allegations have been denied. It is contended that the application is not maintainable since it discloses no cause of action which can be entertained by the Tribunal and therefore, deserves to

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be dismissed.

6. The reply statement goes on to state that it is clear that the smuggled goods that were seized were cleared on the basis of assessment and examination report, which was written by the applicant, who was posted at AAI - Warehouse of ACC, Sahar. This report is given by the applicant, in his own hand-writing, and was confirmed by another co-accused Shri Anil Mehta, and by Shri Nilesh Aiya. It is further averred that the examination report bearing signature of applicant on the bills of entry were forwarded to the forensic experts, who had found the said signature and hand writing to be that of the applicant only. It is also averred that the rubber stamp on the question documents and the one seized from the residence of the applicant were one and the same. This shows the applicant's contention to be not correct.

7. The respondents state further that, on the basis of the statement given by witnesses and co-accused, the applicant was given show cause notices in three cases where his involvement was clearly established. The statement describes the modus-operandi used by one Shri Bipin Ballani (Importer) to import dutiable goods and get them cleared by mis-declaring them in connivance with other people, including the applicant. It is stated that the cases have been adjudicated and the applicant has been penalised under section 112A of Customs Act, 1962 and a penalties imposed on him. Allegations of pressure on the Government Examiner of Questioned Documents has

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been denied, and it is stated that the applicant is guilty of making false averments on oath. The respondents contend that it was on the preliminary investigation report that respondents were satisfied about the prima facie involvement of the applicant, who has, therefore, been placed under suspension. Disciplinary enquiry proceedings are deemed to have already started with suspension as the first step. The revocation of suspension have been considered from time to time by the disciplinary authority and decision communicated to the applicant.

8. It is importantly stated by respondents, in the statement, that the matter has been referred to the CBI to enquire "in deep into the alleged corruption angle", and that investigation reports are awaited. It is for this reason that COFEPOSA proposals against the applicant were not initiated. Considering this, and the penalising of the applicant in three adjudication cases, the suspension of the applicant is justifiable, according to the respondents.

9. We have heard the learned counsels on both sides in detail. Shri G.K.Masand, learned counsel for the applicant argued the case at length before us, first taking us over the facts of the case, and the relevant portions of the CCS (CCA) Rules. He stressed the point that 1 (one) year and eight months have elapsed, and no Charge Sheet has still been issued in the case and that this, in fact,

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amounts to a kind of punishment to the applicant. He made the point that there is an outer limit of three months prescribed for enquiries and refer to the review clause in Chapter 2 of the aforesaid rules to make the point that suspension should be for a minimum period. It was argued that a number of representations were made by the applicant, leading to the reply by the department dt. 11.2.1999, where it was stated that the applicant's representation for revocation had been considered and it was decided that the suspension could not be revoked. Shri Masand made the point in reply to a Court question that in view of a number of representations and the aforesaid reply, no formal appeal had been made as such, and since an Appeal is also a remedy in applicant's favour, this technical point should not be fatal to the OA.

10. Arguing the case further learned counsel for the applicant stated that, in the entire reply statement of the respondents, there was no whisper regarding the starting of the departmental enquiry. The reference of the case to CBI cannot be a sufficient explanation, since the suspension order has been passed with reference to the disciplinary enquiry contemplated. The adjudication matters are over and decided, he argued, and made the point that continuation of suspension was now an arbitrary exercise of power. The statement regarding review of suspension of order is a bald statement, and the fact that one year and eight months had elapsed was clear

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indication that respondents had not been able to find any evidence against the applicant. The counsel for the applicant also referred to the Rejoinder which, he averred, dealt with points raised in paras 19 and 21 of the reply statement.

11. The learned counsel for Applicant relied upon a large number of judgments in support of his arguments. These judgments, some of which are quoted in the OA itself, are listed as below:

a) M.K.Sultan Vs. State of W.B. (Cal)
(1987) 3 ATC 109).

b) R.Madhavan Vs. Dir. Gen. of Telecommunication
(1987) 5 ATC 537 (Mad).

c) P.Satya Harnath Vs. Collector of Customs
(1988) 7 ATC 548 (Mad).

d) Sudhir V.Kolgaonkar Vs. Union of India
(1996) 33 ATC 431 (Bom).

e) Arumugam Vs. Union of India
(1994 (7) SLR 77).

f) Mohinder Singh Vs. Union of India
Judgment in OA 676/92 (CAT Mumbai Bench)
and SLP in same case.

g) Tapas Neogi (OA 1361/94 of CAT Mumbai)

The counsel for the applicant took us over the judgments in detail to make his points, and these have been considered by us carefully.

12. An important point made by counsel for applicant related to the case of Mohinder Singh Vs. Union of India.

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He made the point that this case which was decided by this Tribunal in favour of the applicant, went up to the Supreme Court and that the order passed by the Hon'ble Apex Court dt. 10.5.1993 (copy supplied) was clearly relevant to the present case and helpful in the contentions of the applicant.

13. Arguing the case on behalf of the respondents, their learned counsel Shri

V.D.Vadhavkar, took us over the reply statement in great detail, reiterating several points which have been made therein (these are not being repeated). Shri Vadhavkar focussed his attention on para 4 of reply statement to explain the point as to how the applicant was involved in the said case and similarly referred to para 8 to state that the applicant was found guilty in the adjudication case. Responding to the argument made by the learned counsel for the applicant that transfer was the proper remedy rather than suspension, he stated that it was necessary in public interest that the applicant should be totally off duty.

14. Shri Vadhavkar referred to the judgment in the case of Kolgaonkar Vs. Union of India cited by applicant and contended that there was no whisper ^{there} regarding nature of irregularities which was the basic reason why the order was struck down in that case. Hence, that Judgment, he argued, would not be applicable to the present case.

15. Shri Vadhavkar argued in detail as to why time was being taken in the case, and that CBI was conducting

It must therefore, be made clear that we are not going into the merits of the case insofar as they relate to the charges brought out. These would appear serious enough on the basis of facts on record and we are not required in any case to go into the merits of these charges or otherwise. As regards delay, it is seen that the suspension was ordered on 21.5.1998 and it is indeed over one year and eight months now and admittedly no charge sheet has yet been issued to the applicant. The learned counsel for applicant did try to state that there is a time limit of three months, but while there is a clear rule on time limit in All India Services there is no direct cut rule for a time limit for finalising enquiries within a specified time limit for Central Services. Undoubtedly, the reference to the need for the instructions for reviews relating to suspension, and instructions regarding follow up actions in cases of suspension as contained in the CCS (CCA) Rules are relevant. These were cited by Counsel for applicant to highlight the fact that the delay was inordinately long. Counsel for applicant also referred to Judgment in the case of Satya Harnath Vs. Collector of Customs & Anr.(1988 (7) ATC 548) to state that the three months limit had been accepted in a judicial assessment. Be that as it may, it is clear that government instructions envisage that suspension should not be resorted to

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for long periods and specifically provide for review at stipulated periods of time. On the other hand, the delay here is now of the order of a period as long as an year and eight months and is long by any reasonable standard.

19. The defence of the respondents that the charges are serious and need time to be investigated are prima facie acceptable, but would need to be looked at with reference to the case laws cited to make an assessment as to what is too long a period. Further, the second defence taken is that the matter has been referred to the Central Bureau of Investigation (CBI), which is investigating the case. It is not stated as to how long this will take.

20. In the case of Mohinder Singh Vs. Union of India cited by applicant, it is seen that the applicant in that case was also charged with a serious mis-conduct. This Tribunal had revoked the order and had cited the delay as one of the main reasons. In para 6 of the Judgment it had been held that :

"The distance between the contemplation and pendency is not expected to be far. A proximate or rational relationship of time gap between contemplation and pendency is envisaged. To put it differently, the proximity of time between the two acts must be remote".

The Tribunal had also taken judicial notice of the fact of a time limit existing in the case of All India Services Office Rules.

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This case had been taken up to the Hon'ble Supreme Court by Union of India and had been disposed of on 10.5.1993 by the Apex Court which had decided that SLP by giving a time limit of three months for investigation to be completed and charge sheet placed; failing that it had directed that the Tribunal's order will operate and the suspension would stand revoked. The learned counsel for applicant sought to draw great support from the judgment in this case Mohinder Singh as also the orders in SLP. It may be mentioned here that Shri Mohinder Singh had been suspended on 10.3.1992 and the order of the Tribunal is dated 21.9.1992. By that standard, the delay entailed in the present case before us is very much longer and could certainly be called an inordinate delay.

21. Now, in the case of Kolgaonkar cited above, a judicial review of delay has also been taken and the delay was for more than six months. Similarly, in the case of Satya Harnath cited, it is indeed stated that transfer could have been resorted to rather than suspension. However, the point there in focus was the possibility of tampering of evidence, which is not a stand taken by the respondents in this case for continuation of the suspension.

22. We now come to the point relating to the case being referred to the CBI. It is not clear as to on what date such a reference was made, but the learned counsel for applicant tried to draw support

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from the case of Arumugam Vs. Union of India referred to by him. In that case, decided by CAT Madras Bench, in 1993, it had been observed that the suspension of the applicant therein was contemplated with reference to the disciplinary proceedings and had nothing to do with the investigation by CBI. They had held that a reference to CBI could not justify the continued suspension of the applicant which was initially ordered because of disciplinary proceedings. These points have been discussed in paras 10 and 11, inter alia, of Arumugam's case (1994 (7) SIR 77)..

23. Finally, in the case of Tapas Neogy cited the delay was of the order of the same time period as in this case. The question of continuing the suspension in respect of a criminal offence was also discussed therein and it was held that :

"The continuation of the suspension ordered for initiating a disciplinary proceedings will be available only if some other disciplinary proceedings are initiated, but not if a criminal prosecution is contemplated".

Para 5 of the Judgment is relevant in this regard.

24. The learned counsel for the respondents, on the other hand, had relied on a Judgment of the Hon'ble Apex Court in the case of U.P. Rajya Krishi Utpadan Mandi Parishad and Ors. (1993 (25) ATC 764). Counsel for the respondents made the point that in view of this Judgment the Tribunal should not resort

to any interference on the grounds of delay, and that the Tribunal was not a Court of Appeal. He also buttressed this argument by saying that no regular appeal had been filed by the applicant. Now, we have gone through this judgment carefully and find that no blanket law has been settled to the effect that Tribunals could not at all interfere in orders of suspension on grounds of delay. On the contrary, it has been observed as under :

"The court has to examine each case on its own facts and decide whether the delay in serving the charge-sheet and completing the enquiry is justified or not. However, in the present case, the High Court has not quashed the order of suspension on the ground of delay in framing the charges. As stated earlier, it has set aside the order of suspension on the ground that the authority had no power to pass the second order of suspension in the same case."

It is clear from this that not only have facts and circumstances been the consideration in that case, but it is also held that each case has to be examined on its own facts to decide whether the delay in serving the charge sheet and completing the enquiry is justified or not.

25. We must mention here that it is admitted that representations were made by applicant and a

decision taken and communicated by the respondents on the point of revocation of suspension. It would, therefore, not be in the interest of substantial justice to merely ask the applicant to make another appeal, at this stage of the case.

26. We have tried to consider the facts and circumstances of this case both in regard to the inordinate delay, the seriousness of the mis-conduct made out as also the fact that the CBI is now investigating the case. We have related these to the case laws cited and discussed above. While all enquiries and the investigations referred to can continue, there is force in the prayer made by the applicant that continuation of suspension over this period is not warranted, *in view* Bnb of delay of over one year and eight months in the issuing of Charge Sheet. We draw this conclusion in the background of the case laws cited and discussed above, specially in the case of Mohinder Singh and Tapas Neogy, and other reasons discussed Bnb above in detail.

27. We find that in the amendments made by the applicant he has also added some prayers for additional relief. These relate to requests for calling records relating to preliminary investigation, record of review of suspension, record regarding reference to CBI and a prayer for stopping disciplinary proceedings. We must say that these cannot be considered in the case where the main prayer relates only to revoking suspension. Nor were they brought up in arguments. They cannot be considered on the pleadings made and pleadings relate to the issue of suspension. We were, however, shown the file regarding review of suspension by the Department as required under Govt. instructions. We have perused the relevant portion and find that Reviews are made from time to time and perhaps a latest review was still due as per this record. No case is established for the additional reliefs sought through amendments. Bnb

28. In the conspectus of the total position of the case, we make the following orders on this original application :

- (a) The respondents are given time up to 30th March, 2000 for service of the charge sheet in respect of the contemplated departmental proceedings. If no charge sheet is served by this time, the order of suspension will stand revoked w.e.f. 31.3.2000, automatically, and the applicant will resume duty on the post indicated by the Respondents.
- (b) Liberty is provided to the respondents to consider the CBI Report independently, as per rules. If a separate order of suspension is judged to be necessary on ^{that} basis, they could resort to such action, according to rules.
- (c) The other reliefs prayed for through amendment are not provided and are hereby rejected.
- (d) There will be no order as to costs.

S.L. Jain
(S.L. JAIN)
MEMBER(J)

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B.N. Bahadur
(B. N. BAHADUR)
MEMBER(A)

21-02-2000