

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 542/2001

Date of Decision : 27.2.2002

B.P.Singh _____ Applicant

Shri G.S.Walia _____ Advocate for the
Applicant.

VERSUS

Union of India & Ors. _____ Respondents

Shri M.I.Sethna _____ Advocate for the
Respondents

CORAM :

The Hon'ble Shri Justice Ashok C.Agarwal, Chairman

The Hon'ble Smt.Shanta Shastry, Member (A)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library ✓

Shanta ✓

(SMT.SHANTA SHAstry)
MEMBER (A)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.542/2001

Wednesday this the 27th day of February, 2002.

CORAM : Hon'ble Shri Justice Ashok C. Agarwal, Chairman

Hon'ble Smt. Shanta Shastry, Member (A)

B.P.Singh,
Joint Commissioner,
Central Excise & Customs,
Central Excise Building,
4th Floor, Bandra-Kurla Complex,
Mumbai.

...Applicant

By Advocate Shri G.S.Walia

vs.

1. Union of India through
Secretary (Revenue),
Ministry of Finance,
Dept. of Revenue,
North Block, New Delhi.

2. Commission of Central Excise,
Mumbai - V, Udpad Sulk Bhavan,
Bandra Kurla Complex,
Mumbai.

...Respondents

By Advocate Shri M.I.Sethna

O R D E R (ORAL)

{Per : Smt. Shanta Shastry, Member (A)}

The disciplinary proceedings for major penalties have been initiated against the applicant vide Memo dated 14.5.1999. The following articles of charges have been framed against the applicant.

2. It is the case of the applicant that almost three years are getting completed and yet the enquiry in the matter has not proceeded beyond the issue of the chargesheet. The applicant submits that he has repeatedly asked for the documents relied upon as given in the Annexure-III of the chargesheet.

3. The learned counsel for the applicant submits that the very foundation of the charge has been set aside in an appeal decided by the C.E.G.A.T. and thus the applicant's action has been upheld. Since the very sting has been taken out of the charge, the chargesheet needs to be quashed and set aside at this stage itself. The applicant further submits that after waiting for one year after the issue of chargesheet, he has approached the Tribunal as there was no action on the part of the respondents to proceed with the enquiry expeditiously. The learned counsel has also taken us through the judgement in the case of Zunjarrao Bhikaji Nagarkar vs. Union of India & Ors. 2000 (1) A.I. SLJ 291, in particular he has read paras 38 to 41 in support of his contention that action taken in quasi judicial capacity cannot be made to form the basis for disciplinary action as, such action is subject to judicial review in an appeal. Also it was found in the case of Nagarkar (supra) that it cannot be a ground for misconduct, if, however, it is deliberate and actuated by malafides then it is the different matter. The applicant further submits that there was a preliminary hearing on 17.2.2000. He received notice about the same on 15.2.2000. He

asked for the documents relied upon. He has shown his letters written from 16.3.2000 onwards upto 22.12.2000 wherein he has been repeatedly asking for giving the zerox copies of the documents. In the meantime, according to the applicant, his juniors have been promoted vide order dated 21.9.2000. The learned counsel has also produced another judgement in the case of State of Andhra Pradesh vs. N.Radhakishan - 1998 (1) ATJ 559. It was held in para 18 of this judgement that if an inquiry is proceeded to a large extent, then it should be allowed to be completed. At the same time, the person could be considered for promotion without reference to the charges if found fit otherwise for promotion. Finally, in the aforesaid case the chargesheet was quashed and set aside on the ground that the enquiry had been started, and no acceptable explanation was given for the delay in proceeding with the enquiry. The applicant is therefore seeking to set aside the chargesheet.

4. The learned counsel for the respondents, however, submits that the enquiry is not only against the applicant but 19 others also who are involved. Therefore, the applicant's case cannot be singled out. The documents are common. Further, the learned counsel for the respondents says that the main thrust of the applicant is that his actions were in quasi judicial capacity and therefore they cannot form the basis of disciplinary proceedings as misconduct. The learned counsel further submits that even if the applicant's action has been upheld by the CEGAT still the other parts of the charges are sustainable as those are the

the actions which have been taken in administrative capacity, e.g. Article-II wherein it has been alleged that the applicant misused his position and exerted pressure on the appraising officers. He also did not follow the proper procedure. These are not actions of quasi judicial nature. Therefore, the chargesheet is sustainable and the respondents are justified in continuing with the enquiry.

5. In regard to supply of the documents, the learned counsel submits that there has been no resistance from the respondents' side to supply the documents. In fact, zerox copies of most of the documents have already been supplied to the applicant. There are, however, some bulky documents for which the respondents have told the applicant to inspect them rather than insisting on getting the copies. The learned counsel for the respondents also produced a letter from the Central Vigilance Commission dated 23.8.1999 wherein it has been advised that if the documents are bulky and the copies could not be given to charged officers, they may be given opportunity to inspect these documents in about 15 days' time. Accordingly, the respondents are willing to provide the inspection of these documents. It is only because of this that the enquiry is stuck up. The learned counsel also points out that in two other cases connected with this case, the enquiry has already been finalised and concerned delinquent officers had inspected the documents and cooperated. Similarly, if the applicant also had cooperated, by now the enquiry could have progressed. The learned counsel for the applicant, however,

refutes this and submits that he has not been given the documents and he has been repeatedly reminding the officers about this. He also submits that he is prepared to cooperate and he is also prepared to bear the cost of the copies of the relevant documents relied upon even though they are bulky.

6. We have heard the learned counsel for the applicant as well as the respondents. We find that there has been a stalemate created in proceeding with the enquiry. It is not that the respondents are deliberately delaying the enquiry. We do not therefore consider it necessary to quash and set aside the charge memo dated 14.9.1999. We note that the entire enquiry is held up only because of the non-furnishing of the copies of the documents relied upon and only letters have been exchanged. In our considered view, ends of justice would be met if the respondents are directed to allow the inspection of the documents to the applicant or even supply the copies of the documents at the cost of the applicant. We order accordingly. Both the counsel agree to have a definite date fixed for such inspection of documents or for taking copies of the documents. Accordingly, it is directed that the respondents shall arrange for the inspection of the documents and the applicant shall present himself for receiving the same in the Office of the Chief Commissioner of Central Excise, Mumbai on 14.3.2002 to 15.3.2002 at 11.00 a.m. and if the applicant wants copies, he may be allowed to take the copies at his own cost. The enquiry shall proceed further expeditiously.

In case the enquiry is not completed within a period of six months from the date of receipt of a copy of this order, the applicant's case for consideration for promotion to the post of Additional Commissioner which is kept in sealed cover shall be opened and shall be acted upon without reference to the pending enquiry, subject to the outcome of the enquiry. OA. is disposed of accordingly. No costs.

Shanti
(SMT. SHANTA SHAstry)
MEMBER (A)

Agarwal
(ASHOK C. AGARWAL)
CHAIRMAN

mrj.

Order/Judgement despatched
to Appellant/Respondent (s)

11/27/2192
C. Judgement despatched
to Respondent (s)
19131

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

C.P. 86/2002 and M.P. 865/2003 in
ORIGINAL APPLICATION NO: 542/2001

TRIBUNAL'S ORDER

DATED: 10.12.2003

Applicant by Shri R.G. Walia. Respondents by
Shri V.S. Masurkar.

2. Heard counsel for the parties.

3. This C.P. is against the non-compliance of the order passed by the Tribunal in OA 542/2001 on 27.2.2002.

The Order passed was that the enquiry against the applicant be completed within a period of six months from the date of receipt of a copy of Tribunal's order. In case the respondents are not able to do so, the recommendation of the DPC with regard to the applicant which is at present in sealed cover shall be opened and shall be acted upon. After this order from time to time extension have been sought by the respondents for compliance of the order of the Tribunal. Last such extension was given by order dated 5.9.2003 in which the time was given upto 30.11.2003. The respondents have filed M.P.865/2003 for further extension of time for four months till 31.3.2004.

4. In the oral submission Shri Walia has pointed out that so many extensions have been granted to the respondents. He read out the previous extension given.

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The anxiety of the Tribunal is that the enquiry be completed expeditiously. He has stated that the whole purpose of getting the relief from the Tribunal has been defeated by grant of extension of time repeatedly.

5. Shri Masurkar has explained the detailed developments in the case. He has pointed out that the department has completed the enquiry and had sent the case to the UPSC on 17.9.2003. This was returned by UPSC with some queries. On 9.10.2003 the queries have been met by the Department of Revenue, Ministry of Finance in the case. Shri Masurkar has stated that so far as the order of the Tribunal is concerned it has been complied with by completing the enquiry and no further action is required except that after the opinion of the UPSC, intimate the final order of the disciplinary proceedings to the applicant. He has ^{argued} agreed to distinguish between the completion of enquiry which was specifically ordered by the Tribunal and the completion of the disciplinary proceedings which is a much wider term which has not been used in the Tribunal's order.

6. In our opinion, if an order of the Tribunal has been substantially complied with, the Contempt Petition does not lie. We feel that in the present circumstances the respondents have been able to show to our satisfaction that the order of the Tribunal has been

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complied with substantially, there is no willful disobedience, and therefore there is no case made out for contempt proceedings. Therefore the notice on C.P. dated 25.4.2003 is discharged.

7. As far as the M.P. 865/2003 for extension of time is concerned, now the enquiry proceedings have been completed and the case is ripe for final orders in the disciplinary proceedings. Two months' time is given from today to comply with the order of the Tribunal. Further it is reiterated in addition to the anxiety of the Court on the previous dates, it is the responsibility of the respondent to complete the disciplinary action as soon as possible and it is assumed that in case ~~or~~ such action with regard to the disciplinary proceedings are not completed during the present 2 months extended period, the applicant will not be further deprived of the benefit he had asked for and was given conditional relief by the Tribunal. M.P. 865/2003 is disposed of accordingly.

Husain

(Muzaffar Husain)
Member(J)

Bhatt

(Anand Kumar Bhatt)
Member(A)

NS

for and
1/1/2003