

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 275/95

Date of Decision: 5-4-99

R.L.Tyagi

.. Applicant

Shri M.S.Ramamurthy

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

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

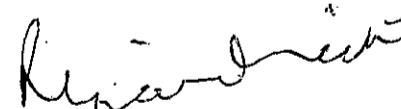
.. Advocate for
Respondent(s)

CORAM:

The Hon'ble Shri Justice A.G.Vaidyanatha, Vice-Chairman,
The Hon'ble Shri D.S.Baweja, Member(A).

(1) to be referred to the Reporter or not ?

(2) whether it needs to be circulated to
other Benches of the Tribunal ?


(R.G.VAIDYANATHA)

VICE - CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.275/95.

Monday, THIS THE 5th DAY OF APRIL 1999.

Coram : Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.
Hon'ble Shri D.S.Bawej, Member(A).

R.L.Tyagi,
146, Type III,
4th floor, CGS Colony,
R.A.Kidwai Marg,
Wadala(West),
Bombay - 400 031.
(By Advocate Shri M.S.Ramamurthy) ...Applicant.

V/s.

1. Union of India.
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 001.
2. The Director.
Enforcement Directorate,
Lok Nayak Bhavan,
6th floor, Khan Market,
New Delhi - 110 006.
3. The Deputy Director - I.
Enforcement Directorate,
2nd floor, Mittal Chambers,
Nariman Point,
Bombay - 400 021.
4. The Deputy Director-II.
Enforcement Directorate,
Janmabhoomi Chambers,
Walchand Hirachand Marg,
Bombay - 400 033.
(By Advocate Shri V.D.Vadhavkar on
behalf of Shri M.I.Sethna). ...Respondents.

: O R D E R :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. In 1986, the applicant was working as Assistant Enforcement Officer in

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for

the Enforcement Directorate at Bombay. It appears, on 3.8.1996 the applicant and Enforcement Officer Mr.R.D.Gandhi were given some information for keeping a surveillance and apprehending Mr.B.S.Logani and Mr.Raghbir Singh at the Indira Gandhi International Airport, New Delhi. It appears, those two suspects came to be arrested by officers of the Customs Department, certain seizure was done. Subsequently, it came to light that there was negligence and mis-conduct on the part of the applicant and Mr.Gandhi. Therefore, the department issued a minor penalty charge sheet against the applicant in 1990. The applicant submitted a reply to the charge sheet. Thereafter, the department came across some additional material and then conditionally withdrew the minor penalty charge sheet with a view to issue a fresh major penalty charge sheet. Accordingly, a fresh charge major penalty charge sheet dt. 6.7.1993 was issued against the applicant and two other officials.

The applicant, then filed OA 797/93 challenging the issuance of charge sheet on many grounds. A Division Bench of this Tribunal by order dt. 11.2.94 disposed of that application with a direction to the respondents to suspend the departmental enquiry proceedings till the disposal of the criminal case. In view of this stay order the department could not proceed with the departmental enquiry against the applicant. It appears, the two suspects mentioned above, ^{out} ^{that is} and one of the accused in the customs case, filed a private complaint in the Court of Magistrate at New Delhi, making certain allegations against three Customs Officers. In that private complaint, the applicant came to be examined as a witness on behalf of that complainant (Bhupinder Singh, an accused in the customs case). Then the Learned Magistrate issued summons on the private complaint to the three Officers of the Customs Department. It appears the Customs Officers moved the High Court at Delhi and obtained stay of further proceedings in the private complaint filed by Mr.Bhupinder Singh. It appears no progress is done in that case till now.

Now, the applicant has come out with the present application mentioning the facts of the Customs case and the criminal case etc. According to the applicant he has performed his duties properly and there was neither negligence

nor mis-conduct on his part. Number of allegations are made in the application about merits of the case. It is also stated that a preliminary enquiry was done by the Customs Collector and he gave a report exonerating the applicant, but still the department has issued the charge sheet against the applicant. It is stated that the action of the department in issuing the charge sheet is illegal. A fresh charge sheet could not have been issued on the same facts after withdrawing the first charge sheet. There is undue and inordinate delay in issuing the charge sheet. The charge sheet is issued on false and frivolous allegations, to save some Customs Officers. The applicant has given a proper and correct statement before the Magistrate Court at Delhi. The respondents cannot allege that the applicant has made a false statement before the Criminal Court. On these allegations, the applicant has approached this Tribunal with a prayer for quashing the charge sheet dt. 6.7.1993.

3. The respondents in their reply have justified the action taken in issuing the charge sheet against the applicant. They have also mentioned the facts of the case. It is stated that the first charge sheet was withdrawn since some vital documents were traced and on that basis a fresh major penalty charge sheet was issued. The procedure adopted by the respondents is perfectly legal. Since one of the delinquent officer Mr.Gandhi was a Gazetted Officer, the Department had to consult the Central Vigilance Commission and then a charge sheet had to be issued by the President who is the Disciplinary Authority for Gazetted Officers. That is how some delay has occurred in issuing the charge sheet. Many allegations on merits are made which are not necessary for our present purpose. It is also stated that the applicant had filed previous OA for identical relief of quashing the charge sheet, but did not get that relief. He cannot now file fresh OA for the same relief.

4. The learned counsel for the applicant contended that the charge sheet is vitiated because of undue delay in issuing the same. Then it was argued that the charge sheet is mala fide and such a charge sheet cannot be issued when the applicant has been exonerated in the preliminary report. On merits it was pointed out that a false case has been foisted against the applicant.

Then it was submitted that the charge sheet is pre-mature since criminal case is pending. On these grounds it was submitted that the charge sheet may be quashed. Then an alternate submission was made that in case the Tribunal comes to the conclusion that charge sheet cannot be quashed and enquiry should proceed, it was argued, that applicant is due for promotion being seniormost among Assistant Enforcement Officer and his promotion should not be withheld or delayed by adopting 'sealed cover procedure' having regard to the fact that there is delay in issuing the charge sheet and there is long lapse of about 13 years from the date of incident till to day. It was therefore submitted that notwithstanding the pendency of Disciplinary Enquiry, the respondents should consider the case of the applicant for promotion as per rules. Mr. V.D. Vadhavkar on behalf of Mr. M.I. Sethna, counsel for the respondents, contended that no case is made out for quashing the charge sheet. He further argued that the present OA for identical relief is not maintainable and is barred by principles of res judicata in view of the finding in the previous OA 797/93. Then it was also stated that after the issuance of charge sheet, there is no delay on the part of the respondents and enquiry could not be proceeded with due to the stay granted by the Tribunal in the previous OA. It was further submitted that respondents have no objection to proceed with the Disciplinary Enquiry if the stay is vacated. He also opposed for giving any direction regarding promotion contrary to the rules pertaining to 'sealed cover procedure'.

5. In the light of the arguments addressed before us, the points that falls for determination are:

- i) Whether the applicant has made out a case for quashing the charge sheet dt. 6.7.1993?
- ii) Alternately, whether the applicant is entitled to a direction for considering his case for promotion notwithstanding the pendency of the Disciplinary Enquiry?
- iii) What Order?

6. Point No.1 :

Some arguments were addressed on merits of the case, to point out that there was no evidence or material to issue a charge sheet against the applicant. Reliance has also been placed on the preliminary enquiry report

which found that there was no case against the applicant. In our view, at the threshold, we cannot go into the correctness of the charge sheet and merits of the case; it is a matter which has to be enquired into during departmental enquiry. We also do not find any merit in the argument about exoneration of the applicant in the preliminary report. A perusal of the preliminary report shows that the concerned officer relied on ~~his~~ oral statements of the applicant and Mr. Gandhi in the Criminal case and on that basis he held that no case is made out for any departmental enquiry. On the face of it, the reasoning is per se fallacious. If the question of holding a departmental enquiry or issuance of charge sheet against a delinquent government officer is to be decided on the basis of his statement or if issuance of a charge sheet in a criminal case is to be decided on the statement made by the accused, then no charge sheet can be issued either for a departmental enquiry or for a criminal case. Every delinquent official and every accused always denies that he has committed any mis-conduct/offence. That cannot be the basis for issuance of charge sheet at all. A charge sheet should be issued on the basis of the materials collected during the investigation. But the Officer who prepared the preliminary enquiry report stated that he is accepting the statement of the applicant and Mr. Gandhi made on oath before the Criminal Court and on that basis no case is made out. Such a preliminary report cannot be given any weight. Even otherwise, the Disciplinary Authority is not bound by the preliminary report. Notwithstanding the preliminary report, if the Disciplinary Authority finds that there is sufficient material to issue a charge sheet he can still issue a charge sheet.

We are also not impressed by the argument that the charge sheet is vitiated by *mala fides*. There is no such allegation and there is no material to support the allegation of *mala fides*.

7. The other contention that the charge sheet is pre-mature since criminal case is pending also does not appeal to us. It is well settled and there can be no dispute that there can be parallel proceedings in departmental enquiry and criminal case. The private complaint filed by the accused against

the Customs Officer is not at all relevant for deciding the alleged mis-conduct of the applicant except on one point. As could be seen from the articles of charge framed against the applicant and the statement of imputations there are number of allegations pointing out alleged mis-conduct of the applicant. The allegation is that the applicant and Mr. Gandhi were sent after giving information for keeping surveillance and for apprehending Mr. Logani and Raghbir Singh, but they did not do surveillance and did not seize any contraband goods. It is also alleged that applicant and Mr. Gandhi went to Air Port only after the accused persons were apprehended by the Customs Officers. It is also alleged that the applicant did not intercept the passengers baggage which he should have normally done. That applicant has not referred to seeing CDF with the accused in his report. Now he has made a false statement before the criminal court to favour the two smugglers.

Except one statement that the applicant has made a false statement in the criminal court, all other allegations against the applicant are only to show that he has not discharged his duty properly and he did not keep surveillance, did not intercept the baggage and did not apprehend the smugglers. In respect of these allegations there is no question of the charge sheet being pre-mature because of criminal complaint filed by the accused of the criminal case against the Customs Officers.

May be, on the point that the applicant has made a false statement in the criminal case regarding CDF, the departmental enquiry cannot be proceeded with when the criminal case is pending. To that extent, we may hold that the charge sheet cannot be proceeded with. Even otherwise, it is a moot point whether in a departmental enquiry an officer can be proceeded with for allegedly making a false statement in a deposition of a Criminal Court. If a witness gives false evidence, then it is for the criminal court to take action at the time of delivering judgment by ordering prosecution of witness for giving false evidence. It is highly doubtful whether for such a charge, the witness can be proceeded with in a departmental enquiry. Therefore, we feel that without expressing any final view on this point, we can restrain

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the respondents from holding any enquiry against the applicant about the alleged false statement made in the criminal court. After the termination of the criminal case, the department must consider the relevant legal provisions and particularly provisions of the Code of Criminal Procedure and then decide whether action is permissible to be taken against the applicant for allegedly making false statement in criminal court and then issue a fresh charge sheet in that aspect. As far as other allegations against applicant are concerned, the pendency of criminal case is wholly irrelevant and there is no bar for having preliminary enquiry proceedings with the Disciplinary Enquiry against the applicant.

8. Now remains the only question about delay in issuing the charge sheet. The incident took place in 1986, but the alleged mis-conduct on the part of applicant and Mr.Gandhi after receiving a letter from the Customs Department by the end of 1987. Then there was some preliminary enquiry and issue of notices etc. Then in 1990 a minor penalty charge sheet was issued. Subsequently, on discovery of additional material major penalty charge sheet is issued.

It is a settled position that there is no straight jacket formula to say that if a charge sheet is delayed by a particular number of years it should be quashed or otherwise it should go on. It all depends upon the facts and circumstances of each case. We have come across many decided case, where in some cases charge sheets has been quashed on the ground of delay and in some cases charge sheet were allowed to continue inspite of delay. Now, the administration has some explanation about the delay between 1986 and 1990 when minor penalty charge sheet was issued. Then there is some explanation as to why the department changed its mind and issued a major penalty charge sheet. The allegations against the applicant and Mr.Gandhi are very serious. The alleged mis-conduct touches upon their integrity and even imputes motives to them for having done something to favour the smugglers. Having regard to the gravity of the charges alleged against the applicant, this is not a fit case in which the Tribunal can quash the charge sheet on the ground of delay.

One more point we have to notice is that identical ground of delay was taken in the previous OA, but the Tribunal was not persuaded to quash the charge sheet on the ground of delay. The learned counsel for the respondents is therefore right in his submission that now on the same plea which did not find favour with the Division Bench which heard the previous OA, the applicant cannot ask for quashing the charge sheet and it is hit by the principles of res judicata.

9. We have secured and perused the records of OA 797/93. Even in that case, number of allegations ^{Were} made in the OA and specific ground is taken that the charge sheet is bad because it was issued in 1993 for an incident of 1986. Therefore, the applicant wanted the charge sheet should be quashed on that ground. The OA was disposed of by the order dt. 11.2.1994. The Tribunal noticed that it is not desirable to proceed with the departmental proceedings when the criminal case is pending. Then following observation is made at the end of para-1 which reads as follows :

"We, however, do not wish to scuttle any departmental action but only direct that the departmental proceedings shall stand suspended until the case in the Criminal Court is finally decided." (underlining is ours).

Therefore, the Tribunal was not persuaded to quash the charge sheet on the ground of delay. What is more, the Tribunal made it clear that it does not want to interfere with the pending departmental enquiry against the applicant. It only said that enquiry should be stayed till the disposal of the criminal case. It may be, in para 2 there is an observation that other contentions which have been raised by the applicant are kept open. In our view, this observation must be read with the observation extracted above. The Tribunal was not inclined to quash and did not want to scuttle the Enquiry Proceedings, but still the applicant's contentions on merits were left open. By a harmonious construction, we can say that, what the Tribunal meant was that the other objections are left open so that they can be agitated at appropriate forum and at appropriate stage. For example, number of allegations ^{have} been made on merits; those can be agitated before the Disciplinary Authority and

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then before the Appellate Authority and may be if the applicant fails at the departmental level he can approach the Tribunal for judicial review after the final order and then he can re-agitate the same thing. In this connection, we are fortified by our view by a decision of the Supreme Court reported in 1995 SCC L&S 374 (Union of India & Anr. V/s. Ashok Kacker). That was a case where after the issuance of charge sheet it was challenged before the Tribunal. Though the applicant had taken number of grounds, the Tribunal quashed the charge sheet on one of the grounds. The Supreme Court reversed the view of the Tribunal and held that the Tribunal should not have entertained the application at the pre-mature stage and then pass an order quashing the charge sheet. Then, it was further observed that the delinquent official has full opportunity to reply to the charge sheet and raise all points available to him including those which were taken up in the proceedings before the Court. Therefore, the appropriate course ^{for} of the applicant is to raise these contentions which are left open by the Tribunal before the Disciplinary Authority, Appellate Authority etc. When once the Tribunal has clearly stated that it does not want to quash the charge sheet and it did not want to scuttle the departmental enquiry, in the second round of litigation the applicant cannot now ask for quashing the charge sheet on identical grounds. Therefore, the present OA asking for quashing the charge sheet on the ground of delay and other grounds which were earlier taken in OA 797/93 is clearly barred by principles of res judicata.

10. In our view, the Supreme Court has in many recent judgments cautioned Courts and Tribunals in entertaining such applications at the threshold and then interfere with the Disciplinary Enquiry. The Supreme Court has come down heavily on Courts and Tribunals in interfering with the Disciplinary Enquiry or in quashing the charge sheet at the threshold (vide 1995 SCC (L&S) 374 – Union of India and Anr. V/s. Ashok Kacker, JT 1994 (1) S.C. 658 – Union of India V/s. Upendra Singh, 1995 (1) ATJ 299 – Transport Commissioner, Madras V/s. A. Radha Krishna Moorthy, 1997 (1) SC SLJ 259 – DIG of Police V/s. K.S. Swaminathan).

11. In view of our finding that the present OA is barred by principles of res judicata in attacking the charge sheet on the ground of delay and other grounds taken in the previous OA (OA 797/93, it is not necessary to consider the question of delay which was again pressed into service by the learned counsel for the applicant. However, we briefly refer to one decision cited by him on this point.

In AIR 1998 SCC (L&S) 1044 = JT 1998(3) SC 123 (State of A.P. V/s. N.Radhakrishan), where the question was about the Tribunal quashing the charge sheet on the ground of delay. There the charge sheet was issued in 1995 pertaining to events which had taken place 10 years earlier. There was no explanation for the delay. Then there was delay in proceeding with the departmental enquiry. In para 19 of the reported judgment, the Supreme Court has made it very clear that it is not possible to lay down any uniform principle applicable to all cases and all situations where there is delay in concluding the disciplinary proceedings. Each case has to be decided on its own facts and circumstances. Then the Supreme Court took the peculiar facts and circumstances of that case and on facts came to the conclusion that it did not want to interfere with the order of the Tribunal quashing the charge sheet. On the question of law, the Supreme Court has made it clear that there is no uniform law and each case has to depend on its own facts and circumstances.

We have already pointed out how on facts there is some explanation from the department and then we find there are serious allegations mis-conduct against the applicant and having regard to the gravity of charges it is not a fit case for this Tribunal to interfere and quash the charge sheet only on the ground of delay. Further, this plea of delay cannot be now entertained by this Tribunal due to principles of res judicata which we have already pointed out.

Hence, taking any view of the matter, this is not a fit case for quashing the charge sheet. Point No.1 is answered in the negative.

12. Point No.2:

We have already seen that this is an incident of 1986. But the misconduct came to light by the letter of the Customs Department only at the end of 1987. We have already pointed out the delay in issuance of charge sheet. But, at least from 1993 and onwards there is no delay on the part of the administration, but the enquiry could not be held in view of the application filed by the applicant in the previous OA and the order of this Tribunal dt. 11.2.1994 restraining the department from proceeding with the enquiry till the disposal of the criminal case. Therefore, nobody is responsible now for the delay after 1993 in view of the order of the Tribunal. It may be that the Tribunal passed that order hoping that some order will be passed in the criminal case in the near future. Inspite of lapse of 5 years from 1994 to 1999, we find that the matter is still pending in the Delhi High Court which has stayed the proceedings in the criminal case before the Magistrate in Delhi. How long we should continue the stalemate is the question. It is not in the interest of either the applicant or the administration to keep the departmental enquiry in suspended animation; if the said order is allowed to continue, then the applicant cannot get his promotion and the sword will be hanging on over his head for years to come. Similarly, the said order is not in the interest of administration also. The fact that the administration has issued a charge sheet, in public interest and to maintain purity in the administration and discipline in government service, it is desirable that the departmental enquiry should be expedited and should end in one way or the other. No useful purpose will be served either for the applicant or for the administration to continue the stay of departmental enquiry for years together. Even the learned counsel for the respondents fairly submitted that the department has no objection to proceed with the enquiry if the stay is vacated. We are told that the enquiry has proceeded against the co-delinquent Mr. Gandhi though final order is not yet passed. Having regard to the facts and circumstances of the case and in public interest, we feel that we should recall the stay granted by this Tribunal in the order dt. 11.2.1994 in

for 12.

OA 797/93 and vacate the stay and direct the administration to proceed with the departmental enquiry. If once we have come to the conclusion that no case is made out for quashing the charge sheet, then naturally the stay has to be vacated and the Disciplinary Enquiry should be proceeded with.

13. We have already pointed out that in the charge sheet there are number of allegations of mis-conduct against the applicant including one allegation of his making a false statement in the criminal court about CDF. We feel that due to pendency of the criminal case the department cannot be allowed to hold an enquiry and decide whether the statement on oath made by the applicant in the criminal case at Magistrate's Court at Delhi is a false statement as mentioned in the charge sheet and in the statement of imputations. In our view, it is for the criminal court to decide whether the witness has made a false statement or not. We have already expressed our view on this point. Even if it is permissible for the department to issue a charge sheet on this ground, we feel that the department should not be allowed to hold an enquiry into this aspect till the disposal of the criminal case. But, there is no bar for the department to proceed with the departmental enquiry regarding other allegations made against the applicant in the charge sheet and the statement of imputations like he did not keep surveillance of the smugglers, he did not apprehend the smugglers etc. Except on the allegation of applicant making a false statement before the criminal court at New Delhi respondents can proceed with the departmental enquiry. It is only after the disposal of the criminal case, the respondents can apply their mind to the legal position and then decide whether charge sheet can be issued on that point and then issue a fresh charge sheet pertaining to the statement of applicant in the criminal court if it is permissible in law and then hold an inquiry according to law.

14. The learned counsel for the applicant made a forcible submission that applicant's promotion has been withheld due to the pendency of the departmental enquiry. It is true that under the Government of India Circular about 'sealed cover procedure' whenever a disciplinary enquiry or criminal case is pending against a government official, his case for promotion will

be considered by the DPC, but the recommendation will be kept in a 'sealed cover' till the disposal of the departmental enquiry/criminal case. According to the procedure if the departmental enquiry/criminal case ends in a punishment to the delinquent official, then 'sealed cover' cannot be opened at all. However, if the official is exonerated in the departmental enquiry or criminal case, then the 'sealed cover' will be opened and effect will be given to the recommendation of the DPC.

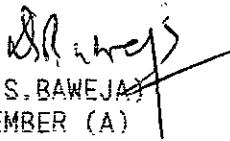
Now, in the present case, if we go strictly by the 'sealed cover procedure', since departmental enquiry is pending the applicant's case for promotion cannot be taken up and the DPC will have to keep its finding in a 'sealed cover'. But, the question is whether any departure from the general rule has to be made in the peculiar facts and circumstances of this case.

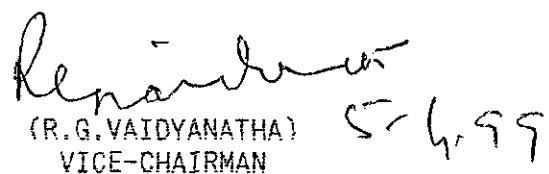
15. In this connection, we may refer to a decision of the Supreme Court in 1995 (29) ATC 546 (State of Punjab and others V/s. Chamanlal, where also there was a delay in issuing the charge sheet. The Supreme Court did not want to quash the proceedings. But, however, having regard to the delay in issuing the charge sheet and completion of the enquiry, the Supreme Court gave a direction that the delinquent official's case for promotion should be considered without reference to the pending departmental enquiry and if he is found fit for promotion he should be promoted immediately. It is further observed that any such promotion is subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. Then, a direction was given for an expeditious disposal of the enquiry case.

For the reasons already mentioned about the delay in issuing the charge sheet, delay in enquiry and subsequent enquiry being held up due to stay granted by the Tribunal for the last 5 years, we feel that this is a fit case in which some direction should be given for expeditious disposal of the enquiry case and if there is delay, then applicant's case should be considered for ad-hoc promotion subject to review in the light of the order of the Disciplinary Authority in the enquiry case.

15. In the result, the application is disposed of with the following directions:

- (1) The prayer of the applicant for quashing the charge sheet is rejected.
- (2) The stay for the Disciplinary Enquiry granted by this Tribunal by order dt. 11.2.1994 in OA 797/93 is hereby recalled and vacated. The respondents are directed to proceed with the departmental enquiry in pursuance of the charge sheet dt. 6.7.1993 against the applicant expeditiously on all allegations of mis-conduct in the Articles of Charges and imputations except the one allegation of applicant making a false statement in the Criminal Court.
- (3) In case the department takes up the question of promotion and if applicant is in the zone of consideration, then the DPC may consider his case for promotion and keep its finding in a 'sealed cover' as per the 'sealed cover procedure' Rules. However, if the Disciplinary Enquiry is not completed within a period of six months from the date of receipt of a copy of this order, then in any DPC held after the said period for considering the case for promotion, then the applicant's case shall not be kept in a sealed cover and if he is in the zone of consideration and found suitable for promotion, then he may be granted ad-hoc promotion subject to the result of the Disciplinary Enquiry. After the Disciplinary Authority passes the order in the Disciplinary Enquiry case, the order of ad-hoc promotion may be reviewed and suitable orders may be passed.
- (4) No order as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN 5-6-99

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CIVIL CONTEMPT PETITION NO.50 OF 2000 in OA No 275/95

Dated this Wednesday the 3rd October, 2001

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

R.L.Tyagi,
Assistant Enforcement Officer,
Enforcement Directorate,
Mittal Chambers, 2nd Floor,
Nariman Point, Mumbai 400 021.
R/o 905/A, Bawa Tower,
Sion Chunabhatti,
Mumbai 400 022.
(By Advocate Shri R.Ramesh) - Applicant

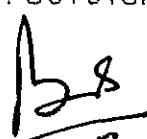
VERSUS

1. Union of India
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block, New Delhi - 110 001.
2. The Director,
Enforcement Directorate,
Loknayak Bhavan,
6th Floor, Khan Market,
New Delhi - 110 006.
3. The Deputy Director,
Enforcement Directorate,
2nd Floor, Mittal Chambers,
Nariman Point, Mumbai - 400 021.
4. The Deputy Director (II),
Enforcement Directorate,
Janmabhoomi Chambers,
Walchand Hirachand Marg,
Mumbai - 400 033.

(By Advocate Shri M.I.Sethna) - Respondents

ORAL ORDER

This Contempt Petition is filed by the original applicant alleging non-compliance of order made by this Tribunal on 5.4.1999 in OA 275 of 1995. The prayer made in the Contempt Petition is as follows:-



(a) that this Hon'ble Tribunal may be pleased to take appropriate proceedings against the Contemner above named under the provisions of Contempt of Courts Act, 1971, read with Contempt of Courts (CAT) Rules, 1992 for the contempt committed by him by deliberately and wilfully and knowingly violating the directions given by this Bench in the judgement dated 5.4.1999 delivered in OA No.275/99 and he be punished according to law.

(b) that the ex-parte enquiry proceedings conducted on 22.9.1999 and the report dated 4.10.1999 submitted by the Contemner herein be quashed and set aside.

(c) that the respondents be permanently restrained from taking any further steps pursuant to the illegal report dated 4.10.1999 submitted by the contemner herein.

(d) that pending the hearing and final disposal of this Contempt Petition, respondents be restrained from taking any further steps against the applicant, based on the report dated 4.10.99 submitted by contemner herein.

(e) that ad interim relief in terms of prayer (d) above be granted.

(f) that such other and further order or orders be passed as may be considered just and proper.

(g) that costs of this Contempt Fetiition be provided for.

2. At the outset we must record the operative part of the order made in the CA which reads as follows:-

(1) The prayer ofthe applicant for quashing the charge sheet is rejected.

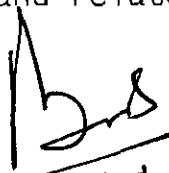
(2) The stay for the Disciplinary Enquiry granted by this Tribunal by order dated 11.2.1994 in OA 797/93 is hereby recalled and vacated. The respondents are direcgtd to proceed with the departmental enquiry in pursuance of the charge sheet dated 6.7.1993 against the applicant expeditiously on all allegations of misconduct in the Articles of Charges and imputations except the one allegation of applicant making a false statement in the Criminal Court.In case the department takes up the question of promotion and if applicant is in the zone of consideration, then the DPC may consider his case for promotion and keep its finding in a 'sealed cover' as per the ' sealed cover procedure' Rules. However, if the Disciplinary Enquiry is not completed within a period of six months from the date of receipt of copy of this order, then in any DPC held after the said period for considering the case for promotion., then the applicant's case shall not be kept in sealed cover and if he is in the zone of consideration and found suitable for

promotion, then he may be granted ad-hoc promotion subject to the result of the Disciplinary Enquiry. After the Disciplinary Authority passes the order of the Disciplinary case, the order of ad-hoc promotion may be reviewed and suitable orders may be passed.

(4) No order as to costs."

3. We have carefully gone through the petition, and the written statements of reply filed viz.one by the Department and the other by the alleged contemner viz. Shri Servesh Kumar who was the Enquiry Officer in the present case. We have been assisted in considering this contempt petition by the learned counsel for the original applicant namely Shri Ramesh Ramamurthy. It is the contention of Shri R.L.Tyagi in the contempt petition that a perusal of the enquiry report would show that the directions given in the judgment and order have been wilfully ignored i.e. in regard to the matters on which the enquiry should not be held. It is alleged that such action is wanton and wilful. The main argument is that the departmental enquiry could not have proceeded regarding the statement in the criminal case about the CD form (in short 'CDF'). The stand taken is that in the examination in chief, the witness was allowed to talk about the CD form. Various extracts of the evidence have been quoted in this regard in the contempt petition.

4. Assisting on this, and expounding on the matter, learned counsel Shri Ramesh Ramamurthy took us over to both the statements filed by the respondents/alleged contemner and reiterated that the enquiry was indeed taken up and completed without regard to the bar on consideration relating to the CDF and related matters. It was argued that in the defence made by



the Enquiry Officer to the effect that he is following the directions of the judgment in the OA, the Enquiry Officer was really only quibbling on language and seeking a defence. Reference was made by Shri Ramesh Ramamurthy to different parts of the judgment in the aforesaid OA to stress his point. Reference was also made in Para 7.10 and 7.13 of the Enquiry Report where it was stated "the matter in regard to CDF has been referred to and discussed." The learned counsel took special exception to the statement made by the alleged contemner to the effect that "enquiry into the charges permitted by this Hon'ble Tribunal" would be incomplete if there is no discussion on the CDF" as stated in Para 10 of the statement of Shri Servesh Kumar. Reiteration was made for setting aside the enquiry report. Shri Ramamurthy stated that in fact this was their main prayer in the Contempt Petition.

5. We have perused the two written statement referred to and the contents therein. The learned counsel for the alleged contemner Shri V.D.Vadhavkar took us over these documents, and made the point, that what was specifically barred from being looked into during the enquiry was the fact of the allegation made that the applicant had made a false statement in the criminal court. He asserted that this has not been gone into by the Enquiry Officer, and, in fact, in the enquiry report the Enquiry Officer has made specific reference to this conscious effort on his part. The learned Counsel stated that the order in OA did not, either directly or implicitly mean that the aspect relating to CDF would not be looked into at all nor



touched upon in any manner or that even the facts in this regard would have to be ignored. He made the point that in the conclusion arrived at, the charge that was concluded to have been proved related to the failure of the applicant in keeping proper supervision, and submitting wrong report to the superior. The aspect relating to false statement before the court has not been touched upon in the conclusion reached, Shri Vadhavkar contended.

6. The other aspect argued by learned Shri Vadhavkar was in regard to the conduct of the applicant. Though argued in detail, we will only list in gist the points made. It was argued that at every stage the applicant has been trying to seek stay of the proceedings of the enquiry. For two years the Department did not do anything in view of the stay until the time when the applicant himself came up in an MP and the stay order was modified. Shri Vadhavkar referred to the petitioner filing the OA before Madras Bench. The applicant had gone up the Madras Bench in OA. Shri Vadhavkar strongly made the point that the Tribunal was not apprised of this fact, purposely by the petitioner. The other argument related to delay in filing of the contempt petition. It was that it was barred by limitation.

7. In regard to the first point, we have perused not only the operational part of the order but have also perused the two paragraphs (referred to especially by Shri Ramamurthy) in the text of the judgment and have no doubt in concluding that the orders made by the Tribunal have been substantially implemented. The first was being that the prayer for quashing of charge sheet was rejected; then the stay order was modified



clearly authorising the department to proceed in the departmental enquiry expeditiously on all allegations except the one regarding the applicant making a false statement in the criminal court. Now as well as the statement perpetrated to as made falsely relating to the aspect of CDF has been referred to in Enquiry Officer's report, it cannot be construed that reference to the CDF in the process of enquiry will render it to be bad in law or make us come to the conclusion that the Enquiry Officer was not following the directions of this Tribunal. On the point allegedly made that statements of some witnesses were recorded in evidence vis-a-vis CDF we must say that evidence must be recorded to elicit the facts. It cannot be recorded in part. Hence reference to the CDF, or to the making of the false report to the superior cannot in any way be seen to violate the orders made by this Tribunal in the OA.

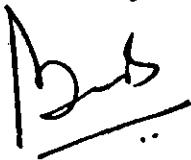
8. We also note that while making out the enquiry report the Enquiry Officer has been conscious of the order of the Tribunal and has recorded it so. He has discussed the CDF aspect within the limitations prescribed and even the statement made by him in Para 10 as reproduced above cannot make his action suspect.

9. Now we come to the objection taken regarding the contempt petition being delayed and being hit by the law of limitation. The main contention was that the applicant himself has stated in Paragraph 3 of his Contempt Petition that the contempt has been committed on 22.9.1999 the contempt petition having been filed on 21.9.2000. We must read the full paragraph



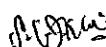
and as explained by Shri Ramamurthy that the limitation will have to be taken from the date on which the enquiry report is served on him i.e. 10.8.2000. The contempt petition is filed in about four to five weeks after this, and therefore the plea taken for limitation does not have any force.

10. We now come to the third aspect of the case viz the conduct of the applicant. The first part relates to applicant not in appearing before the enquiry. Though some facts are before us, we are not going consciously into this aspect as it is not a matter which can be taken in contempt petition. It will probably be open for argument before the disciplinary authority, appellate authority etc. In regard to the applicant going to the High Court of Bombay we only note that he had failed to secure the stay. To this extent, there is nothing wrong in the conduct of petitioner. We, however, note rather seriously that he had chosen to remain quiet, regarding the fact that he had gone up to Madras Bench of this Tribunal (we emphasize Tribunal since it has been held to be one Tribunal whichever Bench a matter is taken to). We have seen a copy of the judgment made by the Madras Bench of the CAT (OA 1190/99 decided on 2.5.2000) and find that an interim injunction was sought restraining the respondents from proceeding the disciplinary case against the applicant regarding the subject matter of charge memorandum dated 6.7.1993. The Madras Bench had found that it was not necessary to interfere with the proceedings at that stage and that the enquiry officer had already submitted his report on 4.10.1998 (sic 1999). The fact of

A handwritten signature in black ink, appearing to read 'B.S.' followed by a stylized surname.

this judgment could well have a bearing on this contempt petition and it should have been clearly stated therein. We do find from the conduct, of the applicant that he is merely seeking the route of contempt petition to attain his objective/purpose of getting ad-hoc promotion in terms of the orders made in OA No.1190/99 (supra). Be that as it may, the important fact is that the basic factual and substantial point we find that the Enquiry Officer has not committed any contempt and we therefore hold that no contempt has been committed by the alleged contemner.

11. In view of our remarks above, on the conduct of the petitioner, we are constrained to award costs in this case. We hereby order costs which we are restricting to Rs.1000/- to be paid to the official respondents by the petitioner filing this contempt petition within a period of one month from the date of receipt of a copy of this order. The contempt petition is rejected. Notices are discharged.



(S.L.Jain)
Member (J)



(B.N. Bahadur)
Member (A)

mb



911

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO. 275/95

Dated this the 20th day of September 2001.

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

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

R.L.Tyagi,
Assistant Enforcement Officer,
Enforcement Directorate,
Mittal Chambers, 2nd Floor,
Nariman Point,
Mumbai.

...Applicant

By Advocate Shri R.Ramesh
with Shri M.S.Ramamurthy

vs.

1. Union of India through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. The Director,
Enforcement Directorate,
Loknayak Bhavan,
6th Floor, Khan Market,
New Delhi.
3. The Deputy Director,
Enforcement Directorate,
2nd Floor, Mittal Chambers,
Nariman Point, Mumbai.
4. The Deputy Director (II),
Enforcement Directorate,
Janmabhoomi Chambers,
Walchand Hirachand Marg,
Mumbai.

...Respondents

A N D

Shri Servesh Kumar,
Enquiry Officer,
(Commissioner for Departmental
Enquiries), Central Vigilance
Commission, Satarkta Bhavan,
INA, New Delhi.

...Contemner

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

RECD

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3. OA.NO.797/93 was decided on 11.2.1994 and the operative part of the order is as under :-

"We find that it would be highly inappropriate to proceed with the departmental proceedings against the applicant during the pendency of the criminal proceedings. We, however, do not wish to scuttle any departmental action but only direct that the departmental proceedings shall stand suspended until the case in the criminal court is finally decided."

4. The applicant has preferred this OA. on the ground that there is delay of more than 7 years in issuing the impugned charge sheet which relates to an incident of 1986 while charge sheet is issued in the year 1993 which vitiates the proceedings and the chargesheet is liable to be quashed and set aside.

5. After dropping of the minor penalty chargesheet under Memorandum dated 24.8.1990, there has been a delay of more than 3 years in issuing the impugned chargesheet. The minor penalty chargesheet itself was issued more than 3 years after the alleged false statement in the criminal proceedings. The delay is fatal to the maintainability of the chargesheet. The delay at every stage betrays a design not to leave out the applicant from false disciplinary proceedings. The respondents' order dated 7.7.1993 ordering a common inquiry to be held against all the chargesheeted officers also vitiates the proceedings as the imputations as stated in the chargesheet nowhere show any common intent or common act which has been committed by these chargesheeted officers. The duties and responsibilities of these officials are distinctly different and therefore common proceedings cannot at all be held in respect of the said charges.

The disciplinary proceedings are therefore liable to be quashed and set aside. The witnesses in the departmental proceedings are the Customs Officers who are accused in the criminal proceedings before the Metropolitan Magistrate, New Delhi. The statements of these witnesses therefore cannot be accepted as they would be made only with a view to protecting their own selves and would be biased against the applicant.

6. There is clear distinction between "stay" of an order and "suspension" of an order. In the event of an order of disciplinary proceedings, as in this case, being suspended, there exists no disciplinary proceedings till they are revived. A promotion cannot be held up or deferred and no sealed cover procedure can be validly adopted. The departmental authorities have no justification whatsoever to withhold/defer the promotion on the basis of the impugned chargesheet which has been suspended by order dated 11.2.1994 in OA.NO.797/93, a direction to the departmental authorities is necessary to the effect that they do not adopt any sealed cover procedure in the matter of promotion of the applicant to the grade of Enforcement Officer.

7. The accused Customs Officers in a criminal complaint instituted on 9.1.1987 before the Court of the Metropolitan Magistrate, New Delhi have moved the Hon'ble Delhi High Court for quashing the criminal proceedings and the proceedings before the Learned Metropolitan Magistrate, New Delhi have been stayed. The

entire proceedings will take many years to end and how long thereafter the departmental proceedings will be initiated is not certain. The chargesheet cannot be permitted to remain as a sword of damocles to hang on his neck for many years to come totally obliterating all his promotions and career advancement.

8. The respondents have resisted the claim of the applicant alleging that the OA. is misconcieved and not maintainable. The applicant has no cause of action. The file regarding the Fact-finding Enquiry No. T-3/345/D/86 was not traceable when minor penalty proceedings were going on. After the file is traced, after going through the file and certain vital documents which were kept in the said file, it was found that the applicant and Shri Gandhi have played nothing short of a double cross against the Department and have completely compromised the departmental interest of going before the court and giving a false testimony which was totally based on after-thought as it completely negated the facts on record and the statements of the accused which were recorded by them on the spot on the date when the incident occurred as there was no mention of Currency declaration Form in the said statements. After reconsideration of the above facts, disciplinary authority came to the conclusion that the above conduct of the officers warranted major penalty proceedings as per Govt. of India instructions No. 19 below Rule 15 of CCS (CCA) Rules,1965, the charged officers were informed of the decision of the disciplinary authority vide

PMR

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Memorandum No.C-3/29/86-Vol.II dated 24.8.1990 (Annexure-'F'). Since one of the charged officers Shri Gandhi was holding a gazetted post, the matter was referred to Central Vigilance Commission for advice. According to the instructions contained in para 2.9 of Chapter III of Vigilance Manual Vol.I, the report of preliminary enquiry together with all relevant documents and papers and its proposals as regards further course of action are required to be referred to the Central Vigilance Commission for advice, which is necessary one. After receipt of advice from CVC, the highest disciplinary authority, the President of India issued the chargesheet to the applicant and Shri Gandhi. After receipt of the said chargesheet, the applicant filed OA.No.797/93 before this Bench for the reliefs as stated above and the order passed thereon as stated above. After receipt of the said order, no further action has been taken in respect of the said chargesheet, hence OA. deserves to be dismissed. The OA. is time barred:

9. No DPC was held during March, 1995 or to be held in April 1995 as there is no vacancy of Enforcement Officer for promotion quota during the Recruitment Year 1994-95. Promotions are to be given on the basis of service record and number of vacancies available in the promotion quota. As departmental proceedings have been suspended till the case in criminal court is finally decided, the promotion of the applicant will have to be dealt with according to the procedure if at all DPC is to be conducted

SDM

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the reply. The OA. is not barred by time. The applicant is the senior most person in All India seniority list to be promoted to the next higher grade of Enforcement Officer and is in zone of consideration since the year 1994. Two DPCs have been held, one in 1994 and another in 1997 and promotions were granted to the employees who were senior to the applicant. There is no merit in defences raised by the respondents, hence chargesheet dated 6.7.1993 is liable to be quashed as the disciplinary proceedings are misconcieved.

11. The respondents have filed reply to the rejoinder of the applicant reiterating the earlier defences. The applicant failed to get any relief by way of interim order dated 24.5.1995. The applicant's case will be dealt with according to the procedure prescribed by rules. The written statement was filed by the then incumbent to the post of Deputy Director of Enforcement, Mumbai on behalf of the respondents under due authorisation from the respondents and he has nothing to do with the departmental proceedings or criminal proceedings related to the case of the applicant. More over Shri C.M.Mehra is no longer in the Directorate as he has already been repatriated to his parent department on completion of his deputation period. The status of the applicant is that departmental proceedings are pending against him and his case is to be dealt with according to administrative instructions in this regard. However, this Tribunal vide interim order dated 3.4.1995 clearly mentioned that

"if the DPC meets they should consider the applicant's claim as per rules and if necessary, place in the sealed cover". Hence, in compliance with these order of this Tribunal, applicant's case for promotion will be dealt with accordingly. The charges mentioned in the chargesheet issued to the applicant are not only based in respect of statement made by him in the criminal proceedings but other attendant facts as detailed in the Annexure II to the chargesheet. Criminal proceedings are pending before the Hon'ble A.C.M.M. New Delhi but stayed by the Hon'ble High Court, Delhi. Applicant will be considered for promotion in the DPC, however, promotion will be governed by the relevant administrative instructions as also by the earlier order dated 3.4.1995 of this Tribunal:

12. After careful examination of the pleadings of the parties, we do find as a fact that after decision of the OA.NO.797/93 on 11.2.1994, which was also in respect of the chargesheet dated 6.7.1993, which is also the subject matter of this OA., the pleadings are that the delay is fatal to the maintainability of the chargesheet, the delay at every stage betrays a design not to leave out the applicant from false disciplinary proceedings, the accused customs officers in a criminal complaint instituted on 9.1.1987 before the court of the Metropolitan Magistrate, New Delhi have moved the Hon'ble Delhi High Court for quashing the criminal proceedings and the proceeding before the Metropolitan Magistrate, New Delhi have

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been stayed. As such chargesheet cannot be permitted to remain a sword of damocles to hang on his neck for many years to come totally obliterating all his promotions and career advancement.

13. The other pleas raised by the applicant were available to the applicant at the time of filing of the earlier OA.NO.797/93, have been considered, hence barred on principle of res-judicata for reconsideration:

14. Regarding the grievance of the applicant in para 1. 8(c), suffice to mention that when the departmental proceedings stand suspended, it does not mean that the chargesheet does not survive. In such circumstance when respondents have stated that promotion will be governed by the relevant administrative instructions as also by earlier order dated 3.4.1995 of the Tribunal, the promotion of the applicant will have to be dealt with according to the procedure if at all D.P.C. is to be conducted in future, the applicant can not have any grievance, as to the method suggested or to be adopted warranted as per law. In this respect, the applicant was having no cause of action, as till the filing of the OA. no DPC was conducted and question of reasonable apprehension, does not arise, as the DPC authorities have not done any act towards the action to be taken in respect of the applicant.

Rej

..11/-

15. The delay in criminal proceedings for which the respondents can not be blamed as they have no control over the same cannot be a ground to quash and set aside the chargesheet. In the facts and circumstances of the case, where criminal proceedings and the departmental enquiry are such that they cannot be disintegrated with each other, applicant is not entitled to any relief.

16. In the result, we do not find any merit in the OA., it is liable to be dismissed and is dismissed accordingly with no order as to costs.

Shant Shastry

(SMT. SHANTA SHAstry)

MEMBER (A)

Mr. Jain

(S.L.JAIN)

MEMBER (J)

mrj.

28

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.275/95.

Monday, THIS THE 5th DAY OF APRIL 1999.

Coram : Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman.
Hon'ble Shri D.S.Bawejia, Member(A).

R.L.Tvagi.
146, Type III.
4th floor, CGS Colony,
R.A.Kidwai Marg.
Wadala(West),
Bombay - 400 031.
(By Advocate Shri M.S.Ramamurthy) ...Applicant.

V/s.

1. Union of India.
through the Secretary,
Ministry of Finance,
Department of Revenue,
Government of India,
North Block,
New Delhi - 110 001.
2. The Director,
Enforcement Directorate,
Lok Nayak Bhavan,
6th floor, Khan Market,
New Delhi - 110 006.
3. The Deputy Director - I,
Enforcement Directorate,
2nd floor, Mittal Chambers,
Nariman Point,
Bombay - 400 021.
4. The Deputy Director-II,
Enforcement Directorate,
Janmabhoomi Chambers,
Walchand Hirachand Marg,
Bombay - 400 033.
(By Advocate Shri V.D.Vadhavkar on
behalf of Shri M.I.Sethna). ...Respondents.

: ORDER :

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is an application filed under section 19 of the Administrative Tribunals Act, 1985. The respondents have filed reply. We have heard the learned counsel appearing on both sides.

2. In 1986, the applicant was working as Assistant Enforcement Officer in

the Enforcement Directorate at Bombay. It appears, on 3.8.1996 the applicant and Enforcement Officer Mr.R.D.Gandhi were given some information for keeping a surveillance and apprehending Mr.B.S.Loqani and Mr.Raghbir Singh at the Indira Gandhi International Airport, New Delhi. It appears, those two suspects came to be arrested by officers of the Customs Department, certain seizure was done. Subsequently, it came to light that there was negligence and mis-conduct on the part of the applicant and Mr.Gandhi. Therefore, the department issued a minor penalty charge sheet against the applicant in 1990. The applicant submitted a reply to the charge sheet. Thereafter, the department came across some additional material and then conditionally withdrew the minor penalty charge sheet with a view to issue a fresh major penalty charge sheet. Accordingly, a fresh charge major penalty charge sheet dt. 6.7.1993 was issued against the applicant and two other officials.

The applicant, then filed OA 797/93 challenging the issuance of charge sheet on many grounds. A Division Bench of this Tribunal by order dt. 11.2.94 disposed of that application with a direction to the respondents to suspend the departmental enquiry proceedings till the disposal of the criminal case. In view of this stay order the department could not proceed with the departmental enquiry against the applicant. It appears, the two suspects mentioned above, ^{out} and one of the accused in the customs case, filed a private complaint in the Court of Magistrate at New Delhi, making certain allegations against three Customs Officers. In that private complaint, the applicant came to be examined as a witness on behalf of that complainant (Bhupinder Singh, an accused in the customs case). Then the learned Magistrate issued summons on the private complaint to the three Officers of the Customs Department. It appears the Customs Officers moved the High Court at Delhi and obtained stay of further proceedings in the private complaint filed by Mr.Bhupinder Singh. It appears no progress is done in that case till now.

Now, the applicant has come out with the present application mentioning the facts of the Customs case and the criminal case etc. According to the applicant he has performed his duties properly and there was neither negligence

nor mis-conduct on his part. Number of allegations are made in the application about merits of the case. It is also stated that a preliminary enquiry was done by the Customs Collector and he gave a report exonerating the applicant, but still the department has issued the charge sheet against the applicant. It is stated that the action of the department in issuing the charge sheet is illegal. A fresh charge sheet could not have been issued on the same facts after withdrawing the first charge sheet. There is undue and inordinate delay in issuing the charge sheet. The charge sheet is issued on false and frivolous allegations, to save some Customs Officers. The applicant has given a proper and correct statement before the Magistrate Court at Delhi. The respondents cannot allege that the applicant has made a false statement before the Criminal Court. On these allegations, the applicant has approached this Tribunal with a prayer for quashing the charge sheet dt. 6.7.1993.

3. The respondents in their reply have justified the action taken in issuing the charge sheet against the applicant. They have also mentioned the facts of the case. It is stated that the first charge sheet was withdrawn since some vital documents were traced and on that basis a fresh major penalty charge sheet was issued. The procedure adopted by the respondents is perfectly legal. Since one of the delinquent officer Mr. Gandhi was a Gazetted Officer, the Department had to consult the Central Vigilance Commission and then a charge sheet had to be issued by the President who is the Disciplinary Authority for Gazetted Officers. That is how some delay has occurred in issuing the charge sheet. Many allegations on merits are made which are not necessary for our present purpose. It is also stated that the applicant had filed previous OA for identical relief of quashing the charge sheet, but did not get that relief. He cannot now file fresh OA for the same relief.

4. The learned counsel for the applicant contended that the charge sheet is vitiated because of undue delay in issuing the same. Then it was argued that the charge sheet is mala fide and such a charge sheet cannot be issued when the applicant has been exonerated in the preliminary report. On merits it was pointed out that a false case has been foisted against the applicant.

Then it was submitted that the charge sheet is pre-mature since criminal case is pending. On these grounds it was submitted that the charge sheet may be quashed. Then an alternate submission was made that in case the Tribunal comes to the conclusion that charge sheet cannot be quashed and enquiry should proceed, it was argued, that applicant is due for promotion being seniormost among Assistant Enforcement Officer and his promotion should not be withheld or delayed by adopting 'sealed cover procedure' having regard to the fact that there is delay in issuing the charge sheet and there is long lapse of about 13 years from the date of incident till to day. It was therefore submitted that notwithstanding the pendency of Disciplinary Enquiry, the respondents should consider the case of the applicant for promotion as per rules. Mr. V.D. Vadhavkar on behalf of Mr. M.I. Sethna, counsel for the respondents, contended that no case is made out for quashing the charge sheet. He further argued that the present OA for identical relief is not maintainable and is barred by principles of res judicata in view of the finding in the previous OA 797/93. Then it was also stated that after the issuance of charge sheet, there is no delay on the part of the respondents and enquiry could not be proceeded with due to the stay granted by the Tribunal in the previous OA. It was further submitted that respondents have no objection to proceed with the Disciplinary Enquiry if the stay is vacated. He also opposed for giving any direction regarding promotion contrary to the rules pertaining to 'sealed cover procedure'.

5. In the light of the arguments addressed before us, the points that falls for determination are:

- i) Whether the applicant has made out a case for quashing the charge sheet dt. 6.7.1993?
- ii) Alternately, whether the applicant is entitled to a direction for considering his case for promotion notwithstanding the pendency of the Disciplinary Enquiry?
- iii) What Order?

6. Point No.1 :

Some arguments were addressed on merits of the case, to point out that there was no evidence or material to issue a charge sheet against the applicant. Reliance has also been placed on the preliminary enquiry report

which found that there was no case against the applicant. In our view, at the threshold, we cannot go into the correctness of the charge sheet and merits of the case; it is a matter which has to be enquired into during departmental enquiry. We also do not find any merit in the argument about exoneration of the applicant in the preliminary report. A perusal of the preliminary report shows that the concerned officer relied on ~~his~~ oral statements of the applicant and Mr. Gandhi in the Criminal case and on that basis he held that no case is made out for any departmental enquiry. On the face of it, the reasoning is *per se* fallacious. If the question of holding a departmental enquiry or issuance of charge sheet against a delinquent government officer is to be decided on the basis of his statement or if issuance of a charge sheet in a criminal case is to be decided on the statement made by the accused, then no charge sheet can be issued either for a departmental enquiry or for a criminal case. Every delinquent official and every accused always denies that he has committed any mis-conduct/offence. That cannot be the basis for issuance of charge sheet at all. A charge sheet should be issued on the basis of the materials collected during the investigation. But the Officer who prepared the preliminary enquiry report stated that he is accepting the statement of the applicant and Mr. Gandhi made on oath before the Criminal Court and on that basis no case is made out. Such a preliminary report cannot be given any weight. Even otherwise, the Disciplinary Authority is not bound by the preliminary report. Notwithstanding the preliminary report, if the Disciplinary Authority finds that there is sufficient material to issue a charge sheet he can still issue a charge sheet.

We are also not impressed by the argument that the charge sheet is vitiated by *mala fides*. There is no such allegation and there is no material to support the allegation of *mala fides*.

7. The other contention that the charge sheet is pre-mature since criminal case is pending also does not appeal to us. It is well settled and there can be no dispute that there can be parallel proceedings in departmental enquiry and criminal case. The private complaint filed by the accused against

the Customs Officer is not at all relevant for deciding the alleged mis-conduct of the applicant except on one point. As could be seen from the articles of charge framed against the applicant and the statement of imputations there are number of allegations pointing out alleged mis-conduct of the applicant. The allegation is that the applicant and Mr. Gandhi were sent after giving information for keeping surveillance and for apprehending Mr. Logani and Raghbir Singh, but they did not do surveillance and did not seize any contraband goods. It is also alleged that applicant and Mr. Gandhi went to Air Port only after the accused persons were apprehended by the Customs Officers. It is also alleged that the applicant did not intercept the passengers baggage which he should have normally done. That applicant has not referred to seeing CDF with the accused in his report. Now he has made a false statement before the criminal court to favour the two smugglers.

Except one statement that the applicant has made a false statement in the criminal court, all other allegations against the applicant are only to show that he has not discharged his duty properly and he did not keep surveillance, did not intercept the baggage and did not apprehend the smugglers. In respect of these allegations there is no question of the charge sheet being pre-mature because of criminal complaint filed by the accused of the criminal case against the Customs Officers.

May be, on the point that the applicant has made a false statement in the criminal case regarding CDF, the departmental enquiry cannot be proceeded with when the criminal case is pending. To that extent, we may hold that the charge sheet cannot be proceeded with. Even otherwise, it is a moot point whether in a departmental enquiry an officer can be proceeded with for allegedly making a false statement in a deposition of a Criminal Court. If a witness gives false evidence, then it is for the criminal court to take action at the time of delivering judgment by ordering prosecution of witness for giving false evidence. It is highly doubtful whether for such a charge, the witness can be proceeded with in a departmental enquiry. Therefore, we feel that without expressing any final view on this point, we can restrain

the respondents from holding any enquiry against the applicant about the alleged false statement made in the criminal court. After the termination of the criminal case, the department must consider the relevant legal provisions and particularly provisions of the Code of Criminal Procedure and then decide whether action is permissible to be taken against the applicant for allegedly making false statement in criminal court and then issue a fresh charge sheet in that aspect. As far as other allegations against applicant are concerned, the pendency of criminal case is wholly irrelevant and there is no bar for having preliminary enquiry proceedings with the Disciplinary Enquiry against the applicant.

8. Now remains the only question about delay in issuing the charge sheet. The incident took place in 1986, but the alleged mis-conduct on the part of applicant and Mr. Gandhi after receiving a letter from the Customs Department by the end of 1987. Then there was some preliminary enquiry and issue of notices etc. Then in 1990 a minor penalty charge sheet was issued. Subsequently, on discovery of additional material major penalty charge sheet is issued.

It is a settled position that there is no straight jacket formula to say that if a charge sheet is delayed by a particular number of years it should be quashed or otherwise it should go on. It all depends upon the facts and circumstances of each case. We have come across many decided case, where in some cases charge sheets has been quashed on the ground of delay and in some cases charge sheet were allowed to continue inspite of delay. Now, the administration has some explanation about the delay between 1986 and 1990 when minor penalty charge sheet was issued. Then there is some explanation as to why the department changed its mind and issued a major penalty charge sheet. The allegations against the applicant and Mr. Gandhi are very serious. The alleged mis-conduct touches upon their integrity and even imputes motives to them for having done something to favour the smugglers. Having regard to the gravity of the charges alleged against the applicant, this is not a fit case in which the Tribunal can quash the charge sheet on the ground of delay.

One more point we have to notice is that identical ground of delay was taken in the previous OA, but the Tribunal was not persuaded to quash the charge sheet on the ground of delay. The learned counsel for the respondents is therefore right in his submission that now on the same plea which did not find favour with the Division Bench which heard the previous OA, the applicant cannot ask for quashing the charge sheet and it is hit by the principles of res judicata.

9. We have secured and perused the records of OA 797/93. Even in that case, number of ^{Writ} allegations ~~are~~ made in the OA and specific ground is taken that the charge sheet is bad because it was issued in 1993 for an incident of 1986. Therefore, the applicant wanted the charge sheet should be quashed on that ground. The OA was disposed of by the order dt. 11.2.1994. The Tribunal noticed that it is not desirable to proceed with the departmental proceedings when the criminal case is pending. Then following observation is made at the end of para-1 which reads as follows :

"We, however, do not wish to scuttle any departmental action but only direct that the departmental proceedings shall stand suspended until the case in the Criminal Court is finally decided."
(underlining is ours).

Therefore, the Tribunal was not persuaded to quash the charge sheet on the ground of delay. What is more, the Tribunal made it clear that it does not want to interfere with the pending departmental enquiry against the applicant. It only said that enquiry should be stayed till the disposal of the criminal case. It may be, in para 2 there is an observation that other contentions which have been raised by the applicant are kept open. In our view, this observation must be read with the observation extracted above. The Tribunal was not inclined to quash and did not want to scuttle the Enquiry Proceedings, but still the applicant's contentions on merits were left open. By a harmonious construction, we can say that, what the Tribunal meant was that the other objections are left open so that they can be agitated at appropriate forum and at appropriate stage. For example, number of allegations ^{have} ~~has~~ been made on merits; those can be agitated before the Disciplinary Authority and

then before the Appellate Authority and may be if the applicant fails at the departmental level he can approach the Tribunal for judicial review after the final order and then he can re-agitate the same thing. In this connection, we are fortified by our view by a decision of the Supreme Court reported in 1995 SCC L&S 374 (Union of India & Anr. V/s. Ashok Kacker). That was a case where after the issuance of charge sheet it was challenged before the Tribunal. Though the applicant had taken number of grounds, the Tribunal quashed the charge sheet on one of the grounds. The Supreme Court reversed the view of the Tribunal and held that the Tribunal should not have entertained the application at the pre-mature stage and then pass an order quashing the charge sheet. Then, it was further observed that the delinquent official has full opportunity to reply to the charge sheet and raise all points available to him including those which were taken up in the proceedings before the Court. Therefore, the appropriate course ^{for} of the applicant is to raise these contentions which are left open by the Tribunal before the Disciplinary Authority, Appellate Authority etc. When once the Tribunal has clearly stated that it does not want to quash the charge sheet and it did not want to scuttle the departmental enquiry, in the second round of litigation the applicant cannot now ask for quashing the charge sheet on identical grounds. Therefore, the present OA asking for quashing the charge sheet on the ground of delay and other grounds which were earlier taken in OA 797/93 is clearly barred by principles of res judicata.

10. In our view, the Supreme Court has in many recent judgments cautioned Courts and Tribunals in entertaining such applications at the threshold and then interfere with the Disciplinary Enquiry. The Supreme Court has come down heavily on Courts and Tribunals in interfering with the Disciplinary Enquiry or in quashing the charge sheet at the threshold (vide 1995 SCC (L&S) 374 - Union of India and Anr. V/s. Ashok Kacker, JT 1994 (1) S.C. 658 - Union of India V/s. Upendra Singh, 1995 (1) ATJ 299 - Transport Commissioner, Madras V/s. A. Radha Krishna Moorthy, 1997 (1) SC SLJ 259 - DIG of Police V/s. K.S. Swaminathan).

11. In view of our finding that the present OA is barred by principles of res judicata in attacking the charge sheet on the ground of delay and other grounds taken in the previous OA (OA 797/93), it is not necessary to consider the question of delay which was again pressed into service by the learned counsel for the applicant. However, we briefly refer to one decision cited by him on this point.

In AIR 1998 SCC (L&S) 1044 = JT 1998(3) SC 123 (State of A.P. V/s. N.Radhakrishnan), where the question was about the Tribunal ouashing the charge sheet on the ground of delay. There the charge sheet was issued in 1995 pertaining to events which had taken place 10 years earlier. There was no explanation for the delay. Then there was delay in proceeding with the departmental enquiry. In para 19 of the reported judgment, the Supreme Court has made it very clear that it is not possible to lay down any uniform principle applicable to all cases and all situations where there is delay in concluding the disciplinary proceedings. Each case has to be decided on its own facts and circumstances. Then the Supreme Court took the peculiar facts and circumstances of that case and on facts came to the conclusion that it did not want to interfere with the order of the Tribunal ouashing the charge sheet. On the question of law, the Supreme Court has made it clear that there is no uniform law and each case has to depend on its own facts and circumstances.

We have already pointed out how on facts there is some explanation from the department and then we find there are serious allegations mis-conduct against the applicant and having regard to the gravity of charges it is not a fit case for this Tribunal to interfere and quash the charge sheet only on the ground of delay. Further, this plea of delay cannot be now entertained by this Tribunal due to principles of res judicata which we have already pointed out.

Hence, taking any view of the matter, this is not a fit case for quashing the charge sheet. Point No.1 is answered in the negative.

12. Point No.2:

We have already seen that this is an incident of 1986. But the misconduct came to light by the letter of the Customs Department only at the end of 1987. We have already pointed out the delay in issuance of charge sheet. But, at least from 1993 and onwards there is no delay on the part of the administration, but the enquiry could not be held in view of the application filed by the applicant in the previous OA and the order of this Tribunal dt. 11.2.1994 restraining the department from proceeding with the enquiry till the disposal of the criminal case. Therefore, nobody is responsible now for the delay after 1993 in view of the order of the Tribunal. It may be that the Tribunal passed that order hoping that some order will be passed in the criminal case in the near future. Inspite of lapse of 5 years from 1994 to 1999, we find that the matter is still pending in the Delhi High Court which has stayed the proceedings in the criminal case before the Magistrate in Delhi. How long we should continue the stalemate is the question. It is not, in the interest of either the applicant or the administration to keep the departmental enquiry in suspended animation; if the said order is allowed to continue, then the applicant cannot get his promotion and the sword will be hanging on over his head for years to come. Similarly, the said order is not in the interest of administration also. The fact that the administration has issued a charge sheet, in public interest and to maintain purity in the administration and discipline in government service, it is desirable that the departmental enquiry should be expedited and should end in one way or the other. No useful purpose will be served either for the applicant or for the administration to continue the stay of departmental enquiry for years together. Even the learned counsel for the respondents fairly submitted that the department has no objection to proceed with the enquiry if the stay is vacated. We are told that the enquiry has proceeded against the co-delinquent Mr. Gandhi though final order is not yet passed. Having regard to the facts and circumstances of the case and in public interest, we feel that we should recall the stay granted by this Tribunal in the order dt. 11.2.1994 in

DAS797/93 and vacate the stay and direct the administration to proceed with the departmental enquiry. If once we have come to the conclusion that no case is made out for ouashing the charge sheet, then naturally the stay has to be vacated and the Disciplinary Enquiry should be proceeded with.

13. We have already pointed out that in the charge sheet there are number of allegations of mis-conduct against the applicant including one allegation of his making a false statement in the criminal court about CDF. We feel that due to pendency of the criminal case the department cannot be allowed to hold an enquiry and decide whether the statement on oath made by the applicant in the criminal case at Magistrate's Court at Delhi is a false statement as mentioned in the charge sheet and in the statement of imputations. In our view, it is for the criminal court to decide whether the witness has made a false statement or not. We have already expressed our view on this point. Even if it is permissible for the department to issue a charge sheet on this ground, we feel that the department should not be allowed to hold an enquiry into this aspect till the disposal of the criminal case. But, there is no bar for the department to proceed with the departmental enquiry regarding other allegations made against the applicant in the charge sheet and the statement of imputations like he did not keep surveillance of the smugglers, he did not apprehend the smugglers etc. Except on the allegation of applicant making a false statement before the criminal court at New Delhi respondents can proceed with the departmental enquiry. It is only after the disposal of the criminal case, the respondents can apply their mind to the legal position and then decide whether charge sheet can be issued on that point and then issue a fresh charge sheet pertaining to the statement of applicant in the criminal court if it is permissible in law and then hold an inquiry according to law.

14. The learned counsel for the applicant made a forcible submission that applicant's promotion has been withheld due to the pendency of the departmental enquiry. It is true that under the Government of India Circular about 'sealed cover procedure' whenever a disciplinary enquiry or criminal case is pending against a government official, his case for promotion will

be considered by the DPC, but the recommendation will be kept in a 'sealed cover' till the disposal of the departmental enquiry/criminal case. According to the procedure if the departmental enquiry/criminal case ends in a punishment to the delinquent official, then 'sealed cover' cannot be opened at all. However, if the official is exonerated in the departmental enquiry or criminal case, then the 'sealed cover' will be opened and effect will be given to the recommendation of the DPC.

Now, in the present case, if we go strictly by the 'sealed cover procedure', since departmental enquiry is pending the applicant's case for promotion cannot be taken up and the DPC will have to keep its finding in a 'sealed cover'. But, the question is whether any departure from the general rule has to be made in the peculiar facts and circumstances of this case.

15. In this connection, we may refer to a decision of the Supreme Court in 1995 (29) ATC 546 (State of Punjab and others V/s. Chamanlal, where also there was a delay in issuing the charge sheet. The Supreme Court did not want to quash the proceedings. But, however, having regard to the delay in issuing the charge sheet and completion of the enquiry, the Supreme Court gave a direction that the delinquent official's case for promotion should be considered without reference to the pending departmental enquiry and if he is found fit for promotion he should be promoted immediately. It is further observed that any such promotion is subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. Then, a direction was given for an expeditious disposal of the enquiry case.

For the reasons already mentioned about the delay in issuing the charge sheet, delay in enquiry and subsequent enquiry being held up due to stay granted by the Tribunal for the last 5 years, we feel that this is a fit case in which some direction should be given for expeditious disposal of the enquiry case and if there is delay, then applicant's case should be considered for ad-hoc promotion subject to review in the light of the order of the Disciplinary Authority in the enquiry case.

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15. In the result, the application is disposed of with the following directions:

- (1) The prayer of the applicant for quashing the charge sheet is rejected.
- (2) The stay for the Disciplinary Enquiry granted by this Tribunal by order dt. 11.2.1994 in OA 797/93 is hereby recalled and vacated. The respondents are directed to proceed with the departmental enquiry in pursuance of the charge sheet dt. 6.7.1993 against the applicant expeditiously on all allegations of mis-conduct in the Articles of Charges and imputations except the one allegation of applicant making a false statement in the Criminal Court.
- (3) In case the department takes up the question of promotion and if applicant is in the zone of consideration, then the DPC may consider his case for promotion and keep its finding in a 'sealed cover' as per the 'sealed cover procedure' Rules. However, if the Disciplinary Enquiry is not completed within a period of six months from the date of receipt of a copy of this order, then in any DPC held after the said period for considering the case for promotion, then the applicant's case shall not be kept in a sealed cover and if he is in the zone of consideration and found suitable for promotion, then he may be granted ad-hoc promotion subject to the result of the Disciplinary Enquiry. After the Disciplinary Authority passes the order in the Disciplinary Enquiry case, the order of ad-hoc promotion may be reviewed and suitable orders may be passed.
- (4) No order as to costs.

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(D.S.BAWEJA)
MEMBER (A)

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(R.G.VAIDYANATHA)
VICE-CHAIRMAN

B.

Certified True Copy
Dated 9/4/99.
S. No. 312
Certified by the Tribunal,
Bombay Central.

TRUE COPY
S. No. 312

The O.A is in the Smt. Disha J. Sajwan
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BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

MISCELLANEOUS PETITION NO. 490 OF 1998

IN

ORIGINAL APPLICATION NO. 275 OF 1995

R.L. Tyagi .. Applicant

v/s

Union of India & Ors. .. Respondents

MISCELLANEOUS PETITION TAKEN
OUT BY THE APPLICANT FOR AN
ORDER FOR EXPEDITING THE HEAR-
ING OF THE ORIGINAL APPLICATION

MAY IT PLEASE THIS HON'BLE TRIBUNAL

The Applicant abovenamed respectfully
states and submits as under:

1. The Applicant has filed the above
Original Application on or about 22.2.1995 for
reliefs inter alia that the Chargesheet dated
6.7.1993 be quashed and set aside. The Applicant
has also sought a direction to the Respondents
to consider the case of the Applicant for promotion

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O.P. 17/7/98
Joni Sethna

to the grade of Enforcement Officer, without postponing the same because of the said Chargesheet. The Original Application was admitted on 3.4.1995.

2. The Applicant states that one Shri J.P. Mishra, Assistant Enforcement Officer has been promoted as Enforcement Officer on adhoc basis with effect from 22.7.1998. The turn of the Applicant for the said promotion to the next higher grade of Enforcement Officer has now come. In view of the pendency of the above O.A., the Applicant will not be promoted even if he ~~has~~^{is} found fit for promotion. The Chargesheet dated 6.7.1993 stands suspended by Order dated 11.2.1994 passed by this Hon'ble Bench in the earlier O.A. No. 797 of 1993. The said order keeping the proceedings under Chargesheet in a suspended state, does not and will not help the Applicant in earning his due promotion since the Department is treating the Disciplinary proceedings as pending.

3. The Petitioner, therefore, respectfully submits that in the interest of justice, the hearing of the O.A. may please be expedited so that the Applicant is free from the state of tension and

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he is not made to lose his promotion from the due date in the very near future.

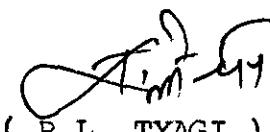
4. The Applicant, therefore, respectfully prays as under:

(a) that this Hon'ble Tribunal may be pleased to expedite the hearing of the above O.A. and fix a date for the final hearing and disposal of the O.A.

(b) that such other and further order or orders be passed as the nature and circumstances of the case may require.

(c) that the costs of this Miscellaneous Petition be provided for.

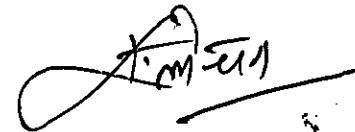
Mumbai, dated this the 24th day of July 1998.

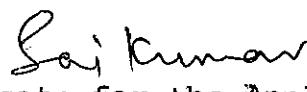

(R.L. TYAGI)
APPLICANT.

VERIFICATION

I, R.L. Tyagi, working as Assistant Enforcement Officer at Chennai, now in Bombay, the Applicant abovenamed do hereby verify that the contents of the foregoing Miscellaneous Petition are true and correct to the best of my knowledge and belief and I believe the same to be true.

So verified at Mumbai, this 24th day of July 1998.


APPLICANT/DEPONENT.


Saj Kumar
Advocate for the Applicant.