

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH.

ORIGINAL APPLICATION NO.: 790/98 & 834/98.

Dated this WEDNESDAY, the 22nd day of December, 1999.

Shri M.G. Rahate, Applicant in
O.A. No. 790/98.

Shri Kishore P. Khot, Applicant in
O.A. No. 834/98.

Shri V. S. Masurkar alongwith Advocate for the
Shri K. R. Yelwe, applicants.

VERSUS

Union of India & Anr. Respondents.

Shri M. I. Sethna alongwith Advocate for
Shri V. D. Vadhavkar, Respondents in both O.As.

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

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

- (i) To be referred to the Reporter or not ? yes
- (ii) Whether it needs to be circulated to other Benches no
of the Tribunal ?
- (iii) Library. yes


(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

os*

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 790/98 & 834/98.

Dated this WEDNESDAY the 22nd day of December, 1999.

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

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

M. G. Rahate,
Working as Upper Division
Clerk, New Customs House,
Ballard Estate,
Mumbai - 400 038.

...

Applicant in
O.A.No. 790/98.

Kishore P. Khot,
Working as T.A.,
New Customs House,
Ballard Estate,
Mumbai - 400 038.

...

Applicant in
O.A.No. 834/98.

(By Advocate Shri V.S. Masurkar
alongwith Shri K. R. Yelwe).

VERSUS

1. Union of India through
Chief Commissioner of Customs,
New Customs House,
Ballard Estate,
Mumbai - 400 038.

2. Dy. Commissioner of Customs
House,
Vigilance Section,
New Customs House,
Ballard Estate,
Mumbai - 400 038.

...

Respondents in
both the cases.

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

...2



O R D E R

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

These are two O.As. for quashing the charge-sheets and for consequential benefits. Respondents have filed reply opposing both the applications. Since the point involved is a short point, after hearing both sides, we are disposing of these O.As. at the admission stage.

2. Few facts which are necessary for the disposal of both these O.As. are as follows :

In O.A. No. 790/98 the applicant is Mr. M. G. Rahate, who is an Upper Division Clerk in the Customs Department working at Mumbai. A Charge-Sheet dated 06.08.1996 is issued to him alleging certain misconduct. The subject matter of the charge-sheet is some alleged irregularity of the year 1988-89.

The applicant's contention is that the charge-sheet is bad since it is issued in 1996 in respect of an alleged incident of 1988-89. Hence, the charge-sheet is liable to be quashed on the ground of delay. It is further alleged that though this charge-sheet was issued in 1996 and more than two years have elapsed, the enquiry has not proceeded and on this ground also the enquiry proceedings are to be quashed.

...3



In O.A.No. 834/98 the applicant Mr. K. P. Khot is now working as a Tax Assistant in the Customs Department at Mumbai. He had been earlier promoted as Preventive Officer. Then the impugned charge-sheet was issued dated 06.08.1996. The applicant is also challenging the validity of the charge-sheet and the continuance of enquiry on the ground of delay, as mentioned above.

The applicants' further submission is, that after the issuance of charge-sheet the applicant has been reverted from the post of Preventive Officer to the post of Tax Assistant, which is illegal. Merely on the basis of issuance of charge-sheet the applicant cannot be reverted. He, therefore, wants that the charge-sheet should be quashed and further, the order of reversion must also be quashed and he must be again promoted as Preventive Officer with all consequential benefits.

3. In both the cases the stand of the respondents is that in respect of certain irregularities, the Central Bureau of Investigation was doing the investigation. Some where in 1994 the C.B.I. did not want to prosecute the applicants in the Criminal Court and suggested departmental action. Then the department has issued the charge-sheet dated 06.08.1996 against both the applicants. After the report of the C.B.I. in 1994 and after consulting the Vigilance Department the charge-sheet has been issued in 1996. Hence, there is no undue delay in issuing



the charge-sheet. As far as the delay in conducting the enquiry is concerned, it is stated that delay has occurred since C.B.I. has not furnished all the documents to the department. The department is having lengthy correspondence with the C.B.I. for production of documents and hence no progress could be done in the enquiry. Every effort is being made to commence and expedite the enquiry. It is also stated that the case involves voluminous documentary evidence. Enquiry Officer has already been appointed.

It is stated that the promotion of Mr. K. P. Khot was an adhoc promotion and, therefore, the adhoc promotee can be reverted after the issuance of charge-sheet as per rules. Hence, the order of reversion is perfectly valid.

4. Shri V.S. Masurkar, the Learned Counsel appearing for both the applicants contended that there is undue delay in issuing the charge-sheet and conducting the enquiry and on this ground the proceedings should be quashed. Alternatively, he submitted that the enquiry should be expedited by giving minimum time to the department to complete the enquiry and pass final orders. He also complained that further promotion of M. G. Rahate will be held up due to pendency of the enquiry. As far as K. P. Khot is concerned, he argued that the order of reversion is illegal and liable to be struck down. On the other hand, Shri M. I. Sethna alongwith Shri V. D. Vadhavkar for the

...5


respondents explained the circumstances about delay in issuing the charge-sheet and about delay in conducting the enquiry. It was, therefore, submitted that no case is made out for quashing either the charge-sheet or the enquiry proceedings. They also argued that Mr. M.G. Rahate is not due for promotion. They justified the order of reversion of K. P. Khot.

5. As far as challenge to the charge-sheet on the ground of delay is concerned, we must note that applicant^{have} has come up with this plea about more than two years after receiving the charge-sheet. If the applicants were aggrieved by the fact that charge-sheet has been issued belatedly and wanted quashing of the charge-sheet on that ground, they should have approached this Tribunal immediately after receiving the charge-sheet but they have approached the Tribunal about more than two years after receiving the charge-sheet. Therefore, they cannot be now heard about the delay of receiving the charge-sheet for the purpose of quashing the same. The applicants also wants the enquiry to be quashed on the ground that no progress is done for the last two and a half years.

Respondents have explained that delay in issuance of charge-sheet and the delay in conducting the enquiry. They have stated that C.B.I. was seized with the matter and it was doing investigation right from 1988 to 1994. It is only in 1994 the C.B.I. filed a report stating that it is a fit case for



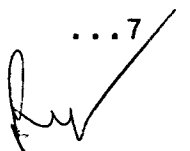
departmental action. Then the department consulted the vigilance department and then issued the charge-sheet in 1996.

As far as delay in conducting the enquiry is concerned, it was stated that the Inquiry Officer is appointed but no progress could be done since the C.B.I. did not furnish the voluminous documents it has seized during investigation. There was lot of correspondence between the department and the C.B.I.

Therefore, this is not a case where at the threshold we can quash the charge-sheet or quash the disciplinary enquiry on the ground of delay and laches.

The Learned Counsel for the applicant/ also placed reliance on the case of State of Andhra Pradesh V/s. N. Radhakishan reported in 1998 (4) SCC 154 where the order of the Tribunal quashing one charge-sheet was confirmed by the Supreme Court. The Supreme Court itself has observed that there is no hard and fast rules or particular time limit for quashing a charge-sheet and it all depends upon the facts and circumstances of the case.

At one stage the Learned Counsel for the applicants himself fairly submitted that the applicants are willing and prepared to face the enquiry and, therefore, he submitted that applicants' objection to the charge-sheet and enquiry on the

...7


ground of delay and laches may be kept open so that the applicants can raise the same at appropriate stage during enquiry or later. In view of the submission, we are not going to the question of quashing the charge-sheet on the ground of delay. We have already stated that respondents have placed on record some reasons and some explanations about delay in issuing the charge-sheet and delay in conduct of enquiry.

6. The Learned Counsel for the applicants is right in his submission that having regard to the fact that the enquiry pertains to an incident of 1988, the enquiry should be expedited. Even the Learned Counsel for the respondents had no objection in expediting the case but his point was that there is voluminous evidence, therefore, it is not desirable to fix any time limit. Applicants' counsel in answer submitted that there should be a direction for completing the enquiry within three months, which is strongly opposed by the Learned Counsel for the respondents.

Having regard to the fact that the enquiry pertains to an incident of 1988-89 and the charge-sheet was issued in 1996 and now preliminary hearing in the enquiry is fixed on 21st and 22nd December, 1999 and having regarding to the fact that the case involves voluminous documentary evidence, we feel that the departmental enquiry should be ordered to be expedited and should end ^{with} passing a final order by the Disciplinary Authority, preferably within a period of eight months from the date of receipt of a copy of this order.

...8

7. As far as the claim of M. G. Rahate, the applicant in O.A.No. 790/98 for promotion is concerned, the applicant's counsel submitted that why his promotion should be held up due to this belated departmental enquiry and, therefore, direction ~~has~~ been given that he must be considered for promotion irrespective of pendency of the departmental enquiry. The Learned Counsel for the respondents point^y out that the applicant has two channels of promotion. One is on the basis of seniority-cum-fitness for which the applicant is not due for promotion in the near future and he is very much junior in the seniority list. As far as the channel of promotion by a competitive examination as Preventive Officer is concerned, it is stated that applicant does not have the required service for eligibility for appearing in the examination for one year more and further, it was stated that in another one year he will be attaining 45 years of age and will not be eligible for this promotion by competitive examination. We have only noted the rival contentions. Since we have given a direction for expediting the departmental enquiry, we do not want to give any direction for promotion of the applicant for the moment. If no final order is passed by the Disciplinary Authority within eight months, as directed, then the applicant should be considered for promotion, provided he is otherwise fit and eligible for promotion subject to zone of consideration, etc. without adopting the sealed cover procedure. If he is otherwise found fit and eligible for promotion, then he could be granted adhoc promotion subject to the result of the disciplinary enquiry.



8. As far as O.A. No. 834/98 is concerned, there is serious challenge to the order of reversion. The applicant was promoted as Preventive Officer on adhoc basis from the post of Tax Assistant. In view of the issuance of charge-sheet, he has been reverted to the post of U.D.C. by the impugned order dated 14.08.1996. But subsequently a corrigendum is issued which is dated 06.09.1996 and now placed before us at the time of arguments by the Learned Counsel for the applicants and the corrigendum says that K. P. Khot has been reverted to the post of Tax Assistant and not Upper Division Clerk as per the earlier order.

The Learned Counsel for the respondents contended that the order of reversion was issued in 1996 but the O.A. is filed in 1998 for challenging the same and, therefore, this prayer is barred by limitation.

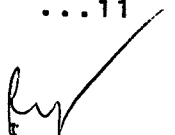
We may straight-away say that there is no plea of limitation raised by respondents in the reply, hence the respondents cannot now be allowed to urge the plea of limitation at the time of arguments.

It is well settled that the plea of limitation is not purely a question of law but it is a mixed question of law and facts. If the respondents had specifically taken the plea of

limitation in the reply, then possibly the applicant could have come with the rejoinder to say as to why there was a delay in filing the application and whether he had given any representation to the administration, etc. Therefore, we do not want to entertain the plea of limitation raised for the first time at the time of argument without raising the plea in the written statement.

Even otherwise, in the facts and circumstances of the case, the plea of limitation has no merit~~s~~. In this case, the applicant is praying for quashing of the charge-sheet itself on the ground of delay, etc. If the main prayer is granted, then automatically the order of reversion falls to the ground, since it is based purely on the ground of misconduct. But in the facts and circumstances of the case and in view of the submission made by the Learned Counsel for the applicant, we are not quashing the charge-sheet but granting a lesser relief of expediting the enquiry and, therefore, we can consider the question of validity of the reversion order. Further, the challenge to the reversion order is in the nature of continuous cause of action. In view of the delay in applicant filing the O.A. about two years from the date of reversion, in case we accept ^{his} ~~this~~ case, we can grant limited relief to the applicant as far as reversion is concerned.

9. Respondents are asserting that the order of reversion is passed purely on the basis of Office Memorandum dated 24.12.1986.



We are concerned with para (i) of this O.M. which is at page 42 of the Paper Book in O.A. No. 834/98. It provides reversion in cases where the adhoc promotion is for a short term or against leave vacancy or it is an adhoc promotion until further orders.

This is not a case of short term promotion or promotion against a leave vacancy. Can it be said that this is a case of adhoc promotion to officiate until further orders, as mentioned in the O.A. Why this promotion of the applicant is adhoc is not explained by the department. The concerned record is not before us. At the time of argument we could gather that it is a case of promotion by D.P.C. It is a promotion against regular vacancy. It is a promotion based on seniority-cum-fitness. Therefore, all the ingredients of regular promotions are there but still it is called adhoc and the reasons are not disclosed in the reply as to why it is called adhoc. But however there is intrinsic material on record to show as to why it was adhoc. The order of promotion is at page 22 of the paper book which is dated 01.11.1995. Though it is called as adhoc and until further orders, it is mentioned that this promotion is subject to the final outcome of O.A. No. 498/94 filed by R. D. Manjrekar & Others in this Tribunal at Mumbai. Since there was a Original Application pending in this Tribunal, the department might have thought that regular promotion is not permissible and therefore they made it adhoc, since the dispute is pending in this Tribunal. But the



department has followed the regular procedure to grant the promotion to applicant and others. It is also admitted at the time of argument that applicant has passed in the competitive examination for Preventive Officer and therefore formal D.P.C. has to be held to confirm the adhoc promotion. Hence, this is not strictly a case of adhoc promotion within the parameters mentioned in para (i)n of the O.M. dated 24.12.1986

10. The Learned Counsel for the applicants also relied on a decision of Guwahati Bench of this Tribunal reported in 1997 (3) (CAT) SLJ 204 (Dhirendra Kumar Das V/s. Union of India & Ors.) where the Division Bench of Guwahati has held that in case of this type of adhoc promotion, if the officer is reverted only on the ground of issuance of charge-sheet, it is illegal and violates Article 311 (2) of the Constitution of India. The Learned Counsel for the applicant also relied upon some other decisions of the Supreme Court that even officers on adhoc promotion cannot be reverted since it amounts to penalty or punishment without holding any departmental enquiry. We need not go into this question in detail since we find that applicant's promotion for all practical purpose was a regular promotion by following a D.P.C. procedure, against regular vacancy and on the basis of seniority and he has passed the competitive examination. In such circumstances, merely on the issuance of charge-sheet the applicant should not have been reverted at all. Hence, the order of reversion cannot be sustained.

 ..13

As already stated, the applicant has come to this Tribunal about two years after the issuance of the order of reversion. In the circumstances, we feel the order of reversion should be quashed with immediate effect. How the period from the date of reversion till the date of reinstatement should be treated, is left to the Disciplinary Authority to consider and to pass appropriate order while passing the final order in the disciplinary enquiry case.

One more contention pressed by the Learned Counsel for the applicant is that both the applicants are working at Mumbai and it will be difficult for them to attend the Departmental Enquiry at Orissa and hence the department should be directed to conduct the enquiry at Mumbai. This submission has been seriously opposed by the Learned Counsel for the respondents. In our view, the question of deciding the place of enquiry is in the discretion of the Disciplinary Authority. It is not a matter which falls within the scope of judicial review. We only leave it to the Disciplinary Authority to consider the request of the applicants to change the place of enquiry and hence we are not interfering with that matter.

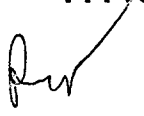
11. In the result, both the applications are allowed as follows :

(a) The departmental enquiry against both the applicants is




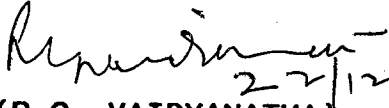
ordered to be expedited and should be completed by passing orders by the Disciplinary Authority as expeditiously as possible and preferably within a period of 8 months from the date of receipt of a copy of this order. Needless to add that both the applicants should co-operate with the Inquiry Officer and the Disciplinary Authority in the expeditious completion of the disciplinary case.

- (b) In case the enquiry is not completed by passing final orders within a period of 8 months as directed, then M.G. Rahate's (applicant in O.A. No. 790/98) claim for further promotion be considered, without following sealed cover procedure, provided he is otherwise eligible, fit and suitable for promotion and he comes within the zone of consideration for promotion.
- (c) The order of reversion of K.P. Khot dated 14.08.1996 with corrigendum dated 06.09.1996 is hereby quashed with immediate effect. The second respondents, namely - the Deputy Commissioner of Customs, Personnel & Vigilance Department, New Customs House, Mumbai, is directed to restore the applicant, K. P. Khot, to the post of Preventive Officer on adhoc promotion within a period of ten days from the date of receipt of a copy of this order by issuing an appropriate order.



- (d) The question as to how the period of reversion from 14.08.1996 till the date of reinstatement of applicant (K.P. Khot) as Preventive Officer in pursuance of the order, shall be decided by the Disciplinary Authority at the time of passing final orders in the Departmental enquiry case. In case the applicant, K. P. Khot, is fully exonerated in the departmental enquiry case, then the official is entitled to the pay of Preventive Officer for the period of reversion less whatever amount he has received. If, however, Mr. K. P. Khot is inflicted as penalty in the departmental enquiry case, then the Disciplinary Authority shall indicate how the period shall be treated. In the usual course and as per his turn, the question of K. P. Khot's confirmation of Preventive Officer may be considered by the D.P.C. and the findings be kept in the sealed cover, to be opened after the termination of the departmental enquiry and subject to the sealed cover procedure rules.
- (e) In the circumstances of the case, there will be no order as to costs.


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


(R.G. VAIDYANATHA)
VICE-CHAIRMAN.

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

CONTEMPT PETITION NO.29 of 2002
(In Original Application No.790 of 1998)

Dated this the 3rd day of May, 2002

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

M.G.Rahate
(By Advocate Shri V.S.Masurkar) - Applicant

Versus

1. Union of India
through the Chief Commissioner of
Customs, New Customs House,
Ballard Estate, Mumbai.
2. Dy.Commissioner of Customs House,
Vigilance Section,
New Customs House,
Ballard Estate, Mumbai.
3. Mr.S.K.Bharadwaj,
Chief Commissioner of Customs,
New Customs House,
Ballard Estate, Mumbai.
(By Advocate Shri M.I.Sethna) - Respondents

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur, Member (A) -

Contempt Petition No.29/2002 in OA 790/98 has been filed by Shri M.G.Rahate alleging that the alleged contemner is guilty of committing contempt against order of the Tribunal dated 22.12.1999 in OA 790/98. A notice was issued and reply has been filed by the alleged contemner. The operative portion of the order as recorded at Para 11 (a) & (b) of the Judgment dated 22.12.1999 reads as below:

- (a) The departmental enquiry against both the applicants is ordered to be expedited and should be completed by passing order by the Disciplinary Authority as expeditiously as possible and preferably within a period of 8 months from the date of receipt of a copy of this order. Needless to add that both the applicants should

....2/-



co-operate with the Inquiry Officer and the Disciplinary Authority in the expeditious completion of the disciplinary case.

- (b) In case the enquiry is not completed by passing final orders within a period of 8 months as directed, then M.G.Rahate's (applicant in OA No.790/98) claim for further promotion be considered, without following sealed cover procedure, provided he is otherwise eligible, fit and suitable for promotion and he comes within the zone of consideration for promotion.

2. Heard Shri M.I.Sethna for the alleged contemner. We have also been assisted by the learned counsel for petitioner, Shri V.S.Masurkar. The point made by Shri Masurkar is that while issuing the orders of promotion dated 19.3.2002 (Annexure- A- 2) the applicant's case for promotion had not been considered properly as required by the order of the Tribunal. Shri Masurkar further stated that the order were issued after the relevant MP was allowed, but even here the promotion given has been made notional. This point was discussed at some length making the point that it was deliberate in nature, and the fact of promotion being provided only notionally heightened the contempt.

3. The learned counsel for the respondents took us over the facts, especially the relevant dates of events. The main stand taken by the respondents is that when the DPC met on 18.3.2002 it was by mistake that applicant's case was taken up and considered under sealed cover procedure, and not under regular procedure as ordered by the Tribunal. It is further stated that on 19.3.2002 the order of promotion subsequent to the decision of DPC were issued; on 20.3.2002, the applicant, Shri Rahate, made a representation to the Commissioner (G), Customs, regarding his grievance of not getting the promotion. It is further stated that

[Handwritten signature]

.....3/-.....

on 21.3.2002 stay on promotion from the post of UDC to Tax Assistant happened to be accorded in the case of Zemse (OA 251/2002). Because of this the respondents were put in a fix, and could not promote the applicant even though respondents consider the representation to be valid. 22.3.2002 to 25.3.2002 being holidays, the respondents moved the Tribunal through proper MPs on 27.3.2002 for permission for according promotion to Shri Rahate.

4. What was brought to be stressed by these dates was the fact and the contention that there was no wilful defiance of the orders of the Tribunal. The mistake had been committed and immediate action was taken to rectify the same. The delay occurred only because of the circumstances as recounted above. The learned counsel for the respondents also brought to our notice the notings made in this respect in the relevant file and the seriousness with which the matter was taken by the Chief Commissioner. We have carefully considered relevant notings on this file, although, for obvious reasons, we are not reproducing them here.

5. At the start of the argument today the learned counsel for the respondents had himself produced before us the order dated 2.5.2002 being E00 No.120/2002, whereby the applicant Shri M.G.Rahate, U.D.C. is ordered to be notionally promoted with effect from 19.3.2002 (copy was provided to Counsel for the applicant Shri Masurkar). The order dated 2.5.2002 was made



....4/-

subsequent upon allowing MP No.355/2002 in OA 251/2002, a day earlier. As discussed above the point about promotion being made notionally was strenuously objected to. The learned counsel for the alleged contemner/Department has taken instructions in this regard and after the case was taken up again in the afternoon today, we are provided with another order dated 3.5.2002 being EOO No.121/2002 whereby the earlier order has been superceded and promotion granted on regular basis to the applicant Shri M.G.Rahate.

6. From a careful consideration of the facts of the case, and after hearing learned counsel on both sides, and especially considering the notings on the file made by alleged contemner, it is clear that what had happened in the DPC cannot be termed as wilful disobedience, and appears to be a mistake. It is also equally clear that the Department has not taken up the matter with due care and caution. This is especially so because after the mistake at the DPC, later also, when the matter had come to the knowledge of the department, inasmuch as here was an MP moved and a CP on hand, the promotion was made notionally. It was later only on 3rd May that the Department got to see this and revise its orders. Thus while this lack of care was evident, it is to be concluded, nevertheless, that the action at the DPC being a mistake there was clearly no wilful act of defiance of the orders of the Tribunal, in so far as the alleged contemner is concerned. His notings on the file which we have referred to



.....5/-

above, clearly shows that he has taken the matter with due seriousness and also enable us to come to the conclusion that there was no intention of any wilful defiance of the orders of the Tribunal on his part. We had hope that some kind of system will be ensured in future where such things are brought to the notice of senior officers at the appropriate time.

7. In view of the above, we do not find any case for proceeding further with CP. Nevertheless, the applicant was pushed to approach the Tribunal again in a manner where such litigation was evidently and clearly avoidable. He has been put to trouble and expense unnecessarily. In the peculiar circumstances discussed above, we do feel that this is a case where award of cost to the petitioner ^{Ans} Shri M.G.Rahate becomes justifiable. Shri Sethna opposes ^{Ans} ~~to~~ award ^{of} cost, since he states the respondents have taken all efforts as early as possible. Again, promotion was granted ^{only Ans} notionally in the first instance as discussed above. Awarding of cost is not only justifiable but essential, and that it cannot be a mere token cost. We hereby award cost of Rs.5000/- (Rupees Five thousand only) payable by the Department to the applicant. The cost shall be paid within two months.

8. CP is hereby rejected. Notices for contempt stand discharged. MP filed along with this CP also stands disposed of.

S.L. Jain
(S.L. Jain)
Member(J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

mb

1615
0
dt: 3.5.2002
Order/Judgment despatched
to Applicant/Respondent(s)
on 31.5.2002
5/6