

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1041, 1121/98 & 313/99.

Dated: 23-12-99

S.D.Kulkarni & Ors.

Applicants.

Mr. G.K.Masand

Advocate
Applicants.

Versus

Union of India & Ors.

Respondent(s)


Mr. M.I.Sethna along with Mr.V.D.Vadhavkar

Advocate for
Respondent(s)

CORAM :

Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member (A).

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


(R.G.VAIDYANATHA)
VICE-CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. ORIGINAL APPLICATION NO.1041/98.
2. ORIGINAL APPLICATION NO.1121/98.
3. ORIGINAL APPLICATION NO. 313/99.

this the 23rd day of Dec 1999.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N.Bahadur, Member(A).

1. Original Application No.1041/98.

S.D.Kulkarni,
Block No.1,
Siddhai Society,
Ambernath (East).

... Applicant.

2. Original Application No.1121/98.

A.H.Borse,
792, Sahyadri Nagar,
N/5, CIDCO,
Aurangabad.

...Applicant.

3. Original Application No.313/99.

D.S.Bhavar,
47/1859, C.G.S. Colony,
Sector VII, Antop Hill,
Mumbai - 400 037.

...Applicant.

(By Advocate Mr.G.K.Masand)

Vs.

1. Union of India, Through the
Secretary in the Ministry of
Finance, Department of Revenue,
New Delhi.

...Respondent
(in all the
three OAs.)

2. Commissioner of Central Excise
& Customs, N/5, Town Centre,
CIDCO,
Aurangabad.

...Respondent
(2nd Respondent
in OA1121/98.)

3. The Commissioner of Central Excise,
HQ., Mumbai - I, Central Excise Bldg.,
M.K.Road, Churchgate,
Mumbai - 400 020.

...Respondent
(2nd Respondent
in OA 313/98.)

...2.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

- 1. ORIGINAL APPLICATION NO. 1041/98.
- 2. ORIGINAL APPLICATION NO. 1121/98.
- 3. ORIGINAL APPLICATION NO. 313/98.

This the _____ day of _____ 1998.

Present: Hon'ble Shri Justice R.G. Vaidyanatha, Vice-Chairman,
Hon'ble Shri B.N. Bahadur, Member(A).

1. Original Application No. 1041/98.

Applicant: S.D. Kulkarni,
Block No. 1,
Siddharth Co. Ltd.,
Ambernath (East).

2. Original Application No. 1121/98.

Applicant: A.H. Borse,
792, Sahyadri Nagar,
W/S, CIDCO,
Aurangabad.

3. Original Application No. 313/98.

Applicant: D.S. Bhavar,
47/1859, C.G.S. Colony,
Sector VII, Anand Hill,
Mumbai - 400 037.
(By Advocate Mr. G.K. Masand)

vs.

Respondent: Union of India, Through the
Secretary in the Ministry of
Finance, Department of Revenue,
New Delhi.

... Respondent
(in all the
three OAs.)

2. Commissioner of Central Excise

& Customs, W/S, Town Centre,
CIDCO,
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(2nd Respondent
in OA 1121/98.)

3. The Commissioner of Central Excise,

HQ., Mumbai - I, Central Excise Bldg.,
M.K. Road, Churchgate,
Mumbai - 400 020.

... Respondent
(2nd Respondent
in OA 313/98.)

...

4. Commissioner of Central Excise,
Mumbai - V, IXth Floor,
Piramal Chambers,
Lalbaug, Parel,
Mumbai - 400 012.
(By Advocate Mr. M.I.Sethna
with Mr.V.D.Vadhavkar.)

...Respondent
(2nd Respondent
in OA 1041/98
and 3 Respondent
in OA 313/99.)

: ORDER :

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

In all these three OAs, the applicants are challenging the legality and validity of the charge sheet issued by the respondents and for consequential reliefs. Respondents have filed reply opposing the three applications. We have heard Mr.G.K.Masand, the learned counsel for the applicants and Mr.M.I.Sethna along with Mr.V.D.Vadhavkar, the learned counsel for the respondents. Since the point involved is a short point and the interim order is operating against the respondents, we are disposing of these OAs at the admission stage after hearing both sides.

2. In all these cases, the department has issued charge sheets against applicants for holding departmental enquiry.

It appears, there was landing on 6.6.1984 of some contraband goods at Narangi. In that connection, the Superintendent (Vigilance) of Central Excise, Mumbai questioned the applicants and some other officials in September, 1984 and recorded their statements. The applicants and some other officials came to be suspended, subsequently departmental charge

sheets were issued against 15 officials including three applicants alleging that they have helped in the smuggling of contraband goods. The applicants denied their complicity in the smuggling of goods. One Mr.V.K.Puri was appointed as the Enquiry Officer in that case. After holding enquiry, the Enquiry Officer reported that the charges are not proved. On that basis the Disciplinary Authority has since dropped the previous charge sheets against all the charged 15 officials including the applicants.

Now, the administration has issued fresh charge sheets to the three applicants alleging that they have made false statements in their earlier statements in September, 1984 and thereby committed mis-conduct. The new charge sheets are issued on different dates in 1998. Being aggrieved by the issuance of fresh charge sheets in respect of an incident of 1984, the applicants have approached this Tribunal challenging the legality and validity of the charge sheets and for quashing the same and asking for other consequential reliefs. They have taken some grounds for challenging the charge sheets.

3. The respondents in their reply have taken the stand that in the previous enquiry the applicants have denied the correctness of the facts in their statements of 1984, it is a case of the applicants and others making false statements before official superiors and thereby they have committed mis-conduct and are liable for disciplinary enquiry.

4. Since we are disposing of the OAs at the stage of admission, we are giving brief reasons for the disposal of the applications.

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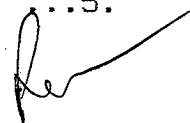
We only mention those grounds which were pressed at the time of arguments and consider them one by one.

5. The main contention of the learned counsel for quashing the charge sheet is on the ground of undue delay in issuing the charge sheets. It was argued that by the impugned charge sheet issued in 1998, the applicants are being subjected to enquiry in respect of an incident of 1984 and statement given in September, 1984 and in view of the delay of 14 or 15 years issuing the chargesheets, it is a fit case for quashing the charge sheets.

The argument is no doubt attractive. At the first flush, we also felt that in view of delay of 14 to 15 years the charge sheets cannot be sustained. But, after deeper scrutiny and examining the materials on record we have reached the conclusion that delay in this case is not fatal and further it is not a delay of 14 to 15 years as made out by the applicants, but it is a case of one or two years.

It may be, now in the charge sheets the charge against the applicants is that they have made false statement of facts in 1984 when their statement was recorded by the Superintendent. No doubt, the charge sheets are issued in 1998. But, we must see the circumstances under which the charge sheets came to be issued.

The administration was proceeding on the assumption that the applicants had given truthful statement in 1984 and on that basis applicants were subjected to previous departmental enquiry. In the previous departmental enquiry, the applicants and other officials retracted their confessional statements of 1984. Therefore, the Enquiry Officer felt that in view of the retraction of the earlier statements of 1984 and want of corroborative

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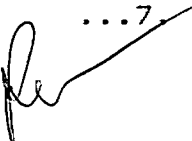
material, the delinquents in the previous case could not be held guilty. We have perused the Enquiry Report which has been filed in another case viz. V.K. Puri (O.A. No.47/99). Mr.V.K.Puri was the Enquiry Officer who gave an Enquiry Report exonerating all the delinquents including the applicants. A separate charge sheet was issued against the Enquiry Officer Mr.V.K.Puri, which is challenged by filing OA 47/99. Since both counsels referred to Mr.V.K.Puri's case, we secured the file of OA 47/99 and both the counsels have commented on the Enquiry Report submitted by Mr.V.K.puri. A perusal of the Enquiry Report shows that all the delinquents including the applicants had retracted from their earlier confessional statements by filing defence brief and also by denying the incidence in their oral examination. That is how, the previous case ended in exoneration.

Now, the administration has taken the stand that applicants have denied the truthfulness of the confessional statements of 1984 and thereby they have deliberately made a false statement of facts which had mis-led the department and hence they are liable for departmental enquiry. The fact that the statement of facts in the confessional statement is false is an admitted case of the applicants. Even in the present OAs, the applicants are not saying that the confessional statement of 1984 was the truthful statement. Therefore, it is now common ground that the statement of 1984 by all the applicants was not a correct statement, but it was a false statement. But, the applicants version is that such a statement was taken by the concerned officer under duress, threat or coercion and it was not a voluntary statement. That version of the applicants will be the defence in the present enquiry. We cannot consider the

merits of the defence in the present OAs, that is a matter which is to be considered and decided by the Enquiry Officer and then by the Disciplinary Authority.

6. Therefore, the administration came to know that applicants have given false statement when their oral statements were recorded in the previous departmental enquiry some time in 1995 and further when defence briefs were submitted at the end of the enquiry by retracting from their earlier statement. Therefore, the cause of action for issuing a charge sheet for alleged false statement of 1984 occurred only from 1995 and onwards, when the administration was put on notice that the previous statements were not true. Therefore, the delay will have to be counted not from 1984, but from 1995 immediately after the applicants denial from statement in 1995. The charge sheets could not have been issued since previous enquiry was very much pending. It is only when the previous enquiry ended in dropping the previous enquiry by the Presidential Order issued in 1998, the department has issued a charge sheet in respect of 1984 statement in April, 1998 and therefore there is no such undue or unexplained delay in this case. The delay of one or two or three years, even if we count from 1995, is not such an undue delay so as to call for drastic action of quashing the charge sheets only on that ground. If the applicants are otherwise prejudiced about their promotional prospects etc. as a result of delayed enquiry, that can be taken care of by giving suitable directions.

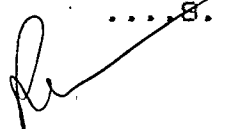
7. The learned counsel for the applicant invited our attention to the case of State of M.P. Vs. Bani Singh and Anr. (1990(1) (ATJ) 653). No doubt, in that case there was a delay of 12 years in initiating departmental enquiry. The Tribunal

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quashed the charge sheet only on the ground of delay. The Supreme Court upheld the order of the Tribunal. But, the observation of the Supreme Court in para 4 of the Judgment are very material. The Supreme Court has pointed out in para 4 that the irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77 itself. The Supreme Court noticed that it is not the case of the department that they were not aware of the irregularities and that they came to know of it only in 1987. If in 1975-77 itself the Department was aware of the irregularities, then issuing of a charge sheet 12 years later cannot be upheld is the observation of the Supreme Court.

In our view, the said decision is not applicable to the facts of the present case. We have already shown that though the departmental enquiry pertains to a statement recorded in 1984, it came to light that it was a false statement only in 1995 when the applicants denied their statements and retracted from the confessional statements in the previous departmental enquiry. We have already pointed out that there may be delay of one or two years in issuing a charge sheet and that too when previous enquiry was pending and therefore action was taken after the previous enquiry came to an end.

8. The next contention of the learned counsel for the applicant is that the present charge sheet is barred by principles of res-judicata, since the statement of 1984 was the subject matter in the previous enquiry. No details are given in the OA about this plea of res-judicata. In the previous enquiry, the subject matter was that applicants and other delinquents had colluded in taking corruption and hushing up of landing of

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smuggled goods. The falsity of 1984 statement was not an issue in the previous enquiry. In fact, the administration proceeded on the basis that 1984 statement was a true statement and on that basis applicants and other delinquents should be punished. But, in the present enquiry, the charge against the applicants is that in 1984 they made a false statement to mis-lead the department. This charge was not there in the previous enquiry. Hence, we hold that the plea of res-judicata has no merit.

9. Then, the next submission is that there is non-application of mind by the Disciplinary Authority in issuing the charge sheets since he has succumbed to the recommendation of the Chief Vigilance Commissioner. We find no merit in this contention. The applicants' counsel has placed reliance on one letter dt.13.1.1998 of the Vigilance Commission which is at page 25 of OA No.1121/98. This letter shows that the Vigilance Commission has carefully examined the re-consideration of the proposal. The Commission has advised dropping of the present charge sheets (that means the previous enquiry) and to issue fresh charges to all the charged officers who had given false statement. This letter is purely in the form of an advise by the Central Vigilance Commission. There is nothing to show that the Vigilance Commission has dictated or directed the Disciplinary Authority to pass an order in a particular way. The Vigilance Commission has given recommendation or advise and on that basis the Disciplinary Authority has passed the order. Merely because there is recommendation of Central Vigilance Commission, it does not mean that the order ~~is~~ passed by the Disciplinary Authority for issuing charge sheets was due to non-application of mind.

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10. In our view, none of the arguments addressed by the applicants merits acceptance so as to quash the charge sheet. We must know that the scope of judicial review at this stage i.e. at the threshold when charge sheets are issued is very limited. We cannot go into the correctness or otherwise of the allegations made in the charge sheets. The Supreme Court has cautioned Tribunals and Courts not to interfere at the threshold of issuance of charge sheet.

In the case of Union of India and Another Vs. Ashok Kacker (1995 Supplement (1) SCC 180), the Supreme Court has observed that quashing the charge sheet at the threshold is purely a pre-mature stage and the Tribunal should not have quashed the charge sheet. The delinquent officer has full opportunity to reply to the charge sheet and raise all the points available to him including those which are urged before the Supreme Court. It is for the Disciplinary Authority to give decision on those contentions. Therefore, the Supreme Court reversed the order of the Tribunal which had quashed the charge sheet and allowed the appeal and dismissed the application filed by the delinquent before the Tribunal.

In K.Swaminathan's case ((1996) 11 SCC 498), the Supreme Court observed that even if the charge sheet is vague and does not disclose any misconduct, the Tribunal or Court would not be justified at that stage to interfere. The Tribunal had quashed the charge sheet in that case, which was again reversed by the Supreme Court.

In this case also, some arguments were addressed at the bar about merits of the case. There was also an argument about delay on the part of the applicant in retracting the confession

etc. Both the counsels made some submissions regarding merits of the case, but advisedly, we are not expressing any opinion and we do not want to go into the merits of the case, lest it may prejudice the departmental enquiry. It is open to the applicants to take their defence in the departmental enquiry by filing reply to the charge sheet and by cross-examining the prosecution witnesses and they can also adduce evidence on ^{their} ~~that~~ behalf and then take a decision on merits.

In view of the above discussions, we hold that no case is made out for quashing the impugned charge sheets in these three cases.

We may also note that similar charge sheets are issued against twelve other officials, but they have not approached this Tribunal and they are participating in the enquiry. The learned counsel for the respondents submitted that even against those twelve officials no progress is done in the enquiry since the Tribunal has granted interim order in these three cases and therefore, the enquiry even against those officials is held up.

11. One of the grievance made by the learned counsel for the applicants is that their promotions will be held up due to the pendency of the departmental enquiry particularly when it has started after such long lapse of time. We feel that having regard to the facts and circumstances of the case, direction should be issued to the department to expedite the completion of the departmental enquiry within a particular time limit. Needless to say that all the applicants and other delinquents must co-operate with the Enquiry Officer in recording the evidence and in completing the enquiry. We feel, in the circumstances of the case, a period of six months would be just

and reasonable for completion of enquiry before the Enquiry Officer. If the enquiry is not completed within a period of six months from the date of receipt of copy of this order, then applicants case for promotion should be considered in their turn and subject to their fitness and eligibility and zone of consideration, without making any reference to the pending departmental enquiry. That means, the normal procedure of adopting 'Sealed Cover' should not be adopted in case the enquiry is not completed within six months as directed. But, if the applicants' turn for promotion comes within six months, then 'Sealed Cover Procedure' may be adopted, but if the enquiry is not completed within six months as directed, then sealed cover will have to be opened and given effect to. In either case, if the enquiry is not completed within six months, then applicants should be considered, subject to fitness, eligibility etc., for ad-hoc promotion and in case they are given ad-hoc promotion, it is subject to review depending upon the result of the final order in the departmental enquiry. In case the applicants are exonerated, then the ad-hoc promotion may be made regular promotion as per rules or in case the the enquiry ends in awarding penalty to the applicants, then the ad-hoc promotion should be reviewed as per rules. We are giving this direction as a special case in the peculiar facts and circumstances of the case, since the enquiry is now being held in respect of 1984 incidence.

We have advisedly given time limit only for the completion of the enquiry before the Enquiry Officer. After the

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Enquiry Officer submits a report, the Disciplinary Authority has to apply his mind and may have to send copy of the report to the delinquent officers and occasion may arise to consult UPSC etc. and it may take some time. If any of the officers belongs to Group 'A' service then Presidential Orders will have to be passed. These things may take some time and therefore our time limit is only for submission of the enquiry report by the Enquiry Officer. Needless to say that in the circumstances even the Disciplinary Authority should expedite further proceedings after getting the enquiry report and take all further steps as expeditiously as possible.

We may place on record that after the orders were reserved, an MP viz. M.P. No.875/99 has been filed in OA 1121/98 for production of one document. We have allowed that M.P. on 21.12.1999. We have already pointed out that we are not going to the question of merits, whether the retraction was done at earlier stage or later stage and what value has to be given to it are all questions to be decided in the enquiry case. Hence, we do not want to express any opinion on the merits of the case, lest it may prejudice the enquiry.

12. In the result, all the three applications are disposed of at the admission stage, subject to the observations made in para 11 above. The ad-interim order staying the Departmental Enquiry passed in all the three cases and extended from time to time are hereby vacated. A copy of this order be communicated immediately to the Disciplinary Authority viz. The Dy. Commissioner (P & V)

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Central Excise, Mumbai - II for information and compliance and for giving appropriate instructions to the Enquiry Officer to expedite the enquiry as directed in the order. There will be no order as to costs.

B.N. Bahadur
(B.N. BAHADUR)

MEMBER(A)

R.G. Vaidyanatha
23.12.99
(R.G. VAIDYANATHA)

VICE-CHAIRMAN

B.