

05/18/08

order pronounced today in an
open court by the aforesaid
Bench -

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05/18/08

C.O.

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 403/2006.

Jaipur, this the 5th day of December, 2007.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. Tarsem Lal, Administrative Member.

M. K. Gautam
S/o Shri O. P. Gautam,
Aged 49 years,
R/o 423-424, Sanjay Nagar-D
Near Joshi marg,
Jhotwara, Jaipur.

... Applicant.

By Advocate : Shri Madhukar Sharma.

Vs.

1. Union of India,
Through the Chairman,
Central Board of Excise and Customs,
Ministry of Finance, Department of Revenue,
North Block,
New Delhi.
2. Commissioner,
Central Excise Jaipur-I,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur (Raj.)
3. Commissioner,
Customs,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.
4. Additional Commissioner (P&V),
Disciplinary Authority,
Central Excise Commissionerate Jaipur-I,
New Central Revenue Building,
Statue Circle, C-Scheme,
Jaipur.
5. Shri P. L. Saini,
Inquiry Officer,
Superintendent, Central Excise through
Additional Commissioner (P&V),

Central Excise Commissionerate,
Jaipur.

... Respondents.

By Advocate : Shri Kunal Rawat.

: O R D E R :

Per Hon'ble Mr. Tarsem Lal, Administrative Member.

Mr. M. K. Gautam, the applicant has filed OA No. 402/2006 and asked for the following reliefs :-

- a) By an appropriate writ order or direction impugned order dated 7.3.2006 (Annexure-A/1) & Order dated 17.1.2005 (Annexure A/2) be declared illegal and be quashed and set aside.
- b) The Inquiry Report dated 16.6.2004 (Annexure A/4) should be declared null and void.
- c) By an order or direction respondents may be directed not to implement the order dated 17.1.2005 (Annexure A/2) & Order in appeal dated 7.3.2006 (Annexure A/1), so that the financial loss may not cause to the applicant.
- d) By an order or direction respondents may also be directed to grant the payment of arrears, if any due to such illegal order or withholding of increment of the applicant, with interest on the amount remained with the respondent department till its payment.
- e) Any other relief which is found just and proper in the facts and circumstances of the case be passed in favour of the applicant."

2. The facts of the case are that the applicant was appointed as UDC in the Custom and Central Excise Department and was promoted to the post of Inspector on 19.10.1983. On 27.7.1993 (Annexure A/5) while he was

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posted at Custom Range, Bikaner, he was issued a memo containing the following allegations :-

- "(a) In connection with collection of intelligence a service revolver with 10 alive cartridges was issued to the applicant on 30.11.1992 on his request.
- (b) The service revolver so issued was required to be deposited after returning from tour i.e. from Fatehpur. Instead of returning to his Hqrs., the applicant proceeded on leave w.e.f. 14.12.1992 from Fatehpur.
- (c) The applicant joined his duties after availing leave on 22.2.1993 but he failed to deposit the service revolver to the issuing authority.
- (d) Applicant was directed by the Assistant Collector, Customs, Bikaner vide letters dated 23.2.93 & 10.3.93 to deposit the service revolver, but he failed to comply with the directions of superior officers.
- (e) The applicant later on deposited the service revolver along with 10 alive cartridges on 29.4.93."

Therefore, the applicant showed gross negligence in performing his official duties and acted in a manner unbecoming of a Govt. servant.

3. The applicant furnished reply to the above memo vide his application dated 13.8.93 (Annexure A/6) in which he explained the circumstances which compelled him to remain on leave and due to misunderstanding of the departmental officers he was not allowed to perform his duties from the month of February to July. He requested the Collector, Central Excise Jaipur-1 for collecting the revolver with cartridges from him by any competent officer otherwise he will be compelled to deposit the said weapon

in the nearest Police Station. On 29.4.1993, Mr. Sanjeev Mittal, Inspector, Customs Division, Bikaner collected revolver as per directions of the Assistant Collector, Customs Division, Bikaner. The applicant complied with the directions and handed over the Revolver along with 10 alive cartridges to Mr. Sanjeev Mittal, Inspector, Custom Division, Bikaner on 29.4.93 (Annexure A/9).

4. After a period of 10 years from the alleged date of collection of Revolver i.e. 29.4.93, the respondents issued a charge sheet dated 3.3.2003 (Annexure A/3), which contains the following allegations :-

- "(i) Despite fulfillment of his requirements he did not return to the department the service revolver issued to him.
- (ii) He failed to comply with the directions of his superiors and
- (iii) He leveled false and baseless allegations against his superiors."

5. The applicant submitted a letter dated 21.5.2003 (Annexure A/10) to Respondent No.4 requesting for inspecting the connected files and note sheets on the subject. The applicant submitted that he had complied with the directions dated 26.4.93. He also requested for a copy of the statement of Mr. Sanjeev Mittal, Inspector, to whom the Revolver was handed over on 29.4.93. The applicant explained that due to his illness he was compelled to remain on leave and was not able to comply with the directions given vide letter dated 15.12.1992

and 19.2.93. The inquiry was conducted (Annexure A/4) and all the 3 charges were held to be proved by the Inquiry Officer and the applicant was awarded a penalty of withholding of 3 increments of his pay with cumulative effect under Rule 11 (iv) of the CCS (CCA) Rules, 1965 vide orders dated 17.01.2005 (Annexure A/2). The applicant submitted an appeal which was rejected by the Appellate Authority vide order dated 7.3.2006 (Annexure A/1). Aggrieved by the above, the applicant has filed this OA and asked for the aforesaid relief as given in Para 1.

6. On the other hand, the respondents have filed a detailed reply to the OA and not agreed to any of the reliefs asked for by the applicant. The respondents have pleaded that on 30.11.92 the applicant submitted an application addressed to the Superintendent (Preventive) Customs division, Bikaner, stating that he had to go to Fatehpur for collection of intelligence and a service revolver should be issued to him for his personal safety. Therefore, a service revolver along with 10 alive cartridges was issued to the applicant and he left the headquarter for collection of intelligence. On 14.12.92, he sent a letter from Fatehpur stating that his son had sustained injuries during communal riots and therefore, he had to visit Jaipur during 14.12.92 to 18.12.92 for which 5 days CL should be sanctioned in his favour. However, the service revolver was neither deposited in

the armory by the applicant nor anything was informed by him in this regard. Finally, the applicant joined his duties on 22.2.93, yet he did not deposit the revolver.

6.1. The applicant was directed to deposit the service revolver by the Assistant Commissioner, Bikaner, vide his letters dated 22.12.92, 13.1.93 and 23.2.93 but he failed to deposit the service revolver along with alive cartridges. The applicant kept the revolver with himself till 29.4.93 until it was collected by the department from him through Mr. Sanjeev Mittal, Inspector, Custom Division, Bikaner. The applicant despite sending a special messenger to visit him for collection of service revolver, he refused to return it and defied the direction of his superiors. This shows that the applicant had a malafide intention to keep the service revolver in his possession inasmuch as possible. Then the applicant was issued a charge sheet under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 vide Memorandum C. No.II-10(1) Vig./93/627 dated 3.3.2003 as the applicant has contravened the provisions of Rule 3 (i) (iii) of the Central Civil Services (Conduct) Rules, 1964.

6.2 The applicant was asked to submit his reply on the memorandum dated 03.03.2003 but he failed to submit written statement of his defence. Thereafter, Inquiry Officer and Presenting Officer were appointed on

08.07.2003. The Inquiry Officer submitted his inquiry report on 16.06.2004 wherein he has proved all the articles of charges.

6.3 Finally, the case was adjudicated by the Additional Commissioner (P&V), Central Excise, Jaipur-I, vide order dated 17.01.2005 whereby penalty of withholding of three increments of pay with cumulative effect was imposed.

The applicant preferred an appeal against the penalty order dated 17.01.2005 which has been rejected vide Order in appeal dated 07.03.2006 (Annexure A/1).

6.4 The respondents have further stated that though the present OA has been filed within a period of one year from the date of order of appeal i.e. 7.3.2006, but the applicant has not exhausted all the remedies available under the relevant service rules.

7. The respondents have pleaded that there is no time limit prescribed for issuing of a charge sheet under the provision of law and rules and thus, the plea of the applicant that the same has been issued after an inordinate delay is not sustainable in the eyes of law. The applicant has disobeyed the instructions issued to him vide letter dated 22.12.92, 13.1.93, 23.2.93, 10.3.93 and 26.4.93. He even refused to handover the revolver to the special messenger sent with the letter dated 22.12.92 to collect the same. Therefore, charge sheet was issued

to the applicant on 3.3.2003 on account of misconduct committed by him which has been proved during the inquiry. The respondents have stated that all the submissions put forth by the applicant in his appeal dated 15.3.2005 were duly considered by the Appellate Authority while deciding his appeal. The order in appeal has been passed on the basis of the facts and materials borne on record. Therefore, the same may be upheld by this Tribunal in its totality. Respondents have pleaded that the OA may be dismissed with exemplary cost.

8. The applicant has filed rejoinder and the respondents have filed reply to the rejoinder wherein most of the submissions already made in the OA as well as in the reply to the OA have been repeated.

9. Learned Counsels for both the parties have been heard.

10. Learned counsel for the applicant pleaded that the Revolver along with 10 alive cartridges was issued to him in the year 1992 which was returned in April 1993. The respondents had directed vide their letter dated 26.4.93 (Annexure A/7) that a service revolver which was issued along with 10 alive cartridges on 30.11.1992 may be deposited within a period of 7 days failing which the appropriate action will be taken against him. Whereas the above weapon was handed over to Mr. Sanjeev Mittal on

29.4.93, for which a receipt has also been enclosed as Annexure A/9. Learned Counsel for the applicant repeatedly emphasized that the service revolver along with 10 alive cartridges was handed over by the applicant within a period of seven days to the respondents as directed vide their letter dated 26.4.93.

11. Learned Counsel for the applicant relied on the judgment dated 11.08.2005 decided by Hon'ble the Rajasthan High Court in DB Civil Writ Petition No. 4716/2005, Union of India & Os. Vs. Mahesh Kumar Jawa & Anr., wherein the Hon'ble High Court of Rajasthan has held as under :-

" However, in the opinion of the Tribunal the Department cannot initiate a departmental enquiry after an inordinate delay. The Tribunal has based its view on number of decisions of the Apex Court. It has referred to State of Punjab & Ors. vs. Chaman Lal Goyal reported in 1995 (2) SCC 570; State of AP vs. N. Radhakrishnan reported in 1998 (4) SCC 154, State of MP vs. Bani Singh & Anr. Reported in 1990 (2) SLR 798. It has also referred to a Division Bench decision of this Court in Kuldeep Sharma vs. State of Raj. & Ors. reported in RLW 1999 (1) 168 wherein number of cases of Apex Court have been considered.

There is not a word to explain the delay of 7 years in not initiating the departmental enquiry against the respondent. A serious prejudice has been caused to the respondent because of not initiating the enquiry within a reasonable time. No interference is warranted with the order of the learned Tribunal."

In view of the above, Learned Counsel for the applicant has pleaded that the impugned orders Annexure A/2 and A/1 may please be quashed and set aside.

12. Learned Counsel for the respondents reiterated all the arguments given in his reply to the OA and emphasized that the applicant had not returned the weapon, inspite of sending him repeated reminders. Although, he handed over the weapon on 29.4.93 but he kept the weapon with himself unauthorisedly for a period from 30.11.92 to 29.4.93, for which the disciplinary action has been taken against the applicant. He, therefore, pleaded that the OA may be dismissed.

13. We have examined this case carefully and perused the documents placed on record. The applicant was issued service revolver along with 10 alive cartridges on 30.11.92 which was kept by him with himself till 29.4.93. Although he committed a serious lapse but the department failed to take the action immediately thereafter. The charge sheet has been issued to the applicant under Rule 14 of the CCS (CCA) Rules, 1965 on 3.3.2003 after a period of 10 years.

14. In this regard, the Hon'ble Supreme Court in the case of State of M.P. vs. Bani Singh and another, reported in 1990(2) SLR 798 has observed as under :-

"....We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities if any, and came to know it only in 1987. According to them even in irregularities and the investigations were going on since then. If that is so it is unreasonable to think that they would have taken more than 12 year to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case, there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss the appeal..."

On the same lines, Hon'ble Supreme Court in case of P.V.Mahadevan vs. MD, T.N.Housing Board reported in 2005 SCC (L&S) 861, h as observed as under :-

"11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government

employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

12. We, therefore, have no hesitation to quash the charge memo issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date."

There is another judgment given by Coordinate Bench of this Tribunal at Principal Bench in OA No. 641/2006 decided on 14th December, 2006, wherein it was also held that the Hon'ble Supreme Court in a catena of judgments has held that when there is unexplained delay of 10 years or more in instituting disciplinary proceedings vitiates the enquiry and for this purpose the Principal Bench has relied upon M.V.Bijlani vs. Union of India and Ors., 2006 (5) SCC 88, State of Andhra Pradesh v. N.Radhakrishnan, JT 1998 (3) SC 123, State of M.P. v. Bani Singh and Anr., 1990 (2) SLR 798 and P.V.Mahadevan v. MD T.N.Housing Board (supra).

15. The CAT, Jaipur Bench, in the case of Mukesh Viz. vs. Union of India & Ors., decided by the DB on 24.05.2007 passed in OA No.188/2006, wherein the Executive Engineer, Bhopal, had committed certain irregularities during the period from 3.6.1992 to 29.05.1996 and the charge sheet was issued after a period of 10 years, has held as under :-

"9. Therefore, we are of the considered opinion that in this case inordinate delay had taken placed in issuing the chargesheet to the applicant and there is no satisfactory explanation for inordinate delay. So we find that as per the law laid down by the Hon'ble Supreme Court in the case of M. V. Bijlani, N. Radhakrishnan, Bani Singh and P. V. Madhavan (supra) as applied by the Coordinate Bench at Principal bench which is also binding on us, and we have no reason to differ from the same. As such, we find that the OA has sufficient merits and deserves to be allowed. We, therefore, allow the OA and quash and set aside the chargesheet. No order as to costs.

16. In view of the above discussion, it is clear that the applicant had committed certain misconduct during the period from 30.11.92 to 29.4.93 but the department failed to take any action at that time. We find that in reply to the OA no explanation for such an inordinate delay has been given.

17. In view of the settled case laws, as reproduced above, that the charge sheet cannot be issued after a lapse of 10 years to the applicant. The impugned order

issued by the respondents Annexure A/2 and A/1 are hereby quashed and set aside with all consequential benefits.

18. The OA is allowed. No order as to costs.

Tarsem Lal
(TARSEM LAL)
ADMINISTRATIVE MEMBER

M. L. Chauhan
(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./