

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

Date of Order: 15.05.2014

OA No. 491/2013 with
MA No. 291/00152/2014
MA No. 291/00204/2014
MA No. 291/00210/2014
MA No. 291/00240/2014


Mr. Amit Mathur, counsel for applicant.
Mr. V.K. Pareek, counsel for respondents.

Learned counsel for the respondents produced documents in a sealed cover envelop, as directed by this Tribunal vide order dated 31.03.2014 & 11.04.2014. After perusing the documents, the same is returned to the learned counsel for the respondents in sealed cover.

Heard learned counsel for the parties.

Order is reserved.


(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

Kumawat

Dt 29/5/2014

Order pronounced today in the
open court by the aforesaid Bench.


29/5/14
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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 491/2013
WITH
MISC. APPLICATION NO. 291/00152/2014,
MISC. APPLICATION NO. 291/00204/2014,
MISC. APPLICATION NO. 291/00210/2014,
AND
MISC. APPLICATION NO. 291/00240/2014

Order reserved on: 15.05.2014

Date of Order: 29th.05.2014

CORAM

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER
HON'BLE MR. M. NAGARAJAN, JUDICIAL MEMBER

K.C. Gupta S/o late Shri R.L. Gupta, aged around 59 years R/o B-92, Nehru Nagar, Jhotwara Road, Jaipur, presently working as Superintendent, Central Excise Commissionerate, Jaipur-I, Jaipur (Rajasthan).

...Applicant

Mr. Amit Mathur, counsel for applicant.

VERSUS

The Commissioner, Central Excise Jaipur-I, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur (Rajasthan).

...Respondent

Mr. V.K. Pareek, counsel for respondent.

ORDER

(Per Mr. M. Nagarajan, Judicial Member)

1. The point that arises for our consideration in this O.A. is
"whether the charge-sheet/Memorandum dated 31.05.2013
(Annexure A/1) against the applicant under Rule 14 of Central
Civil Services (Classification, Control and Appeal) Rules, 1965
and subsequent order dated 26/27.06.2013 (Annexure A/2)
under which Inquiry Officer was appointed to inquire into the

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matter, are liable to be interfered with on the ground that the impugned charge-sheet/memorandum has been issued after a lapse of a period of more than 12 years from the date of the incident."

2. The brief facts which give rise to this O.A., as stated by the applicant, are that he was initially appointed in the year 1977 as LDC and later on promoted to the post of U.D.C., T.A. and Inspector. While performing his duty as Inspector in the Technical Section in Central Excise Division-II, Jaipur, he has put up the application dated 06.11.2001 of M/s Anita Tex Print Limited, Kaladera, Jaipur before the higher authorities for consideration for issuance of private bonded warehouse licence as per the paper submitted by the assessee and forwarded by the office of Development Commissioner, NEPZ, NOIDA Office. The said M/s Anita Tex Print Limited, Kaladera, Jaipur was working as DTA Unit during the period 1999 to February, 2001. The said Unit did not pay duty under the provisions of Central Excise Act and Rules. A duty of Rs. 1,38,17,000/- was due over the Unit. The said Unit applied for conversion of itself into 100% Export Oriented Unit. It made application before the Development Commissioner, NEPZ, NOIDA. The Development Commissioner, NEPZ, NOIDA issued the letter of permission under the EOU Scheme on 29.10.2001. The application of the said Unit was processed by the applicant with submission that the case may be considered for the licence in view of the document submitted by the firm. The said file was returned to the applicant only on 22.11.2001 and therein it was noted by

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him that the assessee has submitted an undertaking to deposit the arrears outstanding after decision of his appeal and application of the assessee may be considered and decided under Section 58 of the Customs Act. Subsequently, the office of the Commissioner issued the licence. Thereafter, the LOP issued to the Unit was cancelled on 11.06.2002. A preliminary inquiry was conducted in the matter and the applicant was directed to submit his defence. In the month of February, 2004, the applicant has submitted his defence.

3. In the defence submitted by the applicant in the month of February, 2004, it was stated by him that he merely asked for consideration for issuance of licence and the same was made on the basis of information available in the file. Subsequently, another Inspector posted along with the applicant in Technical Section Shri P.M. Meena made note in the file that the appeal of the assessee is pending for decision with the Commissioner Appeals, Jaipur, therefore, recommendation was made for issuance of licence and the Unit has submitted the cheque of Rs. 18,68,000/- and advance cheque of balance principal amount. According to the applicant, after the above note of the said Inspector Shri P.M. Meena, he put up the note relating to the undertaking given by the assessee that the amount will be paid by him after decision in the appeal. Consequently, the Assistant Commissioner granted conditional licence saying that the licence will be revoked if the assessee violates his undertaking; as such, an amount of Rs. 18,68,000/- was encashed as per undertaking. Thereafter, the file was marked to the applicant on 26.12.2001

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directing for informing to the Unit for job work permission. The applicant in his reply further stated that he merely followed the directions issued by the superiors and performed the work as per law and made submission accordingly. At that stage, the department considered the case of the applicant and decided to give a 'warning' in that matter.

4. The applicant submits that since 2004, the matter remained pending with the respondents, no proceeding took place. However, on 31.05.2013, a charge-sheet was served upon him for the above incident, which took place in 2001 wherein recommendation was made to issue 'warning' to the applicant. He has submitted his reply to the said charge-memo denying all the charges levelled against him vide Annexure A/4 dated 13.06.2013. In spite of the reply of the applicant to the said charge-memorandum dated 31.05.2013, the respondents appointed an Inquiry Officer to conduct the inquiry in the matter. Thus, being aggrieved by the Memorandum of Charges dated 31.05.2013 (Annexure A/1) and the order dated 26/27.06.2013 (Annexure A/2) under which the respondents appointed an Inquiry Officer to conduct the inquiry in the matter, the applicant has presented this O.A. praying for quashing the said Memorandum dated 31.05.2013 (Annexure A/1) and the order dated 26/27.06.2013 (Annexure A/2).

5. Pursuant to the notice of the O.A., the respondents entered appearance and filed their reply. In the reply, they have taken a stand that the charge-Memorandum dated 31.05.2013

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(Annexure A/1) came to be issued under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and after consideration of the written defence submitted by the applicant, the Inquiry Officer has been appointed vide order dated 26/27.06.2013 (Annexure A/2) to inquire into the matter and since no further order has been passed, the claim of the applicant in this O.A. is premature one and, thus, the O.A. is liable to be dismissed.

6. It is further stated in the reply that the act of dealing with the application dated 06.11.2001 of the assessee by the applicant in the departmental file was part of the exercise undertaken by the authority to ascertain the eligibility of the assessee for grant of licence, as his subordinate officers are duty bound to provide their assistance as per authority and requirement to the higher authority in disposal of the Government work. While admitting the fact that a decision was taken to issue an 'administrative warning' in the matter to the applicant and other concerned officers, the respondents contended that before the matter could be concluded by way of issuance of formal administrative warning, the matter was taken up for investigation by the CBI from the criminal angle on the basis of a secret information received by them in the year 2008. The C.B.I. has taken up the investigation and during the course of the investigation, the agency collected and examined 183 documents from various formations and also collected oral evidence of 53 witnesses and submitted an investigation report in the matter vide letter dated 16.12.2009 to the Directorate General of Vigilance, New Delhi

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for initiation of action as recommended. Examination of the investigation report of the CBI revealed that the agency did not find criminal misconduct on the part of the departmental officers, however, noticed lapses on the part of the certain officers, accordingly, recommended initiation of major penalty proceeding against the officers, including the applicant, and minor penalty proceeding/action as deemed fit. The D.G. (Vigilance), New Delhi forwarded the said investigation report to their office vide letter dated 15.01.2010 seeking comments of the parent department before referring the matter to CVC for seeking first stage advice. The comments on the investigation report was forwarded to the D.G. (Vigilance), New Delhi by letter dated 04.03.2010 and the same was forwarded to the CVC for advice. The CVC noticed some discrepancies in the reference and raised some queries. Accordingly, the D.G. (Vigilance), New Delhi by letter dated 07.12.2011 remanded the matter for re-examination and comments and after re-examination of the matter, again the matter was referred to D.G. (Vigilance), New Delhi vide letter dated 06.03.2012.

7. In sum and substance, the specific defence set up by the respondents in resisting the prayer sought by the applicant is that an application before this Tribunal does not lie against a charge-sheet or show cause notice for the reason that it does not give rise to any cause of action. They contended that a charge-sheet or show cause notice in the disciplinary proceedings should not ordinarily be quashed by the Court/Tribunal.

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8. Heard Shri Amit Mathur, learned counsel for the applicant and Shri V.K. Pareek, learned counsel for the respondents and perused the pleadings and the documents annexed to the pleadings of both the parties.

9. Shri Amit Mathur, learned counsel for the applicant argued that the impugned charge-Memorandum dated 31.05.2013 (Annexure A/1) is liable to be quashed on the following grounds

—
"(a). The charge-sheet has been issued to the applicant after a lapse of a period of more than 12 years.

(b). After a preliminary inquiry in the year 2003-04, the respondents have taken a decision to issue 'warning' in the matter and, as such, the same cannot be re-opened after an expiry of about 10 years from the date of taking such decision.

(c). The impugned charge-memorandum has been issued based on the advice of an Extra Departmental Agency who has no role to play in the matter of taking disciplinary action against an employee of the respondents.

(d) The charge sheet has been issued in violation of the circulars and on the basis of the provisions which were not in existence at the time of incident."

10. In support of his prayer that the impugned charge-memorandum is liable to be quashed on the ground that the impugned memorandum came to be issued after a lapse of 12 years from the date of incident, which took place in the year

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2001, Shri Amit Mathur, learned counsel for the applicant, placed reliance upon the following judgments –

- (i) **State of Madhya Pradesh vs. Bani Singh and another** AIR 1990 SC 1308.
- (ii) **P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board** AIR 2006 SC 207.

11. Shri V.K. Pareek, learned counsel for the respondents, by placing reliance upon the judgment of the Hon'ble Supreme Court in the case of **Secretary, Ministry of Defence and Ors. vs. Prabhash Chandra Mirdha** [2012 (11) SCC 565] and another judgment of the Hon'ble Supreme Court in the case of **Secretary to Government, Prohibition & Excise Department vs. L. Srinivasan** [1996 (3) SCC 157] argued that neither the show cause notice in disciplinary proceedings nor the charge-sheet ordinarily be quashed by the court at an initial stage as it would be a premature stage to deal with the issues. He further submitted that the delay either in initiation of departmental proceedings or in concluding the departmental proceedings is not always fatal. It depends upon the facts and circumstances of each case. Though delay on the part of the employer may be one of the circumstances in not permitting the employer to continue with the disciplinary proceedings, if the delay is explained satisfactorily then the proceedings should be permitted to continue. He further argued that the proceedings are not liable to be quashed on the grounds that the proceedings has been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. He submitted that the settled position of

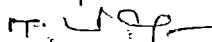
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law is that the gravity of alleged misconduct is a relevant factor and the same is required to be taken into consideration while quashing the proceedings. By inviting our attention to the Charge No. 2 & 3 of charge-Memorandum dated 31.05.2013 (Annexure A/1), he argued that the charges alleged against the applicant are grave in nature and as such in view of the above said settled principles of law the memorandum of charges cannot be interfered with on the ground that there is some delay in initiation of the departmental inquiry.

12. We may refer to the decision relied upon by Shri Amit Mathur, learned counsel for applicant. The Hon'ble Supreme Court in the case of **P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board** (supra) by referring to the judgment of the Hon'ble Supreme Court in the case of **State of Madhya Pradesh vs. Bani Singh and another** (supra) quashed the charge memorandum issued against the appellant Shri P.V. Mahadevan. The relevant portion of the order of the Hon'ble Supreme Court in the case of **P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board** (supra) at para 12, 13 and 16 reads as –

"12. The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

13. Our attention was also drawn to the counter affidavit filed by the respondent-Board in this appeal. Though some explanation was given, the explanation offered is not at all



convincing. It is stated in the counter affidavit, for the first time that the irregularity during the year 1990 for which disciplinary action had been initiated against the appellant in the year 2000, came to light in the audit report for the second half of 1994-1995.

16. 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 the 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."

13. For the purpose of arriving to the above conclusion, the Hon'ble Supreme Court in the case of **P.V. Mahadevan vs. M.D. Tamil Nadu Housing Board** (supra) was pleased to refer to Section 118 and 119 of the Tamil Nadu State Housing Board Act, 1961 (Tamil Nadu Act No. 17 of 1961). The said Section 118 of the said Act, provides for submission of the abstracts of the accounts at the end of every year and Section 119 relates to annual audit of accounts. The Hon'ble Supreme Court recorded a finding that the said two statutory provisions i.e. Section 118 and 119 of the said Act, have not been complied with at the relevant point of time. Such a situation does not exist in the case on hand.

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14. Shri V.K. Pareek, learned counsel for the respondents, drew our attention to the principles laid down by the Hon'ble Supreme Court in the case of **Secretary, Ministry of Defence and Ors. vs. Prabhash Chandra Mirdha** (supra), the relevant Para 10, 11 & 12 reads as –

"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction / competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court (vide State of U.P. v. Brahman Datt Sharma [(1987) 2 SCC 179], Bihar State Housing Board vs. Ramesh Kumar Singh [(1996) 1 SCC 327], Ulagappa vs. Commr. [(2001) 10 SCC 639], Special Director v. Mohd. Ghulam Ghouse [(2004) 3 SCC 440] and Union of India v. Kunisetty Satyanarayana [(2006) 12 SCC 28]).

11. In State of Orissa v. Sangram Keshari Misra [(2010) 13 SCC 311 (SCC pp. 315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority (See also Union of India v. Upendra Singh [(1994) 3 SCC 357]).

12. Thus, the law on the issue can be summarized to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated state or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

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15. In view of the above principles laid down by the Hon'ble Supreme Court in the matter of considering the prayer of a Government employee to quash the charge-memorandum, it is necessary for us to examine the claim of the applicant to quash the charge-memorandum on the ground of delay in the light of the aforesaid legal proposition.

16. No doubt, the incident took place in the year 2001 and a decision was taken to issue administrative warning to the applicant but before the matter could be concluded by way of issuance of administrative warning, the matter was taken up for investigation by the CBI from the criminal angle on the basis of a secret information received by them in the year 2008.

17. The respondents in their reply have explained the delay in initiation of the disciplinary proceedings. The relevant portion of the explanation given by them in written reply relating to the delay in initiation of the disciplinary proceedings reads as –

"4(4)..... Investigation by the agency like CBI general takes time as lots of documents and witnesses are to be examined before arriving at any conclusion. In the instant case, during the course of investigation the agency collected and examined 183 documents from various formations and also collected oral evidence of 53 witnesses. However, the CBI submitted their investigation report in the matter vide letter dated 16/12/2009 to the Directorate General of Vigilance, New Delhi for imitation of action as recommended. Examination of the investigation report revealed that the agency did not find criminal misconduct

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on the part of departmental officers, however, noticed lapses on the parts of certain officers, accordingly recommended initiation of major penalty proceeding against officers, including the applicant and minor penalty proceeding/action as deemed fit. The DG (Vig.), New Delhi forwarded the said investigation report to this office vide letter dated 15/1/2010 for seeking comments of the parent department before referring the matter to CVC for seeking first stage advice. This office forwarded comments on investigation report vide letter dated 4/3/2010 to the DG (Vig) New Delhi, who after examination forwarded to the same to CVC for advice. The CVC noticed some discrepancies in the reference and raised some queries. Accordingly DG (Vig), New Delhi vide letter dated 7/12/2011 referred back the matter for re-examination and comments. After re-examination matter was again referred to DG (Vig.) New Delhi vide letter dated 6/3/2012. In between, the DG (Vig.) New Delhi raised certain queries vide letter dated 27/3/2012, 6/9/2012 and demanded records vide letter dated 24/9/2012. Records supplied vide letter dated 4/10/2012 and queries replied vide letter dated 25/10/2012. Thereafter matter was referred to the CVC by the DG (Vig.), New Delhi vide U.O. Note dated 3/12/2012. Finally CVC tendered its first stage advice vide letter dated 4/1/2013. In view of the above considerable span of time consumed in the investigation and completion procedural formalities. Further after receipt of advice matter referred to Customs Commissionerate for initiation of proceedings as the applicant was posted under Customs Commissionerate at that time, but before the proceedings could be initiated he was transferred to Central Excise Commissionerate, Jaipur-I, accordingly matter received back on 25/4/2013. Thereafter matter was examined thoroughly and disciplinary proceedings for major penalty initiated against the applicant on 31/5/2013 based on the available records."

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18. On perusal of the above, we see the explanation given by the respondents as to how there was delay in issuing the charge-sheet, at what level and what contemplation the decision was taken to issue the charge-sheet. We may mention here that in this case, we do not find that there was any unexplained delay on the part of the respondents in issuing the impugned charge-memorandum. The delay, if at all had taken place, has been properly explained by the respondents. So, we find that merely on account of delay, which has been properly explained by the department, the charge-memorandum cannot be quashed and the respondents should be permitted to continue with the disciplinary proceedings.

19. The Hon'ble Supreme Court in the case of **Secretary to Government, Prohibition & Excise Department vs. L. Srinivasan** (supra) held as under –

"3.In the nature of the charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. It is not necessary to go into the merits and record any finding on the charge levelled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum dehors the limitation of judicial review. This is one such instance where a member had exceeded his power of

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judicial review in quashing the suspension order and charges even at the threshold. We are coming across such orders frequently putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied.

20. We have perused the specific charge levelled against the applicant vide impugned charge-Memorandum dated 31.05.2013 (Annexure A/1). The statement of articles of charge framed against the applicant reads as under –

"1) while working as Inspector (Technical) in Central Excise Division-II, Jaipur had put up the application dated 06.11.2001 of M/s Anita Tex Print Ltd., Kaladera, Jaipur for issuance of Private Customs Bonded Warehouse license under Section 58 of the Customs Act, 1962 clearly overlooking the provisions of Circular No. 68/95 dated 15.06.95. He while processing the said application, in the note dated 09.11.2001, in file No. V (tech) CE-II/133/2001 failed to point out the fact that the assessee had been a defaulter in the past and had evaded a huge amount of Central Excise duty to the tune of Rs. 1,38,17,000/- and cannot be issued licence in view of CBEC circular no., 68/95. Contrary to the provisions he recommended that the assessee may be issued licence.

2) He had put up the application dated 27.11.2001 of assessee for permission to allow weaving of yarn for conversion into Fabric on job work basis and vide note dated 29.11.2001 recommended for permission but failed to point out the fact that the consent letter of job workers were not original and also failed to propose that premises/identity of the job workers may be got verified from field formations before granting

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the permission as huge amount of Central Excise duty had been evaded by the assessee in the past. Aforesaid lapse on his part resulted in irregular grant of permission for sending the raw material to those job workers who were either not existing or not having the facilities to conduct the process for which permissions were granted.

- 3) He failed to ensure and protect the interest of the department in as much as failure on his part enabled M/s Anita Tex Print Ltd., Kaladera, Jaipur to evade central excise duty as well as customs duty to the tune of Rs. 17.21 Crore."

21. A perusal of the above charges levelled against the applicant reveals that the action on the part of the applicant resulted in a heavy revenue loss to the State to an extent of Rs. 1,38,17,000/- and Rs. 17.21 crores i.e. in all a total sum of Rs. 18,59,17,000/-. Hence, in our opinion, the charges levelled against the applicant are grave in nature and as such the dictum of the Hon'ble Supreme Court in the case of **Secretary, Ministry of Defence and Ors. vs. Prabhash Chandra Mirdha** (supra), i.e. the gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings is required to be adhered to. Accordingly we hold that the impugned memorandum of charges dated 31.05.2013 (Annexure A/1) cannot be interfered on the ground that the same has been issued at a belated stage.

22. Recently, in the case of **Chairman, Life Insurance Corporation of India and Others vs. A. Masilamani** [2013

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(6) SCC 530], a question arose before the Hon'ble Supreme Court i.e. -

"Whether the Government Departments can be prevented from proceedings with the departmental proceedings on the ground of delay in initiation or in conclusion of the disciplinary proceedings."

The said issue was answered by the Hon'ble Supreme Court at para 18 of the said judgment as under-

"18. The court/tribunal should not generally set aside the departmental enquiry and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is dehors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration"

Therefore, in view of the above principle laid down by the Hon'ble Supreme Court also, we reiterate our view that the impugned memorandum of charges dated 31.05.2013 (Annexure A/1) cannot be interfered on the ground that the same has been issued at a belated stage.

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23. We may also refer to our order dated 31.03.2014 and the relevant portion of the same reads as –

"OA No. 491/2013

Heard learned counsel for the parties at a considerable length.

Learned counsel for the respondents is directed to produce the following documents on the next date of hearing:

1. The report of the C.B.I. sent to the department.
2. The recommendation sent by the department to the CVC for taking advice on the basis of the report of the C.B.I.
3. The advice given by the CVC to the department on the recommendation of the department.
4. Has the department taken any action on the other officers involved in the decision making process in the matter in question.

Certified copy of this order be provided to the learned counsel for the respondents."

24. In compliance of the aforesaid order dated 31.03.2014, with reference to the point no. 4, the respondents have filed copies of Memorandum No. 18/2013 and Memorandum No. 19/2013 both dated 23.09.2013 respectively issued against Ms. Manpreet Arya, the then Assistant Commissioner, Central Excise, Jaipur and Shri Mool Chand Verma, Assistant Commissioner, Central Excise (the then Supdt.) under Rule 14 of CCS (CCA) Rules, 1965. On perusal of both the said memorandum of charges dated 23.09.2013 issued against Ms. Manpreet Arya and Shri Mool Chand Verma, we find that the respondents have taken action in respect of other officers also who were involved in the said incident. A perusal of the said two memorandums of charges dated 23.09.2013 also reveals that the alleged act on the part of the said Ms. Manpreet Arya and Shri Mool Chand Verma have also resulted in a heavy revenue loss to the

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Government. Hence, on this ground also, we are not inclined to grant the prayer of the applicant for quashing the impugned memorandum of charges dated 31.05.2013 (Annexure A/1).

25. Coming to the next contention of Shri Amit Mathur that since the respondents have already taken a decision to issue warning in the matter and hence the same cannot be reopened, we may observe that the Hon'ble Supreme Court while dealing with the notings made in the departmental files in the case of **Union of India and Ors. Vs. Vartak Labour Union (2)** [2011 (4) SCC 200] at para 15 held as -

"15. It is trite that inter-departmental communications and notings in departmental files do not have the sanction of law, creating a legally enforceable right. In Sethi Auto Service Station vs. DDA, a Division Bench of this Court, in which one of us (D.K. Jain, J.) was a member has observed thus: (SCC pp. 185-86, para 14)

14.Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

In view of the above observation made by the Hon'ble Supreme Court in the above case relating to the notings made in the departmental files, we are not in agreement with the argument of the learned counsel for the applicant that since in the relevant file, a decision has already been taken to give an

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'administrative warning' to the applicant and the same cannot be reopened subsequently.

26. The other ground urged by the applicant in support of his prayer is that the impugned memorandum of charges has been issued based on the recommendation of the CVC and CVC being an Extra Departmental Agency has no authority to interfere in the matter of disciplinary proceedings. Shri Amit Mathur, learned counsel for the applicant in support of his contention placed reliance upon the judgment of the Hon'ble Rajasthan High Court, at Jodhpur in the case of **Rajendra Singh Sisodia vs. Union of India and Ors.** [2010 (127) FLR 693 : 2010 (3) ILR (Raj.) 554]. The Hon'ble Rajasthan High Court at Jodhpur in the **Rajendra Singh Sisodia vs. Union of India and Ors.** (supra) recorded its reasoning at paragraph 13, 14 and 15, which reads as –

"13. In this case, admittedly for the same charges, for which, charge-sheet under Rule 14 of the CCS (CCA) Rules, 1965 was issued vide memo dated 16.08.2007, a criminal case was registered in the C.B.I. and, after investigation, challan was filed in the Court of Special Judge, C.B.I. Cases where the petitioner faced the trial; but, ultimately, vide judgment dated 29.11.2002, after seven years, learned trial Court acquitted the petitioner and it was observed in the judgment that charge against the petitioner was not of criminal nature but the same being in the nature of departmental irregularities.

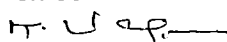
14. After passing of the said judgment admittedly a show-cause notice was issued to the petitioner by the Disciplinary Authority. The petitioner filed his explanation before the Disciplinary Authority and, after

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due satisfaction, the Disciplinary Authority dropped the inquiry and gave finding that this does not appear to be a fit case for initiating disciplinary proceedings as the action being regular and bona fide having no element of mens rea. But, contrary to the decision taken by the Disciplinary Authority while knowing the fact that petitioner has been provided promotion as Income Tax Officer the impugned charge-sheet was issued on the ground that in the case of non-gazetted employee it is provided that wherever there is difference of opinion between the C.B.I. and competent authority the matter was to be referred to the CVC and, accordingly, the case of the petitioner was referred to the CVC for its advice and, as per the advice of the CVC, charge-sheet dated 16.08.2007 was issued.

15. In our opinion, the learned Tribunal has committed a serious error of law while ignoring the fact that power of decision as to initiating the inquiry or not to initiate the inquiry, vests in the Disciplinary Authority and only the Disciplinary Authority is competent under Rule 14 (2) of the CCS (CCA) Rules, 1965; and, once the Disciplinary Authority has exercised the power while giving show-cause notice to the petitioner and took decision not to proceed for inquiry after considering the explanation given by the petitioner, then, it is not open to any of the authorities to take contrary decision. The rule of law must prevail and opinion given by any other authority cannot be taken into consideration to surpass the decision taken by the Disciplinary Authority as provided in the statute."

27. The facts and circumstances of the case before the Hon'ble Rajasthan High Court at Jodhpur in the case of **Rajendra Singh Sisodia vs. Union of India and Ors.** (supra) were different from that of the facts and circumstances of the case on hand. In



the case of **Rajendra Singh Sisodia vs. Union of India and Ors.** (supra), the Disciplinary Authority by exercising its power issued a show cause notice to the petitioner and after considering the explanation given by the petitioner, dropped the inquiry proposed and gave finding that this does not appear to be a fit case for initiating disciplinary proceedings. But in the case on hand, no show cause notice other than one impugned in this O.A. i.e. the charge-Memorandum dated 31.05.2013 (Annexure A/1) was issued to the applicant by the Disciplinary Authority under Rule 14 of CCS (CCA) Rules, 1965. After receipt of the reply from the applicant to the impugned charge-Memorandum dated 31.05.2013, the respondents have taken a decision to proceed with the inquiry and in the process by the order dated 26/27.06.2013 (Annexure A/2), an Inquiry Officer was appointed to conduct the inquiry in the matter. In the case on hand, no decision to drop the enquiry proposed has been taken by the Disciplinary Authority subsequent to issuing the charge-memorandum by considering the written defence submitted by the applicant. Hence, the judgment of the Hon'ble Rajasthan High Court at Jodhpur in the case of **Rajendra Singh Sisodia vs. Union of India and Ors.** (supra) has no application to the facts and circumstances of the case on hand. At this juncture we would like to refer to the principles laid down by the Hon'ble Supreme Court in the matter of applying precedents in the case of **Union of India and another vs. Arulmozhi Iniarasu and others** (2011) 2 SCC (L&S) 267 at para 14 reads as -

"14. the well-settled principle of law in the matter of applying precedents that the Court should not place

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reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or different fact may make a world of difference between conclusions in two cases."

In view of the law laid down by the Hon'ble Supreme Court in the case of **Union of India and another vs. Arulmozhi Iniarasu and others** (supra), we are not persuaded by the arguments of the learned counsel for the applicant Shri Amit Mathur that in view of the judgment of the Hon'ble Rajasthan High Court at Jodhpur in the case of **Rajendra Singh Sisodia vs. Union of India and Ors.** (supra), the impugned orders are liable to be set aside for the reason that the charge-memorandum has been issued on the advice of an extra departmental agency.

28. The other ground urged by the learned counsel for the applicant in support of his prayer is that the impugned charge-sheet has been issued on the basis of the provisions, which were not in existence at the time of incident. Elaborating this contention, learned counsel for the applicant argued that the circular issued on 07.10.2002 cannot be made applicable in respect of an event that took place in the year 2001. He submitted that nobody is expected to follow a circular / rule / law, which was not in existence as on the date of doing an act and, hence, the impugned charge-memorandum is liable to be quashed on the ground that the charges were based upon a

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circular, which was not in existence in the year 2001. In their written reply, the respondents have stated that there is a mention of the circular dated 07.10.2002 in the Statement of Imputation of Misconduct in Annexure-II, which has wrongly been mentioned and, subsequently, suitable corrigendum has been issued. We are not inclined to accept the argument of the learned counsel for the applicant for the reason that the settled position of law is that a mis-quoting or non-quoting of a particular provision of law is not fatal and as such even if it is construed that the respondents ought not have quoted the provision of circular dated 07.10.2002, the same cannot be a ground to interfere with the impugned memorandum of charges.

29. On a perusal of the averments and the grounds urged by the applicant in this O.A. and upon hearing the learned counsel for the applicant, we find that the applicant has raised many points which are in the nature of a defence to the charges levelled against him under the impugned memorandum of charges. We are not prepared to go into the merit and record any finding on the charges levelled against the applicant since any finding recorded by us would gravely prejudice the case of the parties at the time of inquiry. Therefore, we desist from expressing any opinion on merit or recording any opinion upon the contentions raised by the learned counsel for the applicant relating to his role in respect of the alleged charges.

30. For the foregoing reasons, we are of the view that the impugned charge-sheet / Memorandum dated 31.05.2013

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(Annexure A/1) and subsequent order dated 26/27.06.2013 (Annexure A/2) under which an Inquiry Officer has been appointed to conduct the inquiry in the matter, do not require to be interfered with and, thus, the Original Application deserves to be dismissed. Accordingly, the Original Application is dismissed. There shall be no order as to costs.

31. In view of the order passed in the O.A., all the Misc. Applications praying for taking the documents on record are disposed of, as prayed for.


(M. NAGARAJAN)
JUDICIAL MEMBER


(ANIL KUMAR)
ADMINISTRATIVE MEMBER

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