

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00841/2017

Friday, this the 14th day of September, 2018

CORAM:

**Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member**

A.R. Asok Kumar,
Aged 61 years, S/o. Late K. Appukuttan,
Assistant Commissioner (Retired),
Office of the Commissioner of Central Excise, Customs & Service Tax,
Commissionerate Headquarters, I.C.E. Bhavan, Press Club Road,
Thiruvananthapuram – 695 001,
Residing at “SRUTHY”, K.P. 4/857,
Vazhayila, Karakulam P.O.,
Thiruvananthapuram – 695 564. **Applicant**

(By Advocate – Mr. Shafik M.A.)

V e r s u s

- 1 Union of India, Represented by the Secretary, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, 613, 6th Floor, HUDCO Vishala Building, Bhikhaji Cama Place, New Delhi – 110 066.
- 2 The Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Central Board of Excise & Customs, 613, 6th Floor, HUDCO Vishala Building, Bhikhaji Cama Place, New Delhi – 110 066.
- 3 The Commissioner of Central Excise, Customs & Service Tax, Commissionerate Headquarters, I.C.E. Bhavan, Press Club Road, Thiruvananthapuram – 695 001. **Respondents**

(By Advocate – Mr. K. Kesavankutty, ACGSC)

This Original Application having been heard on 10.09.2018, the Tribunal on 14.09.2018 delivered the following:

ORDER

Per: E.K. Bharat Bhushan, Administrative Member

1. OA No. 180/841/2017 is filed by Shri. A.R. Asok Kumar, Retired Assistant Commissioner of Central Excise, Customs & Service Tax against the Articles of Charges framed against him at Annexure A3 and against the failure on the part of the respondents in paying him full pension and retirement gratuity due to him, on account of his retirement on 30.11.2016.

2. The reliefs sought in the OA are as follows:

- (i). To call for the records leading to Annexure A3 and set aside the same;
- (ii). To declare that the applicant is entitled to be paid pension and retirement gratuity and other retirement benefits as on the date of retirement of the applicant on 30.11.2016 afternoon and the pension and gratuity shall not be withheld by the pension sanctioning authority at this point of time for reasons of A3 charge sheet issued to him;
- (iii). To issue appropriate direction or order directing the respondents to sanction and disburse the eligible retirement gratuity to the applicant expeditiously and for the delayed payment of DCRG, penal interest at the rate of 12% per annum from the date the amount became due till the date of actual payment in terms of Rule 68 of the CCS (Pension) Rules, 1972 expeditiously and at any rate, within a time frame that may be fixed by this Hon'ble Tribunal;
- (iv). To issue appropriate direction or order which this Hon'ble Tribunal deems fit, just and proper in the circumstances of the case;
- (v). To award costs to the applicant.

3. The applicant had joined the Respondents' organization as an Inspector of Central Excise on 17.03.1980, going on to be posted as Assistant Commissioner, Air Customs, International Airport at Trivandrum, where he was functioning from 10.11.2014 under the jurisdiction of the 3rd Respondent. He submits that he had an unblemished service of 36 years in the Department and was a recipient of several awards and recognitions on

account of his creditable record. He submits that in the early hours of 26.03.2016, there had been a raid at his work place, mounted by CBI/ACB, Cochin in the form of a surprise check. The applicant was made aware that the surprise check was done in view of an alleged Customs official having demanded Rs. 1900/- by way of bribe from a passenger. The applicant was working on night shift in the Customs Area at that time and was questioned by the team. He extended full cooperation to the authorities and in any case he had no role in the alleged irregularities that the team was investigating.

4. The applicant submits that after an interlude of more than 8 months from his superannuation, the 2nd Respondent issued F. No. C. 14011/67/2016-Ad.V dated 21.11.2016 under Rule 14 of the CCS (CCA) Rules, 1965. This constitutes the Charge Memo impugned as Annexure A3. The alleged misdemeanor of the applicant is encapsulated under para 4 of Annexure A2 attached to the Charge Memo:

“4. During the surprise check, Shri. A.R. Asok Kumar, Assistant Commissioner in charge of Air Customs, International Airport who was the supervisory officer posted at the Airport on 26.03.2016 was found to be in an inebriated state. The attitude of Shri. A.R. Asok Kumar, who was supposed to supervise the duties of his subordinates, was found to be negligent of his duties. On examining him, it was revealed that he had consumed alcohol and the smell of alcohol was found present. Accordingly, Shri. A.R. Asok Kumar was subjected to alcometer test using the alcometer of Valiyathura Police Station by Shri. Venugopalan, Grade Sub Inspector of the said Police station. The print out of the test results showed the alcometer reading as 123mg/100ml. The officer had consumed alcohol and was under its influence and as a result he was not in a position to properly perform his duties of supervising his subordinates or to participate in the surprise check conducted by the CBI.”

5. The applicant submitted a statement of defence on 12.12.2016 denying the charges and requested for dropping the charge sheet as he had retired on 30.11.2016.

6. The applicant was granted provisional pension but his DCRG was retained on the ground of departmental action having been initiated. On seeing that the inquiry had not commenced even after the passage of several months, the applicant had submitted a request to the 2nd and 3rd Respondents for early disbursement of retirement benefits but his representations elicited no reply. On 30.08.2017, the 2nd Respondent issued orders appointing Inquiry Officer and Presenting Officer and a communication dated 18.09.2017 was issued by the Assistant Commissioner, Trivandrum informing the applicant about the appointment (Annexure A11). The delay of nearly one year in even starting the inquiry has caused serious prejudice to the applicant as due amount that he was eligible for had been retained by the respondents.

7. Under grounds, the applicant disputes the move adopted by the respondents in pinning the charges on the applicant. Yet, in the inquiry report, which is available at Annexure A10, prepared by Shri. S. Suresh, Superintendent (Legal), Office of the Commissioner of Central Excise & Customs, Thiruvananthapuram, there is a clear finding that the breath analyser test should not be used as a basis for a positive finding and is to be disregarded in the absence of any corroborative circumstances. The staff driver, one Shri. T. Yesudas, who was also found in the same condition as per the respondents, was not proceeded against by the authorities. Even a cursory reading of Rule 22 and Rule 3(1)(ii) and (iii) of the CCS (Conduct) Rules, 1964 would disclose that there can be no sustainable charge mounted on the basis of the allegation contained in the charge memo. Similarly, the

right of the employee under CCS (Pension) Rules, 1972 cannot be extinguished as it is a vested right. While, provisional pension of a sum of Rs. 48,300/- per month had been granted w.e.f. 01.12.2016, no DCRG or provisional DCRG was granted to him in terms of Rule 64 of the CCS (Pension) Rules, 1964. In the decision of ***State of Kerala vs. M. Padmanabhan Nair*** reported in AIR 1985 SC 356, the Supreme Court has held that pension and gratuity are not a bounty to be distributed by the Government to its employees but are valuable rights and properties due to the employees. So also the decision in ***S.K. Dua vs. State of Haryana*** reported in 2008 (3) KLT 58 (2008) 3 SCC 44 supports the same stand.

8. Respondent Nos. 1 to 3 have filed a reply statement stating that the Charge Memo in question had been issued to the applicant for grave misconduct under CCS (Conduct) Rules, 1964. This constitutes a major penalty proceedings. The fact of his retirement would not stand in the way of the departmental action as per Rule 9(2) of the Central Civil Services (Pension) Rules, 1972, which reads as follows:

“The departmental proceedings instituted while the Government servant was in service whether before his retirement or during his re-employment, should, after the final retirement of the Government servant, be deemed to be proceedings under this rule and should be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service.”

9. Respondents also dispute that under Rule 64 of CCS (Pension) Rules, 1972, DCRG or provisional DCRG are to be granted to the applicant on the ground that the provision of 64 applies only for the employees retiring “normally”.

10. Shri. Shafik M.A., learned counsel for the applicant and Shri. K. Kesavankutty, learned ACGSC for the respondents were heard. The applicant had sought an interim order in the OA requesting for disbursement of provisional DCRG to the applicant pending disposal of the above OA. After hearing both sides, an interim order was issued on 25.01.2018 denying the interim relief prayed for in view of Rule 9 (2) (a) of the CCS (Pension) Rules, which only made it mandatory that an employee, against whom departmental action is pending, would be entitled only to provisional pension. However, this Tribunal also went on to consider the financial status of the pensioner and in order to reduce the hardships caused him, directed the respondents to complete the departmental action in progress within three months of receipt of copy of that order.

11. On 06.09.2018 when the case was called, Shri. Shafik M.A., learned counsel for the applicant, submitted that despite the directions of this Tribunal issued on 25.01.2018 directing that the departmental action should be completed within three months, there had been little progress in this regard. Shri. K. Kesavankutty, learned counsel for the respondents, submitted that he had prepared a petition for extension of time and also another MA for condoning the delay in submitting the extension petition as the time allowed by the Tribunal has passed.

12. Today i.e., on 10.09.2018, both the MAs, namely, MA No. 180/1001/2018 and MA No. 180/1002/2018 were considered. Also taken up was MA No. 976/2018 filed by the applicant in the OA detailing the slow

progress of the proceedings against the applicant. The applicant sought a direction from this Tribunal to get his DCRG disbursed immediately.

13. We have considered all pleadings made and also the records on offer. The applicant, who had been an Assistant Commissioner, Air Customs, had been proceeded against on the ground that he was found in an inebriated condition during a surprise check. The raid had been made on the basis of information that monetary demands had been made by an alleged Customs official from a passenger. Although, the applicant had no direct role in the corruption case, the Department, after a delay of 10 months, served upon him the impugned Charge Memo. The charges pertained to the applicant having been found in an inebriated stage in his office when the surprise check took place. The respondents found it fit to invoke Rule 14 of CCS (CCA) Rules, 1965 and sought his defence statement.

14. Unfortunately for the applicant, the matter developed on the threshold to his retirement and he was served a Charge Memo nearly an year after his retirement. All through, he was denied his pension and DCRG with provisional pension being released to him subsequently. He had agitated this issue pointing out his poor economic state and sought orders of this Tribunal to get his provisional DCRG at least, released pending final decision in the OA. This had been examined and on 25.01.2018 this Tribunal decided not to accede to his request but in view of the difficult circumstances narrated by the applicant, directed the respondents to complete the disciplinary proceedings within three months from receipt of copy of this order. Now, in

October, 2018, the proceedings mentioned above are stated to be still in progress. This is the crux of the applicant's grievance. The respondents have exhibited no sense of urgency in completing the proceedings despite our directions. They have now approached us through an MA seeking firstly, a condonation of delay in filing the extension petition, the delay according to them being of 74 days (MA No. 1001/2018). This is accompanied by MA No. 1002/2018 seeking further 10 months time to be granted for completing the disciplinary proceedings. It is stated therein that "the inquiry proceedings at the Inquiry Officer level are over and order dated 06.06.2018 has been forwarded to the CBEC". A long narration of further necessary proceedings is also detailed in the said Application.

15. Shri. Shafik M.A., on behalf of the applicant, again submitted the difficult circumstances that the applicant is being forced to endure with if his dues not being disbursed. He further drew our attention to a further representation, a copy of which is available at Annexure MA-5, addressed to the Additional Commissioner & Inquiry Officer, seeking an early conclusion to the proceedings against him.

16. From the applicant's side, there has been no delay and he has fully cooperated with the procedures involved as per Annexure MA-4 dated 08.03.2018. His written statement had been called for and this has been provided within the next 10 days. However, there has been noticeable lack of urgency on the part of the respondents and even after a firm time line had been ordered by this Tribunal, respondents had waited well after the said

time limit expired in order to seek a further extension of 10 months.

17. Shri. K. Kesavankutty, learned ACGSC submitted that the inquiry is still in progress and according to him more witnesses, who are CBI officials involved with the case, are required to be examined. This argument appears to be at variance with the claim made in the MA for condonation of delay that “the inquiry proceedings at the Inquiry Officer level are over and order dated 06.06.2018 has been forwarded to the CBEC”. We understand from the proceedings before us that there has been no inquiry report made available to the applicant nor has one been presented before us. All that has been done on behalf of the respondents is a litany of procedures to be completed with several days allotted to each. Clearly, respondents are not serious about concluding the process and has scant regard for the direction of this Tribunal.

18. The view that the retirement benefits are not generosity bestowed upon the employees but are compensation legally due to them is a position that has been supported in a catena of judgments that need not be reiterated here. The applicant in this case had been involved in a situation, where he was allegedly inebriated. The detection was made during the surprise check on a corruption matter but there is no allegation specifically against the applicant on this score. The respondents waited nearly an year and acted when there was only a few days left for the applicant to superannuate. One would have thought that they would show some sense of urgency in concluding the proceedings initiated as his DCRG amount was

not disbursed. In this context it is important to realize that no financial loss or damage had been attributed to the applicant.

19. More than the rights and wrongs of the Charge Memo, what we find more objectionable with the respondents conduct is the notable lack of speed exhibited by them in the case. Despite the direction issued to complete the process within three months, we are unable to get a clear picture as to whether the inquiry has even been completed. As pointed out, the arguments made by the learned counsel for the respondents, when the MAs were heard on 10.09.2018, are at variance with the contentions made in the extension petition. For the reasons stated above, we reject both MA No. 1001/2018 and MA No. 1002/2018 as the reasons given for prolonging the process are not valid. In consequence steps taken in furtherance to Annexure A3 Charge Memo are declared null and void. All claims due to the applicant are to be disbursed within two months from the date of receipt of copy of this order. MA No. 1001/2018 and MA No. 1002/2018 are dismissed and OA No. 841/2017 is allowed. MA No. 976/2018 is closed. No costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures of the Applicant

Annexure A-1 - True copy of the Relief Report dated 30.11.2016 of the applicant.

Annexure A-2 - True copy of the Surprise Check proceedings prepared by the CBI on 26.03.2016.

Annexure A-3 - True copy of the Charge Memo No. 43/2016 issued under F. No. C. 14011/67/2016-Ad.V dated 21.11.2016 issued by the 2nd Respondent.

Annexure A-4 - True copy of the reply dated 12.12.2016 to the charge memo of the applicant.

Annexure A-5 - True copy of the letter C. No. II/25/06/2016 Accts/14731 dated 15.12.2016 issued by the Chief Accounts Officer.

Annexure A-6 - True copy of the representation dated 20.03.2017 submitted to the 2nd Respondent.

Annexure A-7 - True copy of the representation dated 20.07.2017 submitted to the 2nd Respondent.

Annexure A-8 - True copy of the Pay Slip of the applicant for the month of November 2016.

Annexure A-9 - True copy of the Self Contained Note dated 22.04.2016 of the Superintendent of Police & HOB, CBI/ACB, Cochin.

Annexure A-10 - True copy of the Enquiry Report dated 12.08.2016 of Shri. S. Suresh, Superintendent (Legal) & Enquiry Officer.

Annexure A-11 - True copy of the letter C. No. II/10A/6/2016-Vig.Cx.Tvm/362 dated 18.09.2017 of the Assistant Commissioner Thiruvananthapuram.

List of Annexures of the Applicant in MA 976/2018

Annexure MA-1 - True copy of the Interim order dated 25.01.2018 of CAT Ernakulam Bench in OA 841/2017.

Annexure MA-2 - True copy of IO's letter dated 03.08.2018 directing the applicant to submit written brief.

Annexure MA-3 - True copy of written Brief dated 17.03.2018 submitted by the applicant to the IO.

Annexure MA-4 - True copy of the email dated 08.03.2018.

Annexure MA-5 - True copy of the reply dated 09.08.2018 sent to IO.

List of Annexures of the Respondents

Annexure R-1 - True copy of the extract of the G.I., Dept. of Per. & Trg. O.M. No. 28027/3/87-Estt. (A) dated the 29th June, 1990 of the Ministry.

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