

**Central Administrative Tribunal  
Madras Bench**

**OA/310/00517/2017**

**Dated the 30<sup>th</sup> October Two Thousand Eighteen**

**P R E S E N T**

**Hon'ble Mr.R.Ramanujam, Member(A)  
&  
Hon'ble Mr.P.Madhavan, Member(J)**

R.Sankaranarayanan  
S/o late T.S.Ramasamy,  
41, Sriram Nagar 3<sup>rd</sup> Street,  
Madambakkam,  
Chennai 600 126. .. Applicant  
By Advocate **M/s.Menon Karthik Mukundan & Neelakantan**

**Vs.**

Union of India, rep by  
The Commissioner,  
Large Tax Payer Unit (LTU),  
Anna Nagar West Extension,  
Chennai 600 101. .. Respondents  
By Advocte **M/s.A.P.Srinivas**

**ORDER**

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

The applicant has filed this OA seeking the following relief:-

“To quash the Charge Memorandum C.No. II/10A/1/2017-Vig, dated 23.2.2017 issued by the respondent and pass such further or other order as may be deemed fit and proper.”

2. The applicant was working on deputation as Senior Intelligence Officer(SIO) in the office of Directorate General of Central Excise Intelligence (DGCEI), Chennai Zonal Unit from 01.7.2003 to 29.8.2008. The applicant happened to investigate a case of duty evasion by M/s.Industrial & Power Solutions, Ramapuram and had conducted a search at the premises and siezed certain goods taxable under Excise Duty Laws. Accordingly, he put up a show cause notice under rules for approval of Additional Director,Chennai Zonal Unit on 22.8.2008. He had also noted in the file that there could be service tax evasion also which needs to be investigated. As the period of deputation came to an end on 29.8.2008 he was directed to hand over the charge of all cases handled by him to Shri P.Srinivasan on 27.8/2008. The investigation in the matter of services tax evasion was pending at the time of handing over of charge.

3. Now, the respondents had issued a Charge Memo dated 23.2.2017 relating to the above, alleging that he had not monitored the case and it had resulted in a loss of Rs.15 lakhs to the department. The charge memo was issued without applying the mind. The charge alleged relates back to the year 2008, around 9 years back and this

initiation of disciplinary action at this point of time causes grave prejudice and hardship in as much as the applicant is denied a reasonable opportunity to defend himself. So he prays for quashing the proceedings.

4. The respondents filed reply admitting almost all facts stated but would content that the show cause notice was not issued due to the negligence of the delinquent officer and this was noted only in the year 2014 when the assessee made a representation during October 2014 to the Chairman CBEC, New Delhi. The charge memorandum was issued based on the advise by CVC received on 21.2.2017. The applicant had failed to ensure issue of show cause notice to M/s. Industrial Power Solutions, Chennai and failed to maintain devotion to duty, contravening the Rule (3)(ii)(iii) of the Central Civil Service (Conduct) Rules, 1964.

5. The counsel for the applicant contents that there has taken place inordinate delay in initiating the disciplinary proceedings. The charge memo itself shows that the disciplinary authority has not properly applied its mind to the facts alleged. This delay has caused prejudice to the applicant. He was working only as a deputationist and he does not have any records kept with him to defend the allegation after a period of 9 years. The officers working with him are also not there. He mainly relies upon the decision in *R.Loganathan vs. Union of India, Department of Local Administration reported in 2000 (III) CTC 351* in support of his contention.

6. The counsel for the respondents would content that the alleged incident committed by the delinquent has come to its notice only in the year 2014 and they had initiated action immediately. The omission to issue notice had caused a loss of

Rs.15 lakhs. It is also not proper to interfere with the inquiry initiated as no punishment was imposed till date.

7. We had carefully gone through the records and pleadings and heard the counsels on both sides. There is no dispute to that fact that the applicant who was working as Senior Intelligence Officer in the MEPZ had searched the premises of M/s Industrial and Power Solutions on 24.7.2007 and seized some excisable records. The applicant here was the investigating officer. The applicant prepared a draft show cause notice on 22.8.2008 and forwarded to the Additional Director, Chennai Zonal unit and it was also noted that, from the seized records it appears that there could be evasion of Service Tax also which needs to be further investigated. On 29.8.2008, the applicant's deputation period was over and he was directed to hand over the charge and all case records to one Srinivasan and he was relieved from his post. Even as per the reply statement, the draft show cause notice is seen approved by the Additional Director only on 30.12.2010. It is stated in the reply that the successor of the applicant had modified the show cause notice on 21.11.2008 regarding the duty to be imposed and forwarded to the Additional Director, HYRU for approval. Thereafter, the show cause notice was returned without signature of the Additional Director. All the facts clearly shows that the delay had occurred only due to the negligence of the successor officer and the laches that took place in the office of the Additional Director, HYRU. These facts clearly indicate a lack of application of mind on the part of the disciplinary authority in initiating the proceedings. The Hon'ble Madras High Court in the case of Loganathan (cited supra) has categorically held that

inordinate delay vitiates the charge memo and it denies reasonable opportunity to defend himself and violate the principles of natural justice. In this case also, the respondents had failed to give a satisfactory explanation for the delay of 9 years after relieving the officer from his post to initiate disciplinary proceedings. This has caused prejudice to the applicant and it is also not in the interest of administration as it will be difficult to fix liability. The counsel for the applicant has also brought to our notice the decision of the Hon'ble Supreme Court in *P.V.Mahadevan vs. MD, T.N.Housing Board (2005) 6 SCC 636* where the Hon'ble Apex Court has also considered a similar case and held that allowing disciplinary proceeding after a long gap of time will be prejudicial to the delinquent officer and the Apex Court quashed the proceedings. We find that the contention of the applicant is valid and permitting to continue with the disciplinary proceedings as per the impugned order will be against the principles of natural justice and fair play. In the circumstances, the impugned order initiating disciplinary proceedings after a gap of 9 years has to be put to an end.

8. In the result, the OA is allowed. The impugned Charge Memorandum dated 23.2.2017 of the respondents will stand quashed. No costs.

(P.Madhavan)  
Member(J)

30.10.2018

(R.Ramanujam)  
Member(A)

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