

**CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.**

O.A.No.26/2014

Dated this Friday the 21st day of September, 2018.

**Coram: Dr.Bhagwan Sahai, Member (A)
Smt.Ravinder Kaur, Member (J) .**

Shri Prabhanjan Kumar Mishra,
Indian Inhabitant, aged 64 years,
presently residing at
702, Hema Park Tower,
Veer Savarkar Marg,
Bhandup (East), Mumbai-400 042
Retired while working as
Deputy Commissioner of Central Excise
Guwati Division, Guwati. .. Applicant.

(By Advocate Shri L.S. Shetty).

Versus

1. Union of India, through
the Secretary to Government
of India, Ministry of Finance,
Department of Revenue,
North Block, New Delhi-110001.
2. The Central Board of Excise
and Customs constituted under
the Central Boards of Revenue
Act, 1963 (54 of 1963)
through its Chairman having
office at North Block,
New Delhi - 110 001. .. Respondents.

(By Advocate Shri V.B. Joshi).

Order reserved on : 01.08.2018

Order delivered on : 21.09.2018

O R D E R

Per : Dr.Bhagwan Sahai, Member (A) .

1. Through this O.A. the applicant Shri
Prabhanjan Kumar Mishra seeks these reliefs:

(a). quashing and setting aside of the

Memorandum dated 03.05.2006 issued by the Department of Revenue, Central Board of Excise & Customs, Ministry of Finance, Government of India conveying decision of the President to hold an inquiry against him under Rule 14 of the CCS (CCA) Rules, 1965;

(b). directing the respondents to consider his case for promotion and promote him to the post of Joint/Additional Commissioner from the date of promotion of his immediate junior, and grant him consequential benefits such as refixation of his pay/pension, payment of arrears of pay, gratuity and pension and all the retiral benefits including commutation value of pension as admissible within a period of three months, alongwith interest @ 18% from the date the amounts were due and payable to him till their payment, alongwith issuance of new Pensioner's Identity Card indicating the post Joint/Additional Commissioner, and

(c). directing the respondents to pay him the cost of this application.

2. Facts stated in brief:-

2(a). Shri Prabhanjan Kumar Mishra joined on post of Appraiser in Central Excise & Customs Department on 25.07.1974. He retired voluntarily from service on 31.05.2006 on the basis of permission granted under Rule 48 of CCS (Pension) Rules, 1972.

2 (b) . While working as Dy. Commissioner of Central Excise & Customs, a Charge-memo dated 11.08.2000 was issued by Department of Revenue, Ministry of Finance, Government of India under 14 of CCS (CCA) Rules, 1965 to take disciplinary action against him in connection with his performance during 1993 to 1995.

2 (c) . The applicant was not considered in 2001 and 2003 for promotion to the post of Joint/Additional Commissioner when his juniors were promoted.

2 (d) . Central Vigilance Commission in its Office Memorandum dated 28.04.2004 advised the respondents for taking disciplinary action against 45 officers, including the applicant, for their alleged role in granting duty drawback to certain persons/firms on forged documents while working as in-charge of drawback section at Mumbai Airport during 1997-98.

2 (e) . Based on the above advice, the CBEC/Department of Revenue, Ministry of Finance again issued Memorandum No.21/2006 dated 03.05.2006 proposing to hold inquiry against the applicant under Rule 14 of the CCS (CCA) Rules, 1965, enclosing therewith Articles of Charge, Statement of imputation of misconduct /misbehaviour, a list of documents and list of witnesses by whom the articles

of charge were proposed to be sustained.

2 (f) . On 17.05.2006 the applicant submitted his reply to the Memorandum No.21/2006 dated 03.05.2006 (2nd chargememo). In this he sought many details about action taken against M/s.Om Traders, M/s.Prime Agricom and M/s.Tropical Exotics, cases adjudicated and attachment of their property, outcome of the action, copies of the orders confirming the demands, orders at appellate stages, Tribunal stages, Court stages, etc. He also sought a copy of CBEC U.O. No.521/17/2003 dated 20.04.2003, comments therein, etc.

2 (g) . The respondents replied on 20.06.2006 explaining that it was not practicable to make available all the relied upon documents to the applicant at that stage. However, he was allowed to inspect the documents in the office of respondents after giving due notice and that he would be provided full opportunity to inspect the listed documents in the course of the inquiry. It was also mentioned that in case the applicant had anything further to add in continuation of his letter dated 17.05.2006, he was allowed to do do within 10 days otherwise his letter of 17.05.2006 would be considered as his written statement of defence denying the charges and further action would be

taken according to rules.

2 (h) . On 11.02.2009 the applicant again wrote to the respondents requesting to withdraw the charge-sheet issued to him on 03.05.2006 or to take action as per the rules under intimation to him within 45 days of receipt of the letter (Annex-A-11 to O.A.). He again submitted his representation on 21.06.2010 (Annex-A-13 to O.A.) stating that the respondents had not conducted any oral inquiry during preceding 2 year 7 months, that many of the witnesses listed in Annex-iv to the charge-memo issued to him contribute no information relating allegations against him and that in similar cases C.A.T., Mumbai Bench in O.A.382-384/2005 dated 26.06.2006 and O.A.216-217/2006 dated 12.10.2006, the charge-sheets issued had been set aside.

2 (i) . He further mentioned that Smt.Amita Joshi, Examiner and Shri S.S. Ashani, Examiner were the persons responsible for processing all the duty drawback cases and he as Assistant Commissioner was not the basic officer to scrutinize and assess the genuineness of the information mentioned on each and every document of a drawback claim.

2 (j) . The applicant retired voluntarily as Dy. Commissioner of Central Excise & Customs on 31.05.2006.

2 (k) . By order dated 12.05.2010, the disciplinary proceedings initiated against the applicant by Memorandum dated 11.08.2000 (first charge-memo) came to be dropped thereby exonerating the applicant. On 26.06.2010 (Annex-A-13 to OA), he represented to the Joint Secretary, Central Board of Excise & Customs, New Delhi stating that in view of his exoneration by the order dated 12.05.2010 in the disciplinary proceedings initiated against him, he should be considered for promotion to the post of Joint Commissioner and also for the next promotion as Additional Commissioner of Central Excise & Customs. He also mentioned in his representation that as per the Civil List no.99/2003, officers junior to him i.e. Shri Mani K. Sohal and Shri T.R. Kapoor had been promoted as Additional/Joint Commissioner on 24.09.2002, and his promotion should also be granted from that date. In his letter he further mentioned that in spite of the second charge-memo issued to him on 03.05.2006 till June, 2010, no inquiry had been instituted. The charge-memo of 03.05.2006 was issued to 45 officers at different levels for being part of approval to duty drawback claims on forged documents concocted by one Shri Bangar at Air Cargo Complex, Mumbai. The forger was so clever that he managed to fool officers for 3 years until one of his disgruntled

partners in the crime informed CIU in 1998.

2(1). On 11.07.2012 (Annex-A-14 to OA) the applicant again submitted his representation to Chairman, Central Board of Excise & Customs mentioning history of his career, including CBI search of his residence in 1995, his exoneration in the charge-memo dated 11.08.2000 and absence of action on his earlier representations by the Department. Therefore, he prayed for sympathetic treatment and for justice claiming that cases had been instituted against him without any basis and even after exoneration in the earlier cases, no further action had been taken for his promotion.

3. Contentions of the parties (gist):

The applicant's advocate has submitted that -

3(a). he had already submitted written arguments on 23.06.2016 and they should be considered;

3(b). the CVC has prescribed guidelines/time table for completion of departmental enquiry or disciplinary proceedings. However, in the proceedings against the applicant there has been inordinate delay by the respondents;

3(c). other persons involved in the same case of payment of duty drawback on forged documents have already been exonerated;

3(d). the applicant was not supplied even the

relied upon documents by the respondents;

3(e). there are deficiencies in the reply submitted by the respondents dated 01.09.2015;

3(f). the charges contained in the charge-memo of 03.05.2006 against the applicant are not serious and, therefore, delay in initiation of the disciplinary proceedings is not justified;

3(g). the approval to the charge-memo dated 03.05.2006 was not granted by the Competent Authority i.e. Union Finance Minister, and

3(h). based on the view taken by the Apex Court in the following case laws, the delay in initiation and conclusion of the disciplinary proceedings against the applicant make it amply justified for quashing.

(i) Union of India & others Vs. B.V. Gopinath in Civil Appeal No.7761/2013 with 7762-67/2013 decided on 05.09.2013,

(ii) Union of India Vs. S. Rajguru on W.P.(C) 5113/2014 and CMNo.10192/2014 dated 13.08.2014,

(iii) State of A.P. Vs. N. Radhakishan in Civil Appeal No.3503/97 dated 07.04.1998,

(iv) P.V. Mahadevan Vs. M.D. T.N. Housing Board in Civil Appeal No.4901/2005 decided on 08.08.2005,

(v) Prem Nath Bali Vs. Registrar, High Court of Delhi and another in Civil Appeal No.958/2010

decided on 16.12.2015

(vi) State of Madhya Pradesh Vs. Bani Singh and another in Civil Appeals Nos.3045 and 3046/1988 decided on 05.04.1990

(vii) Delhi Jal Board Vs. Mahinder Singh in SLP(C)No.11726/2000 decided on 01.09.2000,

(viii) Union of India & others Vs. Anil Kumar Sarkar in Civil Appeal No.2537/2013 decided on 15.03.2013,

(ix) Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha in Civil Appeal No.2333/2007 decided on 29.03.2012.

The respondents advocate has contended that -

3(i). the O.A. is premature as the applicant has not exhausted the departmental channel available to him for seeking redress of his grievances;

3(j). the CVC in agreement with the advice of C.B.I. proposed on 28.04.2004 major penalties against 30 officers. In this list the applicant was at Sr.No.5 against whom CVC recommended RDA (major penalty). Therefore, the action taken against him in the form of initiation of disciplinary proceedings vide charge-memo dated 03.05.2006 is fully justified;

3(k). approval of the Competent Authority i.e. Union Finance Minister was taken on 29.03.2006 by

submitting draft charge-memo alongwith proposal for major disciplinary action against the concerned officers including the applicant;

3(1). in view of voluminous nature of the documents, the applicant was provided opportunity for their inspection, but he did not avail of it;

3(m). there was delay in initiating the departmental proceedings and concluding it because of the C.B.I. investigation into the case involving sanction of duty drawback by the applicant and others on the basis of forged documents submitted by certain parties without actual export of goods;

3(n). because of the voluminous nature of the fraud and long time taken by the C.B.I. In completing the investigation and subsequent criminal prosecution of 3 officers out of those 45 included in the Office Memorandum of CVC dated 28.04.2004 and non-availability of relied upon documents, there has been delay in concluding the disciplinary proceedings against the applicant but Inquiry Officer has been appointed in September, 2016 and they would be completed early; and

3(o). the claim of the applicant not being justified, the O.A. should be dismissed.

4. Analysis and conclusion :-

4(a). Both the applicant/his counsel and the

respondents have repeated the same contents in the O.A. memo, rejoinder and various affidavits filed. We have considered contents of the O.A. memo, rejoinder affidavits filed by the applicant, replies filed by the respondents and have carefully perused various case laws cited in this case.

4 (b) . Since the applicant was subsequently exonerated on 12.05.2010 (Annex A-2 to this O.A.) in the first disciplinary proceedings initiated with the order of 19.08.2000, his plea of non-completion of the proceedings in time is not relevant now.

4 (c) . The applicant's claim of charges against him being the same as against those quashed by the orders of this Tribunal is not justified because the role of the present applicant was that of in-charge supervisory officer of the duty drawback section at Mumbai airport at the relevant time, whereas the role of the subordinate staff members against whom the disciplinary proceedings have been set aside by this Tribunal was of different nature and they were not working directly under him.

4 (d) . Since the applicant had completed more than 30 years of service, he was allowed by the respondents to retire voluntarily from 31.05.2006, it was even after issuing the second charge-memo to him on 03.05.2006. This charge-memo was based on

the recommendations dated 28.04.2004 of the Central Vigilance Commission proposing major penalty against him for allowing duty drawback to certain parties in 1997-98 on the basis of the forged documents and thereby his failure in exercising effective supervision and check on authenticity / genuineness of the duty drawback claims. The applicant's claim that the respondents did not provide him copies of the documents mentioned in the list enclosed with the charge-sheet is not fully correct as he was offered full opportunity to examine the documents listed with the charge-memo as per the letter dated 20.06.2006 of the Department of Revenue, Ministry of Finance.

4 (e) . The applicant has claimed that the departmental proceedings against the other staff members involved in the same case were quashed and set aside by orders of C.A.T., Mumbai Bench in June, 2006 and October, 2006. Also the order under challenge in this O.A. is of 3rd May, 2006, but the applicant has filed this O.A. on 09.07.2013 i.e. after seven years delay. He has taken the plea that he had filed representations with the respondents on 21.06.2010, 14.09.2010, 24.02.2011 and 11.07.2012 but they neglected the issue. Though these representations were also filed belatedly, he has

requested for condonation of the delay. This does not constitute a fully justified explanation for the long delay.

4 (f). As claimed by the applicant, it is true that after initiation of the 2nd disciplinary proceedings against him vide charge-memo of 03.05.2006, the respondents did not prosecute the proceedings diligently and expeditiously. While the plea of the respondents for it is that because the investigation by C.B.I. of the fraud of duty drawback involving the applicant and others took long time and the documents were voluminous. But even the Inquiry Officer was appointed by them only in September, 2016 i.e. after 10 years and 4 months of issuing the charge-sheet. The disciplinary proceedings have not been concluded even till now. For this lack of seriousness of the respondents on this matter, there is no acceptable justification.

4 (g). While this is a commonly used procedure to put up the proposal for initiation of disciplinary proceedings alongwith draft charge-sheet for approval of the Competent Authority, in this case a photocopy of the relevant case file F.No.C-14011/18/2004-Ad.V in the Department of Revenue, Government of India (page No.36 to 41 and from page 154 to 159 of this O.A.), reveals that a

consolidated proposal was submitted for approval of the Competent Authority i.e. Union Finance Minister in Para 19 of the Office Note at page 31. However, in absence of a full copy of the notings on the case file made available by the respondents, it is not clear as to whether the proposal put up for approval of the Competent Authority to initiate the disciplinary proceedings against the concerned officers also contained a draft charge-sheet against each of the concerned officers.

But on page 174 of O.A. there is a copy of letter dated 10th December, 2014 from the Central Board of Excise & Customs, Department of Revenue addressed to Shri Manvesh Kumar, DC of Customs, Mumbai with respect to this O.A.26/2014 filed by the present applicant. In its last part, it has been mentioned that it is not clear from the note that was put up to Hon'ble Finance Minister whether specific approval to the draft charge-sheet was also obtained.

Therefore, the contention of the applicant that specific permission of the Competent Authority was not taken separately for initiating the penalty proceedings and on the charge-sheet to be issued seems to have substance.

4 (h) . In this context it is also relevant to

consider the contents of the applicant's letter dated 17.05.2006 asking for the documents and information from the respondents. This communication was very vague and the applicant asked for many unnecessary details and list of all officers and all bills of duty drawback claims cleared by the concerned office. In fact he ought to have requested only for supply of the documents directly pertaining to the contents of the charge-sheet. This was only a delaying tactics on the part of the applicant.

4(i). Again in his letter dated 11.02.2009 to the respondents he mentioned non-conduct of oral inquiry but what he meant by it is not clear. He also mentioned that many witnesses listed in the annex attached to the charge-sheet memo did not contribute any information related to the charges. However, on what basis he claimed it is not clear.

4(j). More importantly in para 4 and 5 of the above letter, the applicant attempted to pass on the blame for the fraud totally on to his two subordinates, thereby evading his own accountability as in-charge supervisory officer. In this he also totally evaded to accept his own responsibility of the fact that each payment of more than one lakh rupees was made only with his specific approval and

under his own signature/counter signature. Since no payments were released without his specific approval, taking of such a stand by the applicant of total absence of his role in the fraud thereby evading his own role in it as the in-charge supervisory officer cannot be accepted. In his letter dated 21.06.2010 in para 4 on page 2, the applicant clearly admitted that the forger made fool of all officers in that office for 3 years, among whom he himself was also included. When this was the fact, the applicant cannot claim total innocence about the fraud as he has attempted to claim in the letter dated 11.02.2009.

4 (k) . In the reply given by the CPIO & Deputy Director, Central Board of Excise & Customs, Department of Revenue, Government of India dated 04.02.2015, details of entry in Group 'A' service, dates of promotion as Joint Commissioner and granting of Non-Functional Selection Grade (Additional Commissioner's Grade) to some officers have been mentioned. The applicant has claimed that the officers mentioned in this letter i.e. Shri Mani Kant Sohal, Shri T.R. Kapoor, Shri N.K. Sharma and Shri Jagdish Chander were junior to him and they came to be promoted as Joint Commissioners in 2002 and were also granted Non-Functional Selection Grade

(Additional Commissioner's Grade) in 2003. But in spite of his exoneration in the first disciplinary proceedings, he has not yet been promoted as Joint and Additional Commissioner. The respondents have not rebutted this claim of the applicant. Hence it is not known whether his case was considered by the Departmental Promotion Committee for promotion after his exoneration in the first disciplinary proceedings on 12.05.2010.

4 (1) . On page 185 of O.A., the applicant has claimed that the charges against him are not at all grave and serious, and there is total miscarriage of justice depriving him of pensionary benefits. However, this claim of the applicant is not acceptable because as mentioned in the charge-sheet he failed to ensure proper verification, scrutiny and cross checking of the forged claims of the parties which were cleared by him. Prima facie this is a serious lapse of supervisory Vigilance and diligence on his part and thereby he was certainly one of those responsible for loss to the exchequer.

4 (m) . Nothing has been brought on record by the parties to this O.A. with respect to final action taken against the direct subordinates of the applicant i.e. Smt.Amita Joshi and Shri Ashani.

4 (n) . There has been long delay in initiating and

conducting the 2nd disciplinary proceedings against the applicant. For this the blame belongs to both the sides but the respondents have failed in convincing us of the reasons to justify it.

4 (o) . We have also studied the guidelines of CVC on investigations and disciplinary proceedings dated 03.03.1999 and 23.05.2000 and circular dated 18.01.2016. The CVC has specified time limits for completion of various stages in initiating and conducting disciplinary proceedings against the employees. The one of these guidelines is that after appointment of Inquiry Officer, the disciplinary proceedings / departmental enquiry should be completed in six months.

4 (p) . In **Prem Nath Bali Vs. Registrar, High Court of Delhi and another in Civil Appeal No.958/2010 decided on 16.12.2015**, the Hon'ble Supreme Court has held that the departmental enquiry continued for 9 years and the applicant was kept under suspension for 9 years and 26 days but the departmental enquiry ought to have been completed in six months or at the most in one year. This decision also contains observations of the Court to the effect that departmental enquiry should be concluded in six months and in unavoidable cases within one year.

4 (q) . We have perused these case laws - In the

case of **Union of India & others Vs. B.V. Gopinath in Civil Appeal No.7761/2013 with 7762-67/2013 decided on 05.09.2013**, it has been emphasised that the Disciplinary Authority must approve all stages of the departmental enquiry i.e. approval to initiate the disciplinary enquiry, articles of charge-sheet, and any modification to the charges; and approving of charge-sheet cannot be delegated by the Disciplinary Authority to somebody else.

4(r). In **Secretary, Ministry of Defence and others Vs. Prabhash Chandra Mirdha in Civil Appeal No.2333/2007 decided on 29.03.2012**, it has been held by the Apex Court that the departmental enquiry can be quashed if the charge-sheet was issued by the authority not competent to approve it.

4(s). In **State of A.P. Vs. N. Radhakishan in Civil Appeal No.3503/97 dated 07.04.1998**, the Apex Court held that unexplained delay in concluding departmental enquiry is prejudicial to the employee and on this ground, the charge-sheet was quashed.

4(t). In another case i.e. **P.V. Mahadevan Vs. M.D. T.N. Housing Board in Civil Appeal No.4901/2005 decided on 08.08.2005**, it has been held by the Apex Court that inordinate delay of 10 years in initiating departmental enquiry and absence of convincing explanation for the delay, continuation

of departmental enquiry is prejudicial to the employee unless the employee himself/herself is responsible for the delay, and on this ground the departmental enquiry was quashed.

4(u). In **State of Madhya Pradesh Vs. Bani Singh and another in Civil Appeals Nos.3045 and 3046/1988 decided on 05.04.1990**, the Hon'ble Supreme Court held that delay of 12 years in initiating departmental enquiry and in absence of satisfactory explanation for it, permitting the departmental enquiry is unfair.

4(v). In **Delhi Jal Board Vs. Mahinder Singh in SLP(C)No.11726/2000 decided on 01.09.2000**, it has been held that when the sealed cover procedure was adopted by the DPC and subsequently the concerned employee came to be exonerated but at that time another departmental enquiry was pending against him, pendency of subsequent or later departmental enquiry is not a bar to promotion as cleared by the D.P.C.

4(w). In absence of clear evidence on record in this case, we have not been able to ascertain for sure as to whether the applicant's case was processed by the Departmental Promotion Committee when the four persons claimed by the applicant to be junior to him were considered for promotion and were

promoted as Joint Commissioner in 2002 and later Additional Commissioner Grade was given to them in 2003.

5. Decision

After weighing in totality the facts of this case, contentions of the parties and views taken by the Apex Court in similar case laws discussed above, balance of fairness and justice tilts in favour of the applicant. Although he is not free from the blame for clearance of duty drawback payment on forged claims of parties, the total absence of seriousness on the part of the respondents to initiate and get completed expeditiously the departmental proceedings against the applicant resulting in unjustified delay of more than 12 years and the fact that the applicant retired more than 12 years ago, we feel that it will be only proper and just to bring to an end the disciplinary proceedings initiated against the applicant vide charge-memo dated 03.05.2006. Therefore, at this stage these disciplinary proceedings are quashed and set aside, and the respondents are directed to consider the case of the applicant for consequential benefits to him as and when they became admissible and due to him as per the relevant applicable rules and law in this

regard, if he is found otherwise eligible and fit for them. The benefit of promotion, of course, be only on notional basis.

(Smt.Ravinder Kaur)
Member (J) .

(Dr.Bhagwan Sahai)
Member (A) .

H.