

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.496/2018

This the 17th day of December, 2018

**Coram : Hon'ble Ms. Archana Nigam, Administrative Member
Hon'ble Shri M.C.Verma, Judicial Member**

Shri Devjibhai
Son of Shri Pragibhai Makwana
Aged 51 years,
Working as Superintendent in the office of the respondents
Residing at : Dahyabhai Park Society
Opp. Mohan Motors
Near Swaminarayan College
Shahlam Tol Naka Cross Road,
Ahmedabad 380 022. Applicant

(By Advocate : Shri M.S.Trivedi)

VERSUS

1. Union of India
Notice to be served through
The Commissioner
O/o. Commissioner of Customs (Preventive)
Sardar House, Bedi Bunder Road,
Jamnagar 361 008.
2. The Assistant Commissioner,
O/o. The Assistant Commissioner, Customs
Bhavnagar Division,
Bhavnagar – 395 623. Respondents.

ORDER – ORAL

Per : Hon'ble Shri M.C.Verma, Member (J)

Heard. The OA is at the stage of notice.

2. The facts as has been set out in the OA are that applicant while serving as Superintendent in the office of the Respondents was booked by ACB, for alleged offence under Prevention of Corruption Act and charge sheet against him, by ACB was preferred on 30.10.2015. That on the basis of same facts and material, the applicant was issued departmental charge memo also, No.11/10(A)/Con/03/2015/Pt.1/298 dated 26.10.2016, under Rule 14 of CCS (CCA) Rules 1965 and initiated departmental inquiry. That applicant then preferred OA No.234/2017 and this Tribunal disposed of the OA on 27.6.2017, after considering the facts and circumstances of the case, with direction to the Respondents to stay and kept in abeyance the Departmental

proceedings for one year. It is further case of the applicant that said period of one year have expired, the facts and circumstances still are the same, the trial pursuant to charge sheet filed by ACB has not but the enquiry Officer of Departmental Proceeding, vide communication dated 28.8.2018, intimated for hearing of departmental proceedings scheduled for 04.9.2018 at Mundra Port. That applicant preferred representation, dated 29.8.2018 to Respondent No.1 for change Enquiry Officer & Presenting Office and vide representation, dated 03.10.2018 made request to keep the of Departmental Proceeding in abeyance but vide Memo, dated 11.10.2018 (Annexure A-1) he has been directed to cooperate in Departmental Proceeding and request of applicant to keep the Departmental Proceeding in abeyance was not entertained, and hence is this OA.

3. Learned counsel, Shri M.S.Trivedi, who appeared for the applicant, while pressing for issuance of notice, take us to para

17 of Order dated 27.6.2017 passed in OA No.234/2017. Para 17 reads : *“By taking into account of the fact that the documents to be relied upon, witnesses to be examined, both in the departmental inquiry pursuant to the charge memorandum dated 26.10.2016 as well in the criminal case No.ACB 22/15, are one and the same, in the fitness of the facts and circumstances of the case on hand, we are of the view that interest of justice will be served and equities can be balanced if the judgment in Stanzen Toyatetus India Private Limited (supra) is followed.* Accordingly, the respondents are directed to stay and keep in abeyance the departmental proceedings initiated against the applicants pursuant to the charge memorandum dated 26.10.2016 respectively, vide Annexure A-1, for a period of one year from the date of receipt of copy of this order. However, it is made clear that if the trial is not completed within the said period of one year from the date of receipt of copy of this order,

the disciplinary proceedings against the applicants shall be resumed and concluded by the Inquiry Officer concerned and the applicants shall cooperate in all respects.”

4. Learned counsel also urged that impugned order (Annexure A-1) does not provide any reason why the request of the applicant was rejected by the respondents. He emphasised that it was incumbent upon the respondents to pass a speaking order and to assign reason and since impugned order is non-speaking so is not legally tenable. He further took us to grounds (F) and (G), enshrined in pleading of OA and urged that Annexure A-1 being illegal needs to be quashed and setting aside. He also refers to Para 8 & 9 of representation dated 03.10.2018 (AnnexureA-2) and submitted that this Tribunal in other cases of similar nature have stayed the departmental

inquiry till the statement of delinquent / accused is recorded under the provision of Section 313 of CRPC in the criminal case.

5. Considered the submissions. At the threshold, so far, the submissions of learned counsel that in another similar case this Tribunal has stayed the departmental proceedings till the statement of delinquent / accused is recorded under the provision of Section 313 of CRPC relates it is suffice to say that the Order of that case is not before us and hence we are not in position to appreciate under what circumstances said Order, if any was passed. It is worthwhile to note that fate of each case depends upon its own facts and circumstances.

6. It is also the submission of learned counsel that facts and circumstances of the case at present and at the stage when applicant knocked at the door of this Tribunal, in OA

No.234/2017 are the same. Be that may be, at the time of passing of final order in OA No.234/2017 direction to stay and keep in abeyance the departmental proceedings for the period of one year was there. Whether in such circumstance, it can be said that no other remedy, except a fresh OA was available and whether a fresh OA is entertainable and the answer of learned counsel is that the Order passed in OA No. 234/2017 was not challenged by either of the parties, has attained finality and therefore, if any application for extension of time is given in that OA that would tantamount to Review of the Order. If this contention of learned counsel is accepted then any order passed in instant OA, regarding stay of departmental proceeding, in a way would also be tantamount supervene the order passed in OA No. 234/2017.

7. In Criminal Trial, as informed by learned counsel is at the beginning stage of prosecution evidence and notice for

appearance of complainant has been issued. Trial will definitely take long period for its conclusion. It is well established proposition of law that Criminal Trail and Department Enquiry based on different footings and the motive behind each is also different. There is no legal impediment as well in running of proceedings of both simultaneously.

8. As far as contention of learned counsel that impugned order does not reflects the reasons for rejection relates, it is an administrative order. The issue had already come before the Tribunal in OA No. 234/2017 and there was direction from the Tribunal for stay of the departmental proceedings for one year only so even if no reason is assigned, it is hardly of any avail to the applicant.

9. We did find that the OA being devoid of merits deserve dismissal and hence is dismissed.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)

nk