

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH**

Original Application No. 370/2016

Ahmedabad, this the 17th day of December, 2018

CORAM :

Hon'ble Ms. Archana Nigam, Member (A)

Hon'ble Sh. M.C. Verma, Member (J)

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Shri Vasudevan S. Konda S/o Shri Subburam Konda, Aged 56 years, working as Superintendent of Customs, Kandla Custom, Kutch, resident of 503-B, Kaushtubh Apartment, Halar Road, Valsad, Gujarat – 396 001.

...Applicant

(By Advocate : Mr. M.S. Trivedi)

VERSUS

- 1- Union of India copy to be served through The Secretary to Government of India, Department of Revenue, Ministry of Finance, Government of India, North Block, New Delhi – 110 001.
- 2- Commissioner, Central Excise, Surat-I, New Central Excise Building, Opp. Gandhi Baug, Chowk Bazar, Surat 3600 122.
- 3- Chief Commissioner, Customs, Central Excise & Service Tax, Central Excise Building, Race Course, Vadodara Zone, Vadodara – 390 006.
- 4- Director General, Vigilance, CBEC, 2nd Floor, Samrat Hotel, Chanakyapuri, New Delhi – 110 001.
- 5- Chairman, Central Board of Excise and Customs, North Block, New Delhi – 110001.

...Respondents

(By Advocate : Ms. R.R. Patel)

O R D E R

Per M.C. Verma, Member (Judicial)

1. Applicant, Vasudevan S. Konda, by filing this O.A. under Section 19 of the Administrative Tribunals Act, 1985, has prayed to direct respondent no. 2 to pass necessary order for exoneration of applicant from departmental case as per the reply in CPGRAM dated 30th June, 2015 (**Annexure A/1**), with all consequential benefits.

2. The brief facts, as set out in the O.A. are that applicant while working as Inspector, Central Excise, Surat-II, was implicated in corruption case by ACB, Bharuch and during pendency of criminal proceedings in Bharuch, departmental proceedings under CCS(CCA) Rules, 1964, on same set of imputation as was in articles of charges, was initiated against him in May 2009. That applicant, in criminal trial was acquitted on 28.05.2012. That the Inquiry Officer on conclusion of the enquiry hold, vide his report dated 01.05.2014, that charges against the applicant were not proved, but the same were subject to outcome of appeal pending against the order of acquittal before the Hon'ble High Court of Gujarat. The report of the inquiry officer was accepted by the Disciplinary Authority, but the matter was referred to the DG (Vigilance), CBEC, New Delhi for seeking second opinion from the DGV, CBEC, New Delhi. That thereafter, applicant has filed several representations and vide representation dated 31.5.2015 he urging that Second Advice was not warranted and prayed to close the case without waiting for Second Advice and be paid consequential benefits.

2.1 Applicant also has pleaded that he filed three subsequent CPGRAMs requesting to follow the ratio of Law propounded by Hon'ble the Supreme Court and keeping in view various circulars & instructions issued by the Government of India through CVC and CBEC despite that, he has been informed that the issue has been referred to the DG (Vigilance), CBEC, New Delhi (Respondent No.3) for second opinion, under instructions dated 7.10.2009. That In reply to applicant's CPGRAM dated 8.7.2015, respondent No. 4 vide his letter dated 22.09.2015 **(Annexure A/6)** informed :- ***"matter has been examined and as the appeal in High Court is pending against the acquittal of the officer in the lower court, CVO has decided to keep its second stage advice in abeyance till***

finalization of appeal. Unless and until CO is acquitted by judicial forum, he cannot be treated as Honorably acquitted. His acquittal in lower court is considered to be suspended."

2.2 That applicant then preferred an application, under RTI Act and pursuant thereto respondents, on 08.12.2015, informed :-"***--that there are no such orders, circulars or instructions to consider the order of acquittal as suspended"***.

2.3. The applicant contending that the act of omission and commission of respondents have violated Articles 14, 16 20(2) and 141 of the Constitution of India has approached this Tribunal, under instant O.A. for the relief as stated in para 1 supra.

3. Detailed reply has been filed by the respondent-department submitting that applicant along with others, was trapped by the ACD, Bharuch for alleged demand / acceptance of bribe and was tried under Sections 7, 12, 13(1) (d) and 13(2) of Prevention of Corruption Act, 1988 before the learned Sessions Court at Bharuch. That on 28.05.2012, applicant was acquitted by the Trial Court and the Criminal Appeal filed by the ACB, Gujarat is pending before Hon'ble Gujarat High Court.

3.1. The respondents also have pleaded that Hon'ble Apex Court in ***Sulekh Chand Vs. Commissioner of Police*** held that once acquittal was on merit, the need for departmental inquiry is obviated and in the instant case before passing final order of exoneration, the Disciplinary Authority in terms of letter dated 07.10.2009, as also in terms of para 3 of Circular dated 07.12.2012 has referred the matter for 2nd Stage Advice. Respondents categorically have stated that vide letter dated 1.12.2014 and 27.4.2014 respondents had requested the DG (V), New

Delhi to expedite the matter at their end to complete the further proceedings i.e. issuance of final order

3.2. The relevant para – 3 of Circular dated 07.12.2012 (Annex.R/7), relied upon by respondents reads: “----- **All Disciplinary proceedings in which Disciplinary Authorities propose exonerate or drop the charges, the consultation at 2nd stage would continue to be made to the CVC by the concerned Administrative Authorities.**” And para 3 of Circular dated 3/12/2014 (Annex.R/10) relied upon by the respondents reads : “----- **Where the Disciplinary Authority, on conclusion of Disciplinary proceedings, proposes to impose any penalty which is in line with the Commissioner 1st stage advice in respect of officers falling within the jurisdiction of the commission also, such cases would, henceforth be dealt at the level of CVO and DA concerned in the organization / department. It is further clarified that, any action which is at variance with the commission’s 1st stage advice would continue to be referred to the commission for obtaining 2nd stage advice.**”

4. On 8th August, 2018, after part hearing of the matter, this Tribunal directed the respondents’ counsel to impress the respondents to expedite the decision qua disciplinary proceedings and to apprise about the action taken. The said order, dated 08.08.2018 of the Tribunal reads as under :-

“Learned counsel, who appeared for the applicant, submits that the applicant, on the same set of allegations was prosecuted in Criminal case as well in departmental inquiry and that applicant has been acquitted in Criminal Trials and has also been exonerated by Enquiry Officer in the departmental inquiry. The Inquiry Officer observing that there was no evidence on record to substantiate the allegation, has submitted his report to the Disciplinary Authority. That against the acquittal, in Criminal trial state has preferred appeal which though has been admitted, but has not been finally adjudicated. That Disciplinary Authority though has observed

that the Inquiry Officer report is acceptable, however, in concluding paragraph said that applicant has to be exonerated, but second stage advice is required. Learned counsel added further that applicant is at the verge of retirement and still final order, qua Departmental Enquiry, has not been passed.

Learned counsel for the respondents informed that Respondent has requested CVC to render advice, initially vide letter dated 15.7.2014 and in absence of the second stage advice from CVC, the Disciplinary Authority is unable to finalise the case or the disciplinary action in the matter.

Considered the submissions. It is seen from record that last letter was written on 27.4.2015 seeking Second Stage Advice from CVC. This indicates lethargic on the part of the Respondents. In the circumstances, learned counsel for the respondents to impress upon to expedite the decision qua Disciplinary Enquiry. It is deemed appropriate to report action taken by the Respondents within three weeks and the case is therefore, directed to be listed on 30.8.2018. "

5. In compliance of the aforesaid order, Ms. R.R.Patel, Ld. Advocate, who is representing the respondents today has placed on record compilation of some letters & orders, viz., order dated 28.08.2018 issued by the Directorate General of Vigilance, Customs & Central Excise, letter dated 22.08.2014, 1.12.2014, 15.6.2015 issued by the Commissioner, Central Excise Customs & S.Tax / Customs, Surat-I, letters dated 19.10.2015, 5.1.2016, 5.9.2017, 3.11.2017 issued by the office of Directorate General of Vigilance, New Delhi, letter dated 14.6.2017 issued by DG (Vig.) Ahmedabad, letter dated 5.7.2017, 3.8.2017, 16.11.2017, 12.3.2018, 13.8.2018, 21.8.2018 of Central Excise Commissionerate. Said compilation has been taken on record. Learned counsel orally informed that matter was referred for II stage advice but that II Stage Advice has been kept in abeyance by CBI/DG (Vig) till disposal of criminal appeal by Hon'ble High Court of Gujarat.

6. The factual situation which ultimately has emerged today is that the applicant was exonerated by the Inquiry Officer in departmental

inquiry and the Disciplinary Authority accepted the report of inquiry officer but simultaneously directed for II stage advice and it was done in July 2014. The applicant was also tried in Criminal Trial on same set of facts and has been acquitted by the Trial Court and the Appeal is pending before the Hon'ble High Court of Gujarat. As per information given and by compilation of letters placed on record today, by learned counsel for respondents II Stage Advice has been kept in abeyance by CBI/DG (Vig) till disposal of criminal appeal by Hon'ble High Court of Gujarat.

7. In said backdrop of the matter, learned counsel for applicant has urged that applicant cannot be made to wait for indefinite period. He submitted that it is not obligatory on the part of the Disciplinary authority to act upon the "Second stage advice" of the DGV/CVO and, the Disciplinary Authority can independently take final decision. He also informed that applicant is going to be retired on 31.05.2019. Learned counsel for respondents took the stand that the Department has taken every step which were required but if CVC is not giving any advice, CVC may be impleaded as party. Contents of letter dated 28.08.2018, placed on record today by the counsel for respondents reveals that the tendering of 2nd stage advice has been kept in abeyance by CVO/DG(Vig), CBIC till finalisation of case in Hon'ble High Court of Gujarat.

8. Indisputably applicant is going to be retired on 31st May, 2019 so this Bench is of the view that it would being interest of justice that departmental case against the applicant be finally disposed, well in advance, before his superannuation. It is hoped that the respondent Department and the CVC would work in synch and would take decision

at the earliest possible. It would thus be appropriate if this OA is disposed of with direction to Respondents to take final decision qua departmental case against the applicant, to pass order thereon without delay, with further direction to complete said entire exercise before 31st March 2019 and to communicate the decision taken, without delay, to the applicant. Ordered accordingly.

9. With aforesaid observations and directions, this O.A. and M.A., if any is pending, stand disposed of. No order as to cost.

[M.C.Verma]
Member [Judicial]

[Archana Nigam]
Member [Administrative]

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