

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/159/2019

Dated: 22.04.2019

Between:

A. Chandra Sekhara Reddy,
S/o. A. Eswara Reddy,
Aged about 42 years,
Occ: Deputy Commissioner of GST,
Emp. Code: 3036 DR,
O/o the Commissioner of Central Taxes,
GST Bhavan, Tirupati GST Commissionerate,
9/86-A, Amaravathi Nagar,
West Church Compound,
Tirupati - 517 502.

AND

1. Govt. of India, Ministry of Finance,
Dept. of Revenue,
Central Board of Indirect Taxes and Customs,
North Block,
New Delhi – 110 001 rep. by its
Revenue Secretary.
2. Central Board of Indirect Taxes and Customs,
North Block, New Delhi – 110 001 rep. by its
Chairman.
3. Union Public Service Commission,
UPSC Dholpur House,
Shahjahan Road,
New Delhi – 110 069 rep. by its Chairman.

... Respondents

Counsel for the applicant : Mr. N. Vijay
Counsel for the respondents : Mrs. K. Rajitha, Sr. CGSC
Mr. B.N. Sharma, SC for UPSC

CORAM:

***Hon'ble Mr. Justice R. Kantha Rao, Member (J)
Hon'ble Mr. B.V. Sudhakar, Member (A)***

ORAL ORDER
[Per Hon'ble Mr. Justice R. Kantha Rao, Member (J)]

Heard Sri N. Vijay, learned counsel appearing for the applicant and Smt. K. Rajitha, learned Senior Standing Counsel appearing for the respondents.

2. The applicant filed the present O.A. to declare the action of the respondents in not considering his case for promotion to the cadre of Joint Commissioner of Customs, Central Excise & Central Tax notwithstanding the pendency of the Charge Memo No.21/17 dated 12.6.2017 issued by the 1st respondent as illegal, arbitrary and violative of Articles 14 & 16 of the Constitution of India and consequently direct the respondents to forthwith promote the applicant to the post of Joint Commissioner.

3. The charge in question levelled against the applicant is in respect of 84 bills of entry involving customs duty evasion of an amount of 11,18,32,677/-. The indictment is that of improper assessment by the applicant in discharge of his duties as a Deputy Commissioner. The crux in respect of the charge however relates to the year 2011 and the charge memo was issued in the year 2017. The Inquiry Officer was appointed on 9.1.2018.

4. Earlier to this, the applicant was issued a charge memorandum under Rule 16 of CCS (CCA) Rules in the year 2015 with regard to one of the bills mentioned in the above charge memorandum proposing a minor penalty. Challenging the said charge memo, the applicant filed O.A. No.1002/2016 and the Tribunal by order dated 30.07.2015 directed the respondents to conclude the disciplinary inquiry within a period of 45 days. The disciplinary inquiry in respect of the said minor penalty charge memo was not concluded

within a period of 45 days as directed, no extension of time was sought for by the respondents and the disciplinary authority passed a final order of censure on 19.6.2018. On the ground that the minor penalty charge inquiry in relation to minor penalty charge memo was pending against the applicant, his promotion was denied for a period of nearly three years. On account of the punishment of censure passed against the applicant, he was denied promotion while his batchmates were given promotion in the year 2016. Still O.A. No.1002/2016 is pending before this Tribunal whereunder there is a challenge to the minor penalty charge memo. Subsequently, a major penalty charge memo was issued in the year 2017 against the applicant in respect of 84 bills. but the Inquiry Officer was appointed on 9.9.2018. There is no denial to the fact that there is no progress in the inquiry since the charge memo was issued without any ~~relied upon documents~~ and the Inquiry Officer, long after his appointment, sought for furnishing of relied upon documents and request was made in the year 2019. As the applicant was denied promotion on the ground of pendency of the disciplinary proceedings, he filed O.A. No.997/2018 before the Tribunal seeking a direction to the respondents to complete the disciplinary inquiry initiated against him at an early date. The Tribunal by order dated 12.10.2018 directed the respondents to conclude the inquiry within a period of two months. Subsequently, the respondents filed MA No.37/2019 in O.A. No.997/2018 seeking extension of time for concluding the disciplinary inquiry against the applicant. The Tribunal granted time till 31.10.2019 for concluding the disciplinary inquiry. However, the disciplinary inquiry remained at the same stage without any progress. The applicant submitted representations to the department requesting to consider his case for promotion notwithstanding pendency of the disciplinary proceedings against

him. No action was taken on the representations. Therefore, he filed the present O.A seeking the aforementioned relief.

5. We are not inclined to go into the merits of the case because the applicant in the present O.A. only sought for the relief to issue a direction to consider his case for promotion as there was no progress in the disciplinary inquiry in spite of approaching the Tribunal and the Tribunal issuing necessary directions to the respondents to complete the inquiry.

6. After filing of the O.A, the respondents took some adjournments but they did not file reply statement. On their failure and having regard to the facts and circumstances of the case, their right to file reply is forfeited.

7. For the purpose of disposal of the O.A., it is necessary to peruse the judgement relied upon by the applicant in State of A.P. vs N. Radhakishan in Civil Appeal No.3503 of 1997 dated 7.4.1998 { (1998) 4 SCC 154 }. The case before the Hon'ble Supreme Court relates to corruption charges which are serious in nature. Taking the various factors into consideration which led to delay in conducting departmental inquiry, the Hon'ble Supreme Court quashed the charge memorandum itself. Rule 14 (24) of CCS (CCA) Rules, 1964 prescribes limitation for completing the disciplinary inquiry. The period prescribed is six months which can be extended for a further period of six months for the reasons to be recorded. The Hon'ble Supreme Court, in some of its judgements, laid down that there should not be delay in initiating disciplinary proceedings or in concluding the same. While prescribing the time limit of one year for completing the disciplinary inquiry, the Hon'ble Supreme Court, in the judgement relied on by the learned counsel for the applicant, however expressed the view that it is not possible to lay down any predetermined principles applicable to all cases and in all situations

where there is delay in concluding the disciplinary proceedings. But according to the Supreme Court, the crucial question would be as to whether by such delay, the interests of the employee would be prejudiced. The Supreme Court further laid down that the delinquent employee has a right that the disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings.

8. The Honorable Supreme Court in the case above referred, apart from upholding the action of the Tribunal in quashing the charge memo, upheld the direction of the Tribunal to promote the respondent therein as per the recommendation of the DPC, ignoring the charge memos issued against him.

9. Turning to the facts of the present case, the indictment against the applicant relates to the assessment of the year 2011. The charge memo was issued to him in 2017. Thus, there is inordinate delay in issuing the charge memo. In spite of the applicant approaching the Tribunal and obtaining directions from the Tribunal to complete the inquiry within a time frame, the inquiry is not completed. All through, the applicant was denied promotions. It is brought to the notice of the Tribunal by the learned counsel appearing for the applicant that the appraiser, who physically verified the items was exonerated of the same charge levelled against him. It is also brought to our notice that charges were dropped against some of the Assistant Commissioners who are facing the same charge.

10. Considering all these factors and the way in which the disciplinary proceedings against the applicant have been dealt with, we are of the considered view that necessary direction as prayed for can be issued to the

respondents, basing on the judgement relied on by the learned counsel appearing for the applicant. The respondents are, therefore, directed to consider the case of the applicant for promotion to the post of Joint Commissioner, Central Tax & Customs notwithstanding the pendency of the Charge Memorandum No.21/2107 dated 12.06.2017 issued by the 1st respondent, and pass appropriate orders within a period of eight weeks from the date of receipt of this order. For conducting the said exercise, the respondents are directed to open the sealed cover and consider the assessment made against the applicant for the purpose of considering his promotion. The O.A., therefore, succeeds and is accordingly allowed without any order as to costs.

(B.V. SUDHAKAR)
MEMBER (A)

(JUSTICE R. KANTHA RAO)
MEMBER (J)

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