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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3944/2012& CM No. 8258/2012**

Date of Decision: 1st October, 2013

UNION OF INDIA AND ANR Petitioner

Through : Dr. Ashwani Bhardwaj, Adv.
versus

MADAN LAL Respondent

Through : Ms. Shikha Sapra, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL,J. (Oral)

1 The petitioner before us has raised a challenge to the judgment dated 8th November, 2011 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in Original Application No. 23/2011 holding that the departmental proceedings in the present case would be an exercise in futility and result in harassment meted out to the employee after retirement. Other reasons for arriving at this finding has been noted in the judgment which we are suppose to consider hereafter.

2. The respondent herein was posted as Inspector at the Export Shed, Inland Container Deport (ICD), Tughlakabad, New Delhi on 4th October, 1998, where he was assigned the duty of inspection of consignment present

for export. The respondent was directed by the then Deputy Commissioner on 21st August, 1998 to attend to the clearance of two consignments pertaining to M/s Aravali (India) Ltd. in the absence of the Superintendent having the charge of the unit as a stop-gap-arrangement. It is submitted that the respondent was not in charge of the subject export M/s Aravali (India) Ltd. and attended to the subject AR-4s on specific instructions of the Deputy Commissioner in the absence of the regular incumbent.

3. It appears that the Directorate of Revenue Intelligence (DRI) initiated an inquiry in availment of duty drawback on export of chief quality junk UPFC pipes between 1998 and 1999 by M/s Aravali (India) Limited, Hissar which culminated in issuance of a notice to show cause dated 21st December, 2000 to the exporter. In this notice, reliance was placed on the shipping bills of said firm with regard to the subject transaction. This show cause notice was not addressed to the respondent. It is noteworthy that nothing adverse against the respondent was mentioned therein.

4. No action at all was taken by the petitioner herein against the respondent for a period of 12 years. The petitioner herein forwarded a note to the Central Vigilance Commission for its first stage advice for initiation of regular departmental action for major penalty proceedings which were

accorded by the CVC on 24th September, 2010.

5. It is noteworthy that the respondent as per his age, attained the age of superannuation on 15th September, 2010. But as per rules, the employee would retire on the last date of the month and therefore, he superannuated on 30th September, 2010. Unfortunately on the same date, petitioner issued the following Charge sheet to the petitioner. The relevant portion of the said Charge sheet are reproduced hereunder which reads as follows:-(Page 24)

“STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI MADAN LAL, THEN SUPERINTENDENT, CENTRAL EXCISE, RANGE-II, HISSAR (NOW DEPUTY COMMISSIONER, CENTRAL EXCISE, ALWAR DIVISION, JAIPUR COMMISSIONERATE)

That the said Shri Madan Lal, then Superintendent (Now Deputy Commissioner), while functioning as Superintendent, Central Excise, Range-II, Hissar, Central Excise Commissionerate, Delhi V (Rohtak), on 21.08.1998.

ARTICLE – I

Failed to maintain absolute integrity in as much as he along with Shri N.S. Bhola, Inspector, examined and cleared the export consignment of M/s Aravali (India) Ltd., Hissar

(Haryana) under 02 (two) AR-4s Nos. Namely 27/98-99 dated 21.08.1998 vide which the offending goods were exported, without raising any objection. The goods were misdeclared and overvalued for the purpose of fraudulent availment of drawback. The goods which were exported were junk material and not rigid UPVC as mentioned in the aforesaid AR-4s. ”

6. Aggrieved with the said memo of charges, the petitioner assailed the same by way of O.A.No.23/2011 which was filed before the Central Administrative Tribunal, Principle Bench, New Delhi. There is no dispute that other than the said memo issued on the date of the respondent's superannuation, he had unblemished record of 32 years of service.

7. Apart from several grounds urged on merits in the writ petition, it is submitted that the petitioners opted to issue the impugned Memorandum after more than 12 years of the alleged occurrence of mis-conduct on the part of respondent. The inordinate delay in issuing the charge sheet is contrary to the settled law that charges cannot be levelled after inordinate delay unless the delay can be explained beyond the reasonable grounds.

8. Learned counsel for the respondent submits that after completion of the investigation by the DRI in 1999-2000, no further investigation was

carried out in respect of the subject export by any agency and no further material or evidence came on record to warrant the issuance of the impugned Memorandum. The issuance of Charge Sheet at belated stage in respect of an incident occurred in 1999 is illegal. It is urged that after this period the respondent was accorded two promotions, one to the grade of Assistant Commissioner in 2002 and one to the grade of Deputy Commissioner in 2009 after due vigilance clearance from the competent authority. The conduct of the petitioners shows malafide on the part of the petitioners as they did not take any action till August, 2010 against the respondent.

9. A specific plea was raised even if the allegations were taken to be true, the same could at best be considered as merely supervisory lapses against the respondent. As such, the disciplinary proceedings were misconceived.

10. We may note that the petitioners herein proceeded in identical manner in respect of the some other employees who also assailed the belated charge sheets issued to them. One such employee Joseph Kuok was implicated in the same transactions as the present respondent. He assailed the disciplinary proceedings similarly initiated against him by way of OA No. 2777/2010.

The Central Administrative Tribunal allowed the petition of Joseph Kyon on the ground of inordinate and unexplained delay in issuing the charge memo and quashed the same. The judgment has attained finality.

11. We also noticed that in collateral proceedings, that the DRI had permitted several officers against whom similar allegations have been made without initiation of any disciplinary proceedings. The petitioners have themselves therefore not treated the matters as of any import effecting the discipline of the department.

12. Another similarly situated employee Hari Singh was also served a Charge Memo dated 25th February, 2011 in respect of the same transactions. He assailed the same by way of OA No. 1844/2011 interalia on the ground of inordinate and unexplained delay before the Central Administrative Tribunal in issuing the Charge Memo. Initially the petition was rejected. However, Hari Singh had filed a Review Application No. 27/2012 premised on the documents which had fallen into his hands. Subsequently, the Tribunal thereafter reviewed its previous judgment and allowed the challenge filed by Hari Singh vide judgment dated 8th January, 2013.

13. The petitioners assailed the judgment dated 8th January, 2013 by way of W.P.(C) No. 4245/2013 tilted as **UOI v. Hari Singh**. This writ petition

came up for hearing before us and the same was dismissed by detailed judgment dated 23rd September, 2013.

14. The present respondents have placed strong reliance on this judgment and submitted that the same squarely covers the case of the present respondents.

15. We have perused the record of the present case as well as the judgment dated 23rd September, 2013 passed in W.P.(C) No. 4245/2013. All material facts necessary for adjudication of the present case have been noted in the judgment passed in W.P.(C) No. 4245/2013. The factual matrix of W.P.(C) No. 4245/2013 is similarly, if not identical in all material aspects. In our judgment dated 23rd September, 2013, we arrived at a conclusion that inordinate and unexplained delay of almost 12 years occurred in commencing the disciplinary proceedings would disentitle the petitioners from proceeding in the matter. It was concluded by the petitioners that, at best, the matter pertains to supervisory lapses and does not involve any element of mis-conduct inviting disciplinary action against the respondents.

16. In the instant case, the Central Administrative Tribunal has noted that delay which is unexplained and unreasonable which would cause prejudice to the delinquent employee. Such delay manifests lack of seriousness on the

part of disciplinary authority in pursuing the charges against the employee. While evaluating the impact of the delay, the court must consider the nature of the charge, its complexity and for what reason the delay has occurred. It is not the case of the present petitioners that the respondent had colluded or connived with the offending exporter in effecting the fraudulent exportation of the goods in violation of the provisions of the Customs Act.

17. The Tribunal had concluded the chargesheet, by and large, specifically make a mention of the supervisory lapses at best, on the part of the respondents, and that none of the charges suggest grave negligence on the part of respondent. Since the respondent had already retired, proceedings could only be continued against him under Rule 9 of the CCS (Pension) Rules 1972. No punishment can be awarded to an officer after retirement who may be proceeded under Rule 9 of the Rules of 1972, if the delinquency alleged may not be of grave misconduct or negligence. If the case is only of supervisory lapses and not of grave negligence, the respondent cannot be punished. It was noted that the disciplinary proceedings would take several years to conclude.

18. The Tribunal has further held that disciplinary proceedings would be therefore an exercise in futility whereas continuance of the same would

amount to harassment to the respondent that too after his retirement. For all these reasons, the charge Memo was quashed and set aside.

19. These very grounds and circumstances except the facts relating to the superannuation of the petitioner have been considered in great detail in the case of **UOI v. Hari Singh (supra)**. No circumstances, reasons or grounds had been pointed out to us by learned counsel for the petitioner which would enable us to take a different view in the instant petition.

20. In the judgment dated 23rd September, 2013, we have also noted the office Memo dated 23rd May, 2000 issued by Central Vigilance Commission Schedule of Time limits in conducting investigation as well as departmental enquiry, CVC had observed that delay in disposal of the disciplinary proceedings was a matter of a serious concern to the Commission and such delay also affects the morale of the suspected charge employees and others in the organization.

21. We have noted in **UOI v. Hari Singh (supra)** that disciplinary proceedings should be conducted, soon after the alleged mis-conduct or negligence on the part of the employee, is discovered. Issuance of charge sheet after inordinate delay cannot be said to be fair to the Delinquent Officer. Since it would also make the task of proving the charges difficult, it

would also not be in the interest of administration. If the delay is too long and remains unexplained, the court may interfere and quash the charges. The position in this present case is no different.

22. Learned counsel for respondent submits that despite the petitioner having succeeded before the Central Administrative Tribunal as back as on 8th November, 2011 and that there being no stay in the present case, the respondent have till date not even computed the payments to be made to the petitioner regarding retirement benefits. To say the least, this is most unfortunate and despite the settled position in law.

23. As noted by us in **UOI v. Hari Singh (supra)** this petition is completely mis-concieved.

24. In view of the above, we direct as follow :-

(i) The writ petition is dismissed as devoid of legal merits.

(ii) The petitioners shall ensure that the terminal benefits due to the respondent are computed within a period of four weeks from today and communicated to the respondents forthwith.

(iii) The petitioner shall ensure that the payment of arrears of the pension is effected to the respondents within a further period of four

weeks thereafter.

(iv) The respondents shall be entitled to costs which are assessed as Rs.25,000/- each before the 7th day of next calendar year.

25. The writ petition and the application are disposed of in above terms.

GITA MITTAL, J

DEEPA SHARMA, J

OCTOBER 01, 2013

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