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

+ **W.P.(C)No.4245/2013 & CM No.9885/2013**

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Reserved on : 14th August, 2013

Date of decision : 23rd September, 2013

UNION OF INDIA & ANR. Petitioners

Through : Mr. R.V. Sinha, Adv.

versus

HARI SINGH Respondent

Through : Mr. Sachin Chauhan, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J.

1. By way of the present writ petition, the petitioners have challenged the judgment dated 8th January, 2013 in R.A.No.27/2012 in O.A.No.1844/2011 passed by the Central Administrative Tribunal, Principal Bench at New Delhi holding that there was inordinate and unexplained delay in commencement of the disciplinary proceedings against the respondents before the Tribunal and directing that the same would stand quashed.

2. The respondent before us, joined service with the Customs Department in the year 1976. At the time of filing of his Original Application before the Tribunal, he had put in 35 years of meritorious service. On the 4th of October, 1998, the respondent was posted as Inspector at the Export Shed, Inland Container Depot (ICD), Tughlakabad, New Delhi where he was inter alia assigned the duty of inspection/examination of consignment presented for export from the said port. 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.

3. The exporter appears to have submitted a reply. After consideration of the matter, upon adjudication by the

Commissioner of Customs, an order dated 2nd November, 2001 was passed. There was still nothing incriminating against the respondent. Therefore, from the Custom's point of view, investigation in the case stood completed.

4. On the 6th of August, 2003, the DRI addressed a letter to the Chief Commissioner of Central Excise, (Delhi Zone) with regard to an alleged export fraud of M/s. Aravali (India) Limited, Hissar. This communication was in response to the Chief Commissioner's letter dated 18th June, 2003 and referred to findings of the DRI. Specific reference was made to the shipping bills presented by the company on which the goods had been exported. In para 8 of this letter dated 6th August, 2003, the DRI had stated that scrutiny of the shipping bills revealed that 20 officers of the Custom had examined the consignment covered by the bills. In para 12, the DRI had made following recommendations:-

“12. Considering that a large number of Customs and Central Excise Officers had attended to the export consignment of M/s Aravali India Ltd. over a period of time, it may be a little far fetched to infer that each of the officers had colluded and/or connived with the exporter in the latter's fraudulent activities. On the other hand, a charge of gross negligence or dereliction of duty

against the concerned officials would appear more appropriate and sustainable as well. Thus, it is recommended that departmental action for dereliction of duty may be initiated against the above mentioned 23 officers. This office is shortly issuing a show cause notice invoking penal provisions against only the exporter/firm and its Managing Director.”

Despite the DRI pointing out the above, no action was initiated for dereliction of duty against the 23 custom officers at the ICD.

5. In the meantime, on the 27th of October, 2004, the respondent was summoned by the his Vigilance Department and interrogated about the above exports. The respondent has submitted that he had tendered his explanation to the best of his knowledge, memory, and referred to the incident as well as contemporaneous documents relating to the said export. According to the respondent, the vigilance officials were satisfied with his explanation. Therefore, no action was taken against him, either under the Customs’ Act or under the CCS (Conduct) Rules.

6. The petitioner submits that a preliminary enquiry report dated 3rd October, 2005 was submitted by Shri B.D. Singhal, Assistant Commissioner (Customs) ICD, TKD, New Delhi. Vide the letter dated 24th November, 2006, this enquiry report was

forwarded to Central Excise Delhi – I. However, the Cadre Controlling Authority – (being the Additional Commissioner (P&V), Central Excise Delhi – I) sent a letter dated 14th December, 2006 as he found the enquiry report incomplete and noted that the report did not suggest a specific role of each officer in the fraudulent availment of duty drawback to enable initiation of regular departmental enquiry after obtaining first stage advice from DGOV. In view of the above, another enquiry report dated 9th August, 2007 was submitted by Shri S.N.B. Sharma, Assistant Commissioner, Export (Shed) ICD, TKD, New Delhi which was forwarded to the Central Excise (Delhi) on the 20th of August, 2007.

7. To explain as to why no disciplinary proceedings were initiated against the respondent, the petitioner has further submitted that the DRI had not provided the original or their attested copies of 219 shipping bills relating to the transaction despite several reminders between 26th October, 2004 to 30th December, 2009 which were necessary to initiate disciplinary proceeding.

8. The Directorate General of Vigilance was requested vide a letter dated 11th February, 2010 for first stage advice. The Directorate General of Vigilance, vide letter dated 23rd April, 2010, had informed that the proposal seeking first stage advice was incomplete in the absence of original or certified copy of shipping bills. As per the petitioner, these bills were received only on the 29th of June, 2010 and 17th August, 2010. In this background, Mohd. Abu Sama, Deputy Commissioner was appointed as Inquiry Officer on 8th July, 2010 who submitted his report 8th October, 2010. The first stage advice was thereafter sought vide letter dated 19th October, 2010 enclosing the draft Chargesheet dated 25th February, 2011.

9. The respondent was aggrieved by the issuance of the memorandum dated 25th February, 2011 for the reason that it was issued after a lapse of 13 years of a transaction which had already been the subject matter of the aforesaid show cause notice and adjudication order. The respondent had sent a letter dated 9th March, 2011 requesting for relied upon documents to the impugned memorandum and sought extension of time for filing of reply

thereto. This was of no avail. Without acceding to the respondent's request, the petitioner appointed Shri C.P. Sukhramani, Superintendent as the Presenting Officer vide letter dated 26th April, 2011.

10. Aggrieved by the issuance of the said memorandum and proposed inquiry, the respondent challenged the same by way of O.A.No.1844/2011 before the Central Administrative Tribunal (Principal Bench), Delhi. The learned Tribunal accepted the above explanation tendered by the respondent for the delay and, therefore, was of the view that the case was a fit case if the proceedings were allowed to proceed and came to a conclusion that the responsibility of the respondent was to be fixed. In view thereof, an order dated 19th December, 2011 was passed by the Tribunal whereby the challenge by the respondent was rejected.

11. In order to explain the delay in issuance of the chargesheet, the petitioners were primarily contending non-availability of the shipping bills with them for the reason that the same had been submitted with the DRI.

12. The respondent challenged the judgment of the Tribunal by way of WP(C)No.169/2012 before this court. The respondent had also come into possession of certain documents which had been requisitioned by his colleague Shri. Dharam Parkash Dahiya under the Right to Information Act. These documents included a letter written at the initial stages by the DRI on 24th August, 1999 to the Commissioner of Custom whereby the shipping bills and original documents had been firstly requisitioned by the DRI. In response thereto, on 25th September, 1999, while forwarding the original shipping bills, the Commissioner of Customs had clearly stated that the copies of the shipping bills had been retained by the Custom department. The DRI had addressed a letter dated 6th August, 2003 to the Chief Commissioner of Central Excise, (Delhi Zone) referring to the investigation of the respondent which shows that as back as in 2003, the particulars of the officers against whom misconduct was alleged in the transaction in question had been identified.

13. The respondent filed CM No.354/2012 in the above writ petition seeking permission of this court to bring on record these

documents. The writ petition and the application were disposed of at that stage by the court vide an order passed on 11th January, 2012. Liberty was granted to the respondents to approach the Central Administrative Tribunal by way of a review for producing the additional documents in support thereof.

14. The respondent consequently filed Review Application No.27/2012 in O.A.No.1844/2011 relying upon the documents which had been received by the aforesaid Mr. Dahiya under the R.T.I. Act and sought review of the order dated 19th December, 2011. This review petition was heard and allowed by the order dated 8th January, 2013 of the Central Administrative Tribunal.

15. Learned counsel for the respondent had urged that there was no satisfactory explanation for the delay of almost 8 years in issuance of charge memo dated 25th February, 2011. Reference was made to the several judicial pronouncements of the Supreme Court and orders of the Tribunals in similar matters including ***1990 (Supp) SCC 733 State of Madhya Pradesh v. Bani Singh & Another; 1998 (4) SCC 154 State of Andhra Pradesh v. N. Radhakishan; JT 2005 (7) SC 417 P.V. Mahadevan v. M.D.***

Tamil Nadu Housing Board; (1995) 2 SCC 570 State of Punjab & Ors. v. Chaman Lal Goyal; 2002 (4) SLR 233 Inderjit Singh & Ors. v. Food Corporation of India & Ors.; 2001 (5) SLR 518 Meera Rawther v. State of Kerala; 1999 (7) SLR 422 Rajbir Singh Gill v. State of Punjab; O.A.No.689/2005 Irfan Ahmed v. UOI & Ors.; W.P.No.2079/2007 UOI v. Irfan Ahmed; SLP Civil CC 1918/2010 UOI v. Irfan Ahmed; 1978 Lab. I.C. 824 B.J. Shelat v. State of Gujarat & Ors.; 1979 SCR (3) 504 UOI & Ors. v. V.J. Ahmed; O.A.No.1087/2009 M.S. Bhatia v. UOI & Ors. and WP(C) No.750/2010 UOI & Ors. v. M.S. Bhatia. It was held in these judgments that if there was no satisfactory explanation for the inordinate delay in commencement of disciplinary proceedings, they were liable to be quashed.

16. The Tribunal noted the factual narration made by the present petitioner and concluded that the relevant documents were actually available with the present petitioner; that there was excessive delay in issuance of the chargesheet and that the instant case was a case of inordinate and unexplained delay in commencement of the disciplinary proceedings.

17. The Tribunal accepted the review petition and proceeded to hear the main petition on merits. The same was also allowed by the Central Administrative Tribunal holding that there was no satisfactory explanation for delay of almost 8 years in issuance of the charge sheet and the office memorandum dated 25th February, 2011 was quashed. The order of the Tribunal dated 19th December, 2011 was thus recalled and the impugned office memorandum dated 25th February, 2011 was set aside and quashed.

18. Aggrieved by the orders of the Central Administrative Tribunal, the petitioners have filed present writ petition contending that the explanation given by the petitioner for the delay in issuing the memorandum dated 25th February, 2011 was bonafide, adequately explained and deserves to be accepted. It has also been contended that no finding has been returned with regard to any prejudice resulting to the applicant in contesting the disciplinary case on account of alleged delay. The submission is that the delay in issuance of the memorandum dated 25th February, 2011 had occurred in the circumstances which were completely beyond the control of the petitioner and that the judgment of the Central

Administrative Tribunal was contrary to law laid down by the Supreme Court as well as by the Punjab and Haryana High Court. These questions arise for consideration by us in this writ petition.

19. The respondent entered appearance on advance notice and submitted that the impugned orders have to be tested on the basis of the records which were before the Central Administrative Tribunal when it passed the impugned order. In this background, we permitted the respondent to place such extracts of the record of the Tribunal as had not been placed before us by the petitioners and were necessary for adjudication of the case. The same was duly filed in the present proceedings and has been considered. The writ petition was admitted and taken up for hearing with the consent of both sides.

20. The question which arises for consideration in the present matter is whether the delay in issuance of the charge sheet stands adequately explained and what is the impact of the delay so far as the rights of the respondent are concerned.

21. It is an admitted position before this court that the transaction on which the disciplinary action is based related to the

period of 1999. The petitioners do not dispute that they had full knowledge of the transactions. The communications received from the DRI are admitted before us. This correspondence manifests that proceedings had been initiated against the exporter on the documents which adequately informed the petitioners of the nature of the inquiry as well as the charges.

22. The disciplinary proceedings against the respondent were commenced by issuance of the charge memo dated 25th February, 2011.

23. We may first examine the principles of law which would govern the consideration of the issues raised herein. So far as delay in issuance of the charge sheet is concerned, we may usefully refer to the pronouncement of the Supreme Court reported at **1990 (Supp) SCC 738, State of Madhya Pradesh v. Bani Singh & Another**. Just as the case before us, in **Bani Singh** as well, the State had appealed against the order of the Tribunal on the ground that it ought not to have quashed the proceedings merely on the ground of delay and laches. The alleged irregularity had allegedly taken place in 1975-77 and the department was aware of them.

The Supreme Court held that it is unreasonable to think that it would take more than 12 years to initiate the disciplinary proceedings. The contention was rejected by the court holding as follows:-

“4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigation were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal’s orders and accordingly we dismiss this appeal.”

24. Again in the judgment reported at **1998 (4) SCC 154 State of Andhra Pradesh v. N. Radhakishan**, the Court considered the

same issue and laid down the following principles:-

“19. It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that 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. In considering whether delay has vitiated the disciplinary proceedings **the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it.** It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. **Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper**

explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

(Emphasis supplied)

25. It is therefore trite that delay which is unexplained and unreasonable would cause prejudice to the delinquent employee. Such delay clearly manifests the lack of seriousness on the part of the disciplinary authority in pursuing the charges against the employee. In the event of any employee deviating from path of honesty, efficiency and diligence, action should expeditiously be taken as per prescribed procedure. The Supreme Court has laid down the principles holding that unexplained and unreasonable delay per se results in prejudice to the charged officer except when the employer can show that the employee was responsible for delay or is otherwise able to explain the delay. 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.

26. Learned counsel for the respondent has drawn our attention to the judgment dated 3rd July, 2009 passed in ***WP(C)No.4757/2007, Union of India v. V.K. Sareen***. In this case,

the petitioner had proposed to commence disciplinary action against the respondents for imposition of major penalty with regard to his functioning between 12th June, 1990 to 12th April, 1993. An Enquiry Officer was appointed on the 22nd of April, 2003 and the report of the inquiry was submitted on the 1st of July, 2005. The charge sheet and the proceedings were quashed by the Central Administrative Tribunal by an order passed on 20th of March, 2007 which order came to be questioned by way of the writ petition filed before this court. In the judgment dated 3rd July, 2009, this court had culled out the principles as follows:-

“13. It is trite law that disciplinary proceedings should be conducted soon after the alleged misconduct or negligence on the part of the employee is discovered. Inordinate delay cannot be said to be fair to be Delinquent Officer and since it would also make the task of proving the charges difficult. It would also not be in interest of administration. If the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how much delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice the delinquent in defending the enquiry ought to be interdicted.”

In the judgment in *Union of India v. V.K. Sareen* (Supra), the court also rejected the explanation for the delay in instituting

the disciplinary proceedings as well as in taking final order on the enquiry report.

27. It has been repeatedly held by the Supreme Court that disciplinary proceedings are necessary in public interest as well. They are essential in inculcating a sense of discipline and efficiency. The proceedings should not be protracted. In this regard, our attention has been drawn to the pronouncement reported at *JT 2005 (7) SC 417 P.V. Mahadevan v. M.D. Tamil Nadu Housing Board*. In this case, a charge memo has been issued to the appellant on the 8th of January, 2000 pertaining to alleged irregularity in issuing a sale deed in the year 1990. There was no explanation for the extraordinary delay of ten years in initiating the proceedings. The respondent had attempted to explain that the irregularities for which the disciplinary action had been initiated had come to light only in the second half of 1994-95, when the audit report was released. This explanation was not accepted by the Supreme Court. The court noted the unbearable mental agony and distress caused to the officer concerned and held as follows:-

“The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interests of the Government employee but in public interest and also in the interests of inspiring confidence in the minds of the Government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”

28. The judgment of the Division Bench of this court dated 5th February, 2010 in *WP(C)No.750/2010 Union of India and Another v. M.S. Bhatia* is on a similar terms.

29. Mr. R.V. Sinha, learned counsel for the petitioner has urged that the Tribunal ought not to have interfered in the proceedings inasmuch as the respondent had approached it at the stage of issuance of charge sheet and that the matter had not proceeded to the stage of a final order. It is urged that the issuance of the charge sheet does not infringe the rights of a party and it is only when a final order imposing the punishment or otherwise adversely

affecting a party is passed, it may have a grievance and cause of action in his favour.

30. In this regard, reliance is also placed on the judgment reported at **2012 (11) SCC 565 Secretary Ministry of Defence v. Prabhash Chandra Mirdha**. Perusal of this judgment would show that the charge memorandum dated 8th of January, 1992 was issued to the respondents on the alleged demand of bribe of Rs.37,000/- and its acceptance on 3rd August, 1991. The Supreme Court did not lay down any absolute proposition that a charge sheet cannot be ever challenged. In para 8 of the judgment, the Supreme Court has specifically noted that the law does not permit quashing of the charge sheet in a 'routine manner'. The case considered by the Supreme Court also shows that a charge sheet in that case had been issued within one year of the alleged action by the employee. In para 9 of the judgment, the Supreme Court had noted that the delay in concluding the domestic enquiry is not always fatal and that it depends upon the facts and circumstances of each case. In para 10 of the judgment, the Supreme Court has noted that a writ application does not ordinarily lie against the charge sheet or show

cause notice and that it should not ordinarily be quashed. In para 12, after considering the law on this aspect, the court reiterated the principles thus:-

“Thus the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the ground that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.”

31. The Supreme Court has, therefore, reiterated well settled principles that proceedings initiated at belated stage would be quashed if the delay creates prejudice to the delinquent employee.

32. We have noted above the pronouncements of the Supreme Court wherein the court has observed the manner in which the delay would result prejudice. In view thereof, this judicial precedent is of no assistance to the case of the petitioner in the

present writ petition.

33. It is further contended that the respondent had failed to show as to how he has been prejudiced by the delay. Reliance is placed on the pronouncements of the Supreme Court reported at **2007 (3) Scale 1 The Government of Andhra Pradesh and Others v. Appala Swamy** and **JT 2012 (11) SC 533 Chairman, LIC of India & Ors. v. A. Masilamani** in support of this submission.

34. We find that in **The Government of Andhra Pradesh and Others v. Appala Swamy** (Supra), the Supreme Court has again reiterated the well settled principles that no hard and fast rule can be laid on the effect of delay in concluding disciplinary proceedings or on the aspect of its impact on the delinquent. It was observed that the employee has to make out a case of prejudice. The court also noted that the question had to be considered in the facts and circumstances of the case keeping in view of the nature of the charges.

35. So far as the judgment in **Chairman, LIC of India & Ors. v. A. Masilamani** (Supra) is concerned, the Supreme Court in para 10.2 has held as follows:-

“10.2 The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance the weigh the same, so as to determine, if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion.”

(Underlining by us)

The absolute proposition urged by Mr.R.V. Sinha, Advocate has not been laid down by the Supreme Court in this case.

36. The only explanation tendered by the petitioners to explain the delay is that it had forwarded the original shipping bills relating to the transactions to the DRI and, therefore, had to await receipts of these original shipping bills or certified copies from the DRI before commencing the action against its employees.

37. The respondent points out that as per the letter dated 24th August, 1999 of the DRI, it had requisitioned only “*list of shipping bills and all shipping bills along with connected documents in original*” which had been filed by M/s. Aravali (India) Limited, Hissar. The Commissioner of Custom, ICD, New Delhi forwarded the same under the cover letter dated 25th September, 1999 stating that it was enclosing list of 219 shipping bills along with all connected documents in original which had been filed by the said firm with the progress report. The Customs authority had also informed the DRI in this letter itself that Xerox copy of the original bills had been retained by it.

38. The respondent has placed before this court an extract of a noting of the Commissioner Central Excise dated 25th September, 1999 referring to the aforenoticed letter dated 24th August, 1999 of the DRI. It is noted therein that “*all shipping bills pertaining to the export made by DRI have been retrieved from the record room and xerox copies have been kept for records at the end. A draft forwarding letter is placed opposite alongwith a detailed report on the matter. If approved we may send the original documents along*

with the detailed report to DRI for further investigation submitted please”.

39. It is manifest therefore, that even though the petitioner had forwarded original shipping bills, it had prepared and retained xerox copies with itself. Therefore, the explanation of the petitioners for the inordinate and unexplained delay in issuance of the chargesheet on the ground that the original bills or copies thereof were not available with it is wholly specious and devoid of merit. The xerox copies had been prepared by the custom department itself.

40. The respondent points out that the petitioners have taken the plea that they needed “certified” copies which were received only on 29th June, 2010 for the first time before the Central Administrative Tribunal.

For this reason as well, the reliance on the reminders to the DRI for the originals or attested copies of the shipping bills is of no avail inasmuch as the petitioner had in its possession all xerox copies which had been prepared by them from the original documents and they were at best required to certify the authenticity

thereof. Therefore obtaining the certified copies of the documents was really an idle formality and wholly unnecessary in the given case.

41. Certain other actions taken by the petitioner also support the respondent. On the 4th of January, 2000, the DRI initiated an inquiry. It issued the show cause notice dated 21st December, 2000 against the exports by M/s. Aravali (India) Limited, Hissar. It contained details which running into 20 typed sheets. The show cause notice was again addressed only to the exporter and was not addressed to the respondent. No Customs employees were implicated therein.

42. On culmination of its inquiry, a final order was passed by the Commissioner Customs which was based on the said shipping bills without implicating the respondent or commenting anything adverse to the petitioner. This final adjudication into the matter stood concluded. The Commissioner of Custom, ICD, New Delhi had passed the order dated 2nd November, 2001 against the exporter imposing penalty and directing confiscation of the goods as well as refund of the duty drawback which had been disbursed.

It is noteworthy that this adjudication by the Commissioner Custom was again based on a detailed consideration of documents and makes reference to the shipping bills and other documents relating to the export.

Even at this stage, the Commissioner Customs could not point out anything adverse against the respondent.

43. The DRI submitted a report dated 6th August, 2003 to the Chief Commissioner of Central Excise (Delhi Zone) referring to its investigation and recommended departmental action against 23 officers for dereliction of duties. As noted above, this report categorically stated that it was *“far fetched to infer that each of the officers had colluded and or connived with the exporters in the latter fraudulent activities”*.

44. On this report, we find a noting by the Department recommending that the statement of the remaining officers be finalized and the matter be referred to the Central Vigilance Commission for advice. Despite these directives of the DRI, the Custom authorities still did not move a step.

45. To the shock of the respondent, on the 27th of October, 2004,

he was summoned by the Vigilance Section. When he reported, the respondent was interrogated and he had tendered his explanation to the interrogators. The petitioner has claimed that a preliminary report was submitted on 3rd October, 2005 which was found incomplete. A further inquiry was commissioned which submitted another inquiry report dated 9th August, 2007.

According to the respondent, his explanation was accepted by the petitioners and, therefore, no action against him was taken.

46. The petitioners have attempted to take shelter under an inquiry report dated 9th August, 2007 received on the 20th of August, 2007, as another circumstance to explain the delay on their part. However, in our view nothing turns on this inquiry inasmuch as the petitioner had authoritatively adjudicated upon the subject matter on 2nd November, 2001 when final adjudication was effected against the exporter with regard to the transactions in questions.

47. In its communication dated 6th August, 2003, the DRI had named 23 persons including the respondent against whom departmental proceedings were suggested.

48. So far as inability to obtain copies is concerned, learned counsel for the respondent has urged that the DRI is located in the CGO complex at Lodhi Road, New Delhi and the Inland Container Depot (ICD) is located at Tughalkabad, New Delhi. The disciplinary authority of the petitioner was the Central Excise and Customs which has its office at the ITO. These premises are located within few kilometres of each other. It certainly did not have to take 13 years to reach one office from the other to obtain the certified copies, even if they could be held to be essential. We, of course, in the given circumstances, have held to the contrary.

49. Judicial precedent on the facts similar to the present case has been reported at *MANU/DE/2911/2013 Union of India v. B.A. Dhayalan*. The court has considered the factual narration and also referred to the relevant rule position with regard to requirement of original documents for conducting disciplinary proceedings. Para 34 of the judgment reads as follows:-

“34. An examination of the order of the Tribunal impugned by the petitioners reveals that the aspect of delay has been carefully considered and recorded by the Tribunal. The Tribunal did not accept the plea of the petitioners that the delay in the present matter was

on account of the fact that the original documents were in the custody of the Court and the police authorities, on account of the criminal investigation pending before the Court against the respondent, on the FIR filed by the petitioners. In this regard, the Tribunal has observed and noted that the respondent had insisted that the authorities would proceed against him without producing the original documents, in 2003, which has not denied by the petitioners. The Tribunal, thus, held that there was no impediment for the authorities to have proceeded against the respondent with the copies of the documents as the respondent who could be prejudiced in absence of original documents had waived the presence of original documents. The Tribunals also relied on Rule 14 of the CCS(CCA) Rules, 1965 and observed that the rules does not mandates that the disciplinary authority has to show original documents to the delinquent even if the delinquent does not demand the original documents. The only requirement is to provide a list of documents to be supplied to the delinquent. As per the GI letter dated 19th June, 1987, in order to cut down delays in the disposal of the disciplinary cases, it has been recommended that among other measures to be adopted, the copies of all the documents relied upon and the statements of the witnesses cited on behalf of the disciplinary authority, ought to be supplied to the delinquent officer along with the charge sheet, wherever possible. Thus, the Tribunal held that there was no impediment in supplying the copies of the relevant documents to the respondent as the allegation of the petitioners was not that they did not have the copies of documents. In any case, the copies of documents could be easily obtained by making simple applications before the court, where the criminal prosecution initiated against the respondent was pending or from the investigation

authorities. It was also noted that, in any case, the original documents could also have been inspected by the petitioners by requesting the same from the concerned Court.”

The insistence of the writ petitioner before us on the requirement of the original documents or certified copies thereof is therefore, misconceived and the plea set up by the respondent has to be rejected by us.

50. The file notings stated 25th September, 1999 and 27th September, 1999 also militate against acceptance of the explanation given by the petitioners.

51. So far as the delay which the petitioner had to explain in issuance of charge memo dated 25th February, 2011 is concerned, this memo was thus initiated more than thirteen years after the transaction in question; more than eleven years after completion of the custom investigation and after completion of the adjudication by the Commissioner Custom on 2nd November, 2001; more than 8 years after the 6th August, 2003 when the DRI informed the petitioner about the recommendations for departmental action against 23 officials and 7 years after the petitioner had been called

for and interrogated on the 27th of October, 2004.

52. In the impugned judgment dated 19th December, 2011, the Central Administrative Tribunal has held that inordinate and unexplained delay in issuance of the chargesheet is violative of the principles of natural justice.

53. The available record was considered sufficient by the Commissioner Custom to pass a final adjudication order dated 2nd November, 2001. This order makes a detailed reference to the shipping bills and other documents. However, when it comes to initiation of disciplinary proceedings against the respondent, the petitioners want this court to accept that the available record was insufficient.

54. On the question as to the manner in which disciplinary proceedings are required to be processed, learned counsel for the respondent has drawn our attention to the Office Memorandum No.000/VGL/18 dated 23rd May, 2000 issued by the Central Vigilance Commission, Government of India. By this memorandum, the Vigilance Commissioner had recommended a schedule of time limits in conducting investigation and

departmental inquiries. It is observed that delay in disposal of disciplinary cases are a matter of serious concern to the commission and that such delay also effect the morale of the suspected charged employees and others in the organization.

55. The commission reiterated its prior instructions dated 3rd March, 1999 which prescribed the following time limits to be adhered by the Ministry/Departments of Government of India, autonomous organisations and other Cooperative Societies, in respect of their employees for expeditious disposal of the cases :-

“S.No.	State of Investigation or Inquiry	Time Limit
1.	Decision as to whether the complaint involves a vigilance angle.	One month from receipt of the complaint.
2.	Decision on complaint, whether to be filed or to be entrusted to CBI or to be taken up for investigation by departmental agency or to be sent to the concerned administrative authority for necessary action.	-do-
3.	Conducting investigation and submission of report.	Three months.
4.	Department’s comments on the CBI reports in cases requiring Commission’s advice	One month from the date of receipt of CBI’s report by the CVO/Disciplin ary Authority.

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| 5. | Referring departmental investigation reports to the Commission for advice. | One month from the date of receipt of investigation report. |
| 6. | Reconsideration of the Commission's advice, if required. | One month from the date of receipt of Commission's advice. |
| 7. | Issue of charge-sheet, if required. | (i) One month from the date of receipt of Commissioner's advice.
(ii) Two months from the date of receipt of investigation report. |
| 8. | Time for submission of defence statement. | Ordinarily ten days or as specified in CDA rules. |
| 9. | Consideration of defence statement. | 15 (Fifteen) days. |
| 10. | Issue of final orders in minor penalty cases. | Two months from the receipt of defence statement. |
| 11. | Appointment of IO/PO in major penalty cases. | Immediately after receipt and consideration of defence statement. |
| 12. | Conducting departmental inquiry and submission of report. | Six months from the date of appointment of |

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| 13. | Sending a copy of the IO's report to the Charged Officer for his representation. | IO/PO.
i) Within 15 days of receipt of IO's report if any of the Articles of charge has been held as proved.
ii) 15 days if all charges held as not proved. Reasons for disagreement with IO's findings to be communicated. |
| 14. | Consideration of CO's representation and forwarding IO's report to the Commission for second stage advice. | One month from the date of receipt of representation. |
| 15. | Issuance of orders on the Inquiry report. | i) One month from the date of Commission's advice.
ii) Two months from the date of receipt of IO's report if Commission's advice was not required." |

The above time line has been hopelessly breached by the petitioners.

56. In the instant case, information with regard to adjudication was received vide the order dated 21st August, 1999 while the

charge memorandum has been issued on 25th February, 2011. The charge memo was thirteen years after the transaction; eleven years after completion of the adjudication by the customs; 8 years after the DRI recommended the Departmental action against 23 officials and seven years after the petitioner was interdicted as on 27th of October, 2011 by the Vigilance Section of the petitioner. The petitioner has been given promotion in the meantime. Eight officers out of 23 named in the report dated 6th August, 2003 have retired. Certainly we have noted above the observations of the authority who had passed the order. The DRI in its communication dated 6th August, 2003 has taken a view that it was a little far fetched to infer that each of the officers had colluded and/or connived with the exporter in the latter's fraudulent activities. The DRI has stated that a charge of gross negligence or dereliction of duty against the concerned officials would appear to be more appropriate and sustainable as well. Thus, no dishonesty was imputed to the respondent or any of the other persons named even by the DRI.

57. In the instant case, so far as delay is concerned, the petitioners do not remotely suggest that the respondent attributed to any delay. It is a hard fact that there is delay which is abnormal and extraordinary. The explanation of the petitioners is completely unacceptable for the reason that it is an after thought. In fact the petitioners had available with them the entire record which they claimed to have acquired belatedly.

58. It would be most inappropriate to accept the only justification tendered by the respondents of merely having written a few communications to the DRI for the documents. In any case, if the petitioner was serious about initiating disciplinary action in the above noted circumstances, it could have done so. We have noted above that the petitioner had available with them the necessary record and there was really no reason or occasion for delaying the proceedings for want of original documents. The final adjudication order as well as all inquiry reports was based on the records of the petitioners. Even after obtaining the inquiry report, the respondents delayed the matter not by one or two years but by several years as set out above.

59. We find that the courts have even held that delay in initiating disciplinary proceedings could tantamount to denial of a reasonable opportunity to the charged official to defend himself and therefore be violative of the principles of natural justice. In this regard, reference may usefully be made to the pronouncement of the Kerala High Court reported at **2001 (1) SLR 518 Meera Rawther Vs. State of Kerala** wherein it has been held as follows:-

“3. The court also held that wherever delay is put forward as a ground for quashing the charges, the Court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In this connection we also refer to the decision of Gujarat High Court in Mohanbhai Dungarbhai Parmar vs. Y.B. Zala and Others, 1980 (1) SLR 324 wherein the Court held that delay in initiating proceedings must be held to constitute a denial of reasonable opportunity to defend himself for one cannot reasonably expect an employee to have a computer like memory or to maintain a day-to-day diary in which every small matter is meticulously recorded in anticipation of future eventualities of which he cannot have a prevision. Nor can he be expected to adduce evidence to establish his innocence for after inordinate delay he would not recall the identity of the witness who could support him. Delay by itself therefore, will constitute denial of reasonable opportunity to show cause and that

would amount to violation of the principles of natural justice.”

60. So far as the prejudice is concerned, the long period which has lapsed between the alleged transaction and issuance of charge sheet would by itself have caused memory to have blurred and records to have been lost by the delinquent. Therefore, the respondent would be hard put to trace out his defence. The prejudice to the respondent is writ large on the face of the record. The principles laid down by the Supreme Court as well as by this court in the judgments cited by the respondent and noted above squarely apply to the instant case.

61. Certain intervening circumstances which are relevant and material for the purpose of the present consideration, deserve to be considered. We note such circumstances hereafter.

62. On the 23rd of September, 2012 the petitioner was promoted to the post of Superintendent, after evaluation in selection by the Departmental Promotion Committee and due vigilance clearance.

63. Learned counsel for the petitioner has also drawn our attention to the pronouncement of the Tribunal in

O.A.No.2727/2010 titled Joseph Kouk v. Union of India & Another. It is important to note that Joseph Kuok was implicated in the same incident as the present respondent. He also assailed the disciplinary proceedings similarly commenced against him by way of O.A.No.2777/2010. The Central Administrative Tribunal allowed Joseph Kouk's petition on the ground of inordinate and unexplained delay on the part of the respondent in issuing the charge memo. In the impugned order, the Central Administrative Tribunal has relied upon its adjudication in the *Joseph Kouk* matter.

64. We have been informed that eight officers out of the twenty three who were named in the report dated 6th August, 2003 have been permitted to retire. The petitioners permitted these eight officers to retire voluntarily from service. No disciplinary proceedings were initiated against them before they retired. It is trite that an employee against whom disciplinary proceedings were being contemplated would not be permitted to leave the organization or to voluntarily retire from service. It is apparent therefore, that the respondents themselves did not consider the

matter as of any serious import affecting the discipline of the department.

65. In view of the above narration of facts, the delay in initiation of the proceedings certainly has lent room for allegations of bias, mala fide and misuse of powers against the respondent by the petitioners. In the judgment reported at **1995 (1) ILJ 679 (SC) *State of Punjab v. Chaman Lal Goyal*** it has also been observed that when a plea of unexplained delay in initiation of disciplinary proceedings as well as prejudice to the delinquent officer is raised, the court has to weigh the facts appearing for and against the petitioners pleas and take a decision on the totality of circumstances. The court has to indulge in a process of balancing.

66. The alleged misconduct claimed to have been done by the respondent Hari Singh has also not been treated to be a major delinquency by the respondent in the light of the principles laid down in ***Meera Rawther*** (Supra). It, therefore, has to be held that the delay in initiating disciplinary proceedings would constitute denial of reasonable opportunity to defend the charges in the case and therefore, amounts to violation of principles of natural justice.

67. The plea of the petitioners that they did not have the original documents or certified copies thereof is baseless and rightly rejected by the Tribunal in the impugned order. As noted above, the petitioners were in possession of photocopy of original shipping bills which photocopy had been prepared by them and were available throughout. Even if the plea that the original documents or certified copy were necessary for initiating the disciplinary proceedings were to be accepted, the action of the respondents was grossly belated and certainly the long period which has lapsed was not necessary for procuring the same.

68. The respondents have failed to provide a sufficient and reasonable explanation for the delay in initiating the disciplinary proceedings against the petitioner.

69. We have noted the judicial pronouncements laying down the applicable consideration in some detail hereinabove only to point out that the law on the subject is well settled. The petitioners were fully aware of the position in law as well as of the necessary facts to adjudicate upon the issue. In our view, the present writ petition was wholly inappropriate and not called for.

70. For all these reasons, the judgment of the Tribunal cannot be faulted on any legally tenable grounds.

The writ petition and application are devoid of legal merits and are hereby dismissed.

The respondent shall be entitled to costs of litigation which is are quantified at Rs.20,000/-.

(GITA MITTAL)
JUDGE

(DEEPA SHARMA)
JUDGE

SEPTEMBER 23, 2013
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