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

+ **W.P.(C) No.11881/2009 & CM No.12008/2009**

Date of decision : 17th December, 2013

UOI & ORS.

..... Petitioners

Through Mr.R.V. Sinha, Adv. with Mr.P.K. Singh,
Adv.

versus

J.P. SINGH

..... Respondent

Through Dr.Ashwani Bhardwaj, Adv.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE DEEPA SHARMA

GITA MITTAL, J. (Oral)

1. The petitioner has assailed the order dated 19th November, 2008 passed in OA No.1690 of 2007 by the Central Administrative Tribunal, Principal Bench, New Delhi. By this judgment, the Central Administrative Tribunal had held that there was unexplained delay and laches in initiating disciplinary proceedings against the present respondent. As a result, by the impugned order, the Tribunal has quashed the memorandum dated 19th May, 2006 whereby the declaration was made by the appointing authority to hold the disciplinary inquiry against the respondent under Rule 14 of the CCS (CCA) Rules, 1965.
2. The respondent was an officer of the 1992 batch of the Indian Revenue Service of the Customs & Central Excise Services. During the relevant period, the respondent was posted as an Assistant Commissioner, with the service.

3. Investigations were initiated by the Directorate of Revenue Intelligence (DRI) at Mumbai against five benami companies namely M/s R.S. & Company, M/s Stitch & Style, M/s Hingiri Overseas, M/s Deepshikha Overseas and M/s Saharanpur Handicrafts into fraudulent exports as well as fraudulent claim of duty draw backs. Based on such investigation, a show cause notice dated 3rd December, 1999 was issued by the DRI under Section 124 of the Customs Act, 1962 read with Rule 16 of the Customs, Central Excise Duties & Service Tax Drawback Rules, 1995 for imposition of penalty under Section 114 (i), 114 (ii) and 117 of the Customs Act, 1962. The allegation was that the respondent had entered into conspiracy with one Rajesh Kumar for carrying out fraudulent exports by wrongfully declaring higher value of old and used garments for making the claim of duty drawback.

4. On the 7th of March, 2000, the respondent was placed under suspension which was revoked in March, 2001.

5. The respondent replied to the cause notice issued under the Customs Act and also made his written submissions on 15th October, 2001. A fine of Rs.2,00,000/- was imposed by an order dated 19th August, 2003 upon the respondent. This order imposing the fine was assailed by the respondent before the Custom Excise & Service Tax Appellate Tribunal (CESTAT). The penalty was initially stayed by an order passed on 29th October, 2003. The respondent's appeal was accepted by CESTAT by the final order passed on 2nd November, 2005 and the order imposing penalty upon him was quashed.

It is undisputed before us that this order has attained finality.

6. In addition thereto, during this period, on 25th September, 2002, the petitioner was promoted as a Joint Commissioner as well.

7. The petitioners thereafter issued the memorandum dated 19th May, 2006 intending to hold a disciplinary inquiry against the respondent under Rule 14 of the CCS (CCA) Rules, 1965 and informed him of the charges which pertained to the afore-noticed export transaction only. The respondent submitted a reply on 1st September, 2006 and nothing happened thereafter for a period of over one and a half years.

8. It is to be noted that the respondent assailed the memo dated 19th May, 2006 before the Central Administrative Tribunal by way of OA No.1690 of 2007. More than six months after the filing of the petition before the Central Administrative Tribunal by the respondent, the petitioners issued an order dated 4th March, 2008 appointing an inquiry officer as well as a presenting officer to conduct disciplinary proceedings against the respondent.

9. We are also informed by Dr. Bhardwaj, learned counsel for the respondent that the Central Bureau of Investigation also conducted investigation into the allegations made by the petitioner. Nothing incriminating was found against the present respondent and no criminal case was initiated against him.

10. The respondent had challenged the order dated 19th May, 2006 before the Tribunal inter alia on the ground that the petitioners were contemplating conducting a departmental promotion committee for their non-functional

selection grade in 2006 and the respondent was in the zone of consideration. The impugned memorandum dated 19th May, 2006 was issued only to interdict this consideration of the respondent.

11. The respondent has also contended that the memorandum of charge-sheet dated 19th May, 2006 was predicated on allegations which were identical to the show cause notice dated 3rd December, 1999.

12. The respondent has drawn our attention to the order dated 21st November, 2005 passed by the CESTAT wherein specific findings have been returned to the effect that there was no proof of any monetary flow to the respondent and that there was no other evidence as well against the respondent. The CESTAT has also noticed that there was no proof of any personal interest on the part of the respondent and that he had no role at all to play in respect of export of the goods. Our attention has also been drawn to the action of the respondent in stopping the payment of claim to the disputed companies and also the dues of the respondents which show that there was no engagement of the respondent with the companies in question.

13. An important circumstance which has weighed with the Central Administrative Tribunal in accepting the challenge by the respondent is the fact that the allegations pertained to transactions of the year 1998 while the charge-sheet was issued as back as in the year 2006 based on material which was in the power, possession and knowledge of the petitioners in the year 1998 as well. The case was investigated by two agencies, firstly the Department of Revenue

Intelligence & thereafter by the Central Bureau of Investigation which had not found any culpability of the respondent in the alleged transactions. The respondent has also averred prejudice on account of the delay as well as the fact that he had not had any opportunity to cross-examine such witnesses whose statements were recorded under the Customs Act and further that at this highly belated stage, no witnesses would be available at present to support his defence.

14. We find that there was delay not only in initiation of the disciplinary proceedings and issuance of the charge-sheet, but also gross and unexplained delay in appointment of the inquiry officer which was effected only on 4th March, 2008. The respondent has submitted that the purpose of the inquiry was to harass him despite his innocence and the same is devoid of any basis on merit.

15. It is noteworthy that with regard to the same transaction, the petitioners issued similar belated charge-sheets to other customs employees as well. Our attention is drawn also to fact that with regard to the same transaction, the petitioners had issued a memorandum of charge-sheet to one Joseph Kuok, then deployed as a Superintendent with Customs. The memorandum of charges was issued to him on 15th January, 2010 which he challenged by way of OA No.2727 of 2010 before the Central Administrative Tribunal. Joseph Kuok's challenge was based on grounds identical to that on which the respondent challenged the petitioner's action. The Tribunal accepted Joseph Kuok's challenge by way of an order dated 16th May, 2011 holding that the disciplinary

proceedings were untenable because of unexplained and unwarranted delay in initiation of the departmental inquiry against Joseph Kuok. This order of the Tribunal was not challenged by the petitioners and has attained finality.

16. A third person namely Hari Singh who was working as an Inspector with the Customs department at the relevant time, was also issued a similar memorandum of charges in respect of the same transaction. The present petitioners (respondents in the challenge by Hari Singh) relied on the same show cause notice under the Customs Act and the inquiry report as in the present case. Hari Singh's challenge to the memorandum of charges before the Central Administrative Tribunal had also succeeded by the judgment dated 8th January, 2013 passed in RA No.27 of 2012 in OA No.1844 of 2011 passed by the Central Administrative Tribunal.

17. The present petitioners challenged this judgment of the Tribunal by way of WP (C) No.4245 of 2013 which was dismissed by a judgment dated 23rd September, 2013. The findings of this court that there was inordinate and unwarranted delay in commencement of the disciplinary proceedings against the respondent were not challenged by the petitioner before any other court and the same have also attained finality.

18. We find that detailed reasons have been recorded by the Tribunal in the order dated 19th November, 2008 assailed by way of the present writ petition. The very issues on which the writ petition is based, were raised before us and were decided by us in the judgment dated 23rd September, 2013 passed in WP

(C) No.4245 of 2013 entitled *Union of India &Anr. Vs. Hari Singh*. The challenge by the petitioners in the instant case is identical to that pressed by Hari Singh in that case.

19. The Tribunal has noted that the respondents have not been able to adequately explain the inordinate delay in initiation of the charge-sheet which would cause prejudice to the defence of the respondent. The petitioners have not been able to place any explanation for the delay which has ensued before us as well.

20. Other circumstances including the fact that the respondent was promoted; the order quashing the penalty which had been imposed upon the respondent were accepted by the petitioner herein; as well as the fact that the Central Bureau of Investigation found no culpability of the respondent also lend substance to the case of the respondent. We find no merit in the challenge which has been laid to the order of the Central Administrative Tribunal by way of the present writ petition.

21. This writ petition and application are, therefore, dismissed with costs which are quantified at Rs.25,000/-. The costs shall be paid to the respondent within eight weeks from today.

(GITA MITTAL)
JUDGE

DECEMBER 17, 2013
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(DEEPA SHARMA)
JUDGE