HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.15060 of 2016

Order: (per V.Ramasubramanian, J.)

Aggrieved by an order of the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, quashing a charge memo issued against the 1st respondent herein, solely on the ground of delay, the Union of India has come up with the present writ petition.

2. Heard Mr. B.Narayana Reddy, learned Assistant Solicitor General of India, for the petitioners and Mr. N.Vijay, learned counsel for the 1st respondent.

3. The 1st respondent joined the Department of Central Excise as Inspector in the year 1992 under the Ex-serviceman quota. He was later promoted to the post of Superintendent in 2007 and he retired on reaching the age of superannuation on 31-3-2015.

4. Two weeks before his retirement, the 1st respondent was served with a charge memo dated 17-3-2015. The charge framed against the 1st respondent was that while he was working as Inspector (Preventive), under one B.Sri Krishna, Superintendent, the said Superintendent had called up a shop running business as Cellular Care Centre and demanded Rs.5,000/- both for himself and for the 1st respondent herein, for not conducting a raid on the shop. The incident allegedly happened on 04-4-2004, which led to

a trap being organised by the Central Bureau of Investigation (CBI) as against Mr. B.Sri Krishna, Superintendent. In the First Information Report (FIR), the name of the 1st respondent herein was included as accused No.2, but the CBI filed a charge-sheet only as against Mr. B.Sri Krishna, Superintendent. It appears that the I Additional Special Judge for CBI Cases, Visakhapatnam, convicted B.Sri Krishna for offences under Sections 7, 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act. It is only after the judgment of the Criminal Court dated 19-02-2015 that the department appears to have decided to proceed against the 1st respondent herein departmentally.

5. The main grievance of the Union of India in this writ petition is that the departmental charge memo cannot be quashed solely on the ground of delay. The case of the Union of India is that they were not responsible for the delay. Though the incident happened on 04-4-2004, the CBI charge-sheeted only one person and the criminal case ended in conviction of that person only on 19-02-2015. Within a month, the charge memo as against the 1st respondent herein was issued on 17-3-2015. Therefore, the Union of India contends that there was no delay in the initiation of disciplinary proceedings.

6. On the question of delay, we are of the considered view that the Tribunal was wrong and the Union of India is right. It is not every delay that would vitiate the initiation of

disciplinary proceedings. The question of delay has always to be considered only in the context of the facts. Therefore on the sole ground of delay, a departmental enquiry cannot be nipped in the bud.

7. But there are other issues in the case on hand. The case of the prosecution before the CBI Court was that on 04-4-2004, the Superintendent of Central Excise Mr. B.Sri Krishna called the *de facto* complainant Mr. P.Ravi Kumar on his mobile phone and demanded Rs.5,000/- both for himself and for the 1st respondent herein. Admittedly, the 1st respondent was working as an Inspector under the control of the Superintendent, who allegedly made the phone call. The further case of the prosecution was that on 06-4-2004, the *de facto* complainant went to the office of the Superintendent of Central Excise Mr. B.Sri Krishna and met him in his chamber and explained to him that he was unable to pay the bribe. According to the prosecution, Mr. B.Sri Krishna thereafter demanded at least Rs.3,000/-, but the *de facto* complainant lodged a complaint with the CBI, leading to the trap.

8. In the final report filed by the CBI, they have indicated a reason for not charge-sheeting the 1st respondent herein along with the main accused B.Sri Krishna, despite the fact that the 1st respondent was implicated as accused No.2 in the FIR. The reasons stated by the CBI in their final report for not charge-sheeting the 1st respondent are as follows:

> "It is respectfully submitted that Sri Ch.Lakshman Babu, Inspector of Customs & Central Excise, Brodipet, Guntur was figured as Accused No.2 in the FIR. However he was not available at the office at the time of the trap. He has not accepted the bribe from the complainant. No conversation taken place about Sri Ch.Lakshman Babu between Sri P.Ravi Kumar and B.Srikrishna. Hence the name of Sri Ch.Lakshman Babu is not included in Col. No.1 of the charge sheet. However the Customs & Central Excise Office, Guntur was requested to initiate RDA for Major Penalty against Sri Ch.Lakshman Babu for his alleged role in the demand for bribe and threatening of Sri P.Ravi Kumar, complainant for payment of bribe to Sri B.Srikrishna."

9. Therefore, all that remained on record for implicating the 1st respondent herein in the criminal case was a demand allegedly made by B.Sri Krishna from the shop owner on his mobile phone that the amount demanded was both for himself and for the 1st respondent herein. The *de facto* complainant is not stated either by the CBI or by the department to have ever met the 1st respondent. The 1st respondent was admittedly not available in the office at the time of trap. Even according to the CBI, no conversation ever took place between the 1st respondent and the *de facto* complainant. Therefore, there is not even any foundation for the department now to proceed against the 1st respondent departmentally, merely because the main accused in the criminal case has now been convicted.

10. Moreover, the departmental charge memo now proceeds on the basis as though the *de facto* complainant met the 1st respondent along with one D.Madhu Babu. The imputations of misconduct alleged against the 1st respondent in the departmental charge memo read as follows:

> "On 06.04.2004, Shri Ravi Kumar went to the office of Shri B.Sri Krishna, Superintendent to request that he cannot pay Rs.5,000/- as demanded by him. Shri Ch.Lakshman Babu called Shri Ravi Kumar to his seat and along with Shri D.Madhu Babu held discussions with Shri P.Ravi Kumar and asked him to pay the amount of Rs.5,000/- as asked by Shri B.Sri Krishna.
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> Shri Ch.Lakshman Babu and Shri D.Madhu Babu insisted Shri Ravi Kumar to pay the amount to Shri B.Sri Krishna failing which there would be a problem. Shri Ch.Lakshman Babu also threatened that there would be a raid on the shop of Shri P.Ravi Kumar and that the bribe to be paid would be hiked to Rs.10,000/- if the latter does not pay the amount of Rs.5,000/- to them immediately."

11. But unfortunately, the stand taken by the Investigating Agency before the Criminal Court is completely contrary to the aforesaid imputations. According to the final report filed by the CBI, no conversation took place between the *de facto* complainant and the 1st respondent herein. The Criminal Court has proceeded on the basis of the same stand taken by the CBI. Now if the department takes a stand that a conversation took place between the *de facto* complainant and the 1st respondent herein, the same would actually dilute the stand taken by the CBI before the Criminal Court.

12. There is also one more reason. The department initiated proceedings against D.Madhu Babu, who was not an accused before the Criminal Court but now roped in, in the departmental charge memo framed against the 1st respondent. The enquiry resulted in the finding of not guilty since the *de facto* complainant confirmed the stand of the CBI that there was no conversation between him and Madhu Babu also. As a consequence, the charges against

Madhu Babu have been dropped. Therefore, we do not know how an amplification can be made by the department, of whatever has transpired before the Criminal Court and also accepted by the CBI.

13. Therefore, in the light of the positive stand taken by the CBI before the Criminal Court, which we have extracted above and in the light of what has happened to Mr. D.Madhu Babu in the departmental enquiry initiated against him, we are of the considered view that no useful purpose will be served in continuing the enquiry against the 1st respondent who has already reached superannuation in March, 2015. Hence, the conclusion reached by the Tribunal to set aside the charge memo, though for a different reason, which we do not approve, cannot be interfered with. Hence, the writ petition is dismissed and the order of the Tribunal is confirmed, for the reasons that we have indicated above. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

30th November, 2016.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G.SHYAM PRASAD

Writ Petition No.15060 of 2016
(per VRS, J.)

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