

Urmila Ingale

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 1326 OF 2015

Shri S.K.Phadke .. Petitioner
Vs.
The Union of India and ors. .. Respondents

Mr.L.S.Shetty a/w Mr.Arn timer Misra, for the Petitioner.
Mr.Vinod Joshi, a/w Mrs.Neeta V. Masurkar, for Respondents No.
1 to 3.

**CORAM : SMT. V.K.TAHILRAMANI ACTING C.J.
AND M.S.KARNIK, J.**

**RESERVED ON : 15th FEBRUARY, 2018
PRONOUNCED ON : 27th FEBRUARY, 2018**

ORDER (PER M.S.KARNIK, J.) :

1. The petitioner has filed this Petition under Article 226 of the Constitution of India challenging the order dated 19/12/2014 passed by the Central Administrative Tribunal, Mumbai Bench, Mumbai in OA/760/2013. The Tribunal by common judgment and order disposed of 19 OAs filed by various applicants as the OAs involved common grievance and

identical issues of facts and law.

2. Insofar as the petitioner is concerned, at the relevant time, he was working as a Superintendent at Dronagiri, CFS Jawaharlal Nehru Customs House (for short 'JNCH') during the period January to April 2005. The charge-sheet pertains to alleged incident of fraudulent export which took place during the period 2002-2005. Insofar as the petitioner is concerned, the incident is alleged to have taken place between January – April 2005.

3. Charge in brief against the petitioner is that DRI had booked case of export fraud committed by racketeers at JNCH. It was found that racketeers were claiming illegitimate drawback benefit by outright overvalue export only by processing export documents without making any physical export and without giving export consignment. In both these cases, examination report and late export order (LEO) were obtained by racketeers against shipping bills. The petitioner was charged with

negligence.

4. The Memorandum of charge-sheet for major penalty was issued to the petitioner on 10/09/2013. The petitioner filed OA before the Tribunal challenging the impugned Memorandum of charge-sheet on various grounds. The main ground for challenge is that for incident which took place between January to April 2005, charge-sheet has been issued in the year 2013 i.e. almost after 8 years. The Tribunal by the impugned order was of the view that question of delay and also other related questions of bias as well as merits of the facts of the case should be best left to the Enquiry Officer and the Disciplinary Authority to examine in detail and take appropriate decision. The Tribunal observed that the observations made by it shall not be taken into consideration as any finding of the Tribunal and the same shall not affect the decision making process in the pending enquiry. The Tribunal therefore directed the Disciplinary Authority to complete the disciplinary proceedings positively within a period of 6 months from the date of receipt of the

Tribunal's order. It is this order of the Tribunal that is impugned by way of this Petition. This Petition had come up for admission on 29/02/2016. This Court was pleased to dispose of the Petition by passing following order.

“This petition has been preferred by the petitioner being aggrieved by the order dated 19.12.2014 passed by the Central Administrative Tribunal, Bombay Branch, Mumbai in Original Application No. 760 of 2013 preferred by the petitioner. In the said order, the Tribunal observed that the whole object of initiation of a disciplinary inquiry on the basis of a charge-sheet is to ascertain the truth and correctness in the allegations levelled against the delinquent officers when there is a cause for inquiry. It was further observed that the memorandum of charge-sheet cannot be quashed at this stage. By observing thus, the Tribunal directed the petitioner to participate in the disciplinary proceedings and let the Inquiry Officer and the Disciplinary Authority take the disciplinary proceedings to its legal conclusion.

2. It is an admitted fact that the petitioner has participated in the disciplinary proceedings and the inquiry report is awaited. Learned counsel for the petitioner states that if an order is passed within six weeks from today in the disciplinary proceedings, he will not press this petition. Learned counsel for the respondents makes a statement that the order will be passed within six weeks from today. In view of the statement made by the learned counsel for the Respondents, this petition is disposed of as not pressed, however, with direction to the respondents to pass the order within a period of six weeks from today. Needless to say that if the order is adverse to the petitioner, he can challenge the same before appropriate forum.”

5. As the respondents did not pass final order within the stipulated period and also within the extended period

granted by this Court, by an order dated 09/06/2017, order dated 29/02/2016 was recalled and Writ Petition No. 1326 of 2015 was restored to file.

6. Learned Counsel for the petitioner urged that the delay in issuing charge-sheet has seriously prejudiced the petitioner. In fact the petitioner has retired on 31/07/2015. Learned Counsel for the petitioner submits that as the enquiry initiated against the petitioner was on the charge of negligence and in view of long delay of 8 years in issuing Memorandum of charge, this is a fit case where the disciplinary proceedings should be quashed. In support of his submission that the delay in initiating disciplinary proceedings would vitiate the enquiry, he has relied upon the decision of the Apex Court in the case of **State of A.P. Vs. N.Radhakishan (1998) 4 Supreme Court Cases 154.**

7. Learned Counsel further points out that pursuant to recall of the order dated 29/12/2016, the Petition is amended

by incorporating the following amendment.

“and any consequential order that may be passed by the respondents pursuant thereto.”

8. Learned Counsel for the respondents on the other hand points out that the Tribunal by a reasoned order has come to the conclusion that all objections including the objection of delay can be taken before the Enquiry Officer. Looking to the seriousness of the charges and explanation offered by the respondents for the delay in issuing charge-sheet, it cannot be said that delay would vitiate the enquiry. He further points out that by an order dated 19/06/2017 being Final Order No. 17/2017, the Competent Authority has imposed penalty of withholding of ten percent (10%) of petitioner's monthly pension otherwise admissible to him for a period of 2 years.

9. The order dated 19/06/2017 is passed during the pendency of this Petition. Though there is a delay in passing the order, nevertheless the order has been now passed. The petitioner will have to challenge the order dated 19/06/2017

before the appropriate forum as we are not inclined to interfere with the Tribunal's order. In the light of the law laid down by the Hon'ble Supreme Court in the case of **L. Chandra Kumar Vs. Union of India and ors. (1997) 3 Supreme Court Cases 261**, it is not possible for us to directly entertain the challenge to the order of punishment dated 19/06/2017 in exercise of our writ jurisdiction under Article 226 of the Constitution of India.

10. The Tribunal by the impugned order for the reasons recorded was pleased not to interfere with the disciplinary proceedings on the ground of delay at that stage. The Tribunal had indicated that the question of delay and all related questions should be best left to the Enquiry Officer and Disciplinary Authority to examine in detail and take appropriate decision. We are not inclined to interfere with the order passed by the Tribunal in exercising our writ jurisdiction under Article 226 of the Constitution of India as we agree with the reasons recorded by the Tribunal. Learned Counsel for the petitioner urged that the challenge to the order dated 19/06/2017

imposing the penalty of withholding of 10% of petitioner's monthly pension for a period of 2 years otherwise admissible to him may be entertained in the light of the fact that the Petition is pending and respondents have taken unduly long time to pass the order. We are however not inclined to accept the submission of the learned Counsel for the petitioner in the light of law laid down by the Apex Court in the case of **L. Chandra Kumar** (*supra*).

11. We therefore do not find any infirmity in the view taken by the Tribunal. Writ Petition deserves to be dismissed.

12. Needless to mention that the petitioner is at liberty to challenge the order dated 19/06/2017 before Central Administrative Tribunal on its own merits. We may not be understood to have made any observations on the merits of the matter and the Tribunal may decide the challenge to the order dated 19/06/2017 on its own merits and without being influenced by observations made by us in this order.

13. All the contentions as regards challenge to the order dated 19/06/2017 are left open including the question of delay in issuance of the charge-sheet to be agitated by the petitioner before the Tribunal.

14. With these observations, Writ Petition is dismissed with no order as to costs.

(M.S.KARNIK, J.)

(ACTING CHIEF JUSTICE)