IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.02.2019

CORAM

THE HON'BLE MR JUSTICE M. VENUGOPAL
AND
THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

W.P.No.25525 of 2018
and WMP No.29692 of 2018

V.S. Sundararajan ... Petitioner

Vs

1. Union of India
   rep by the Under Secretary to
   Government of India,
   Ad-V Section, Office of the Chief
   Vigilance Officer,
   Central Board of Excise & Customs,
   Department of Revenue,
   Ministry of Finance,
   6th Floor, Hudco Vishala Building,
   Bhikaji Cama Place,
   New Delhi - 110 066

2. The Registrar,
   Central Administrative Tribunal,
   Chennai - 104 .... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a Writ of Certiorari to call for the records relating to the judgment in O.A.No.13 of 2014 dated 27.07.2018 on the file of the Second Respondent and quash the same and allow the Original Application and to grant the relief sought for therein to the Petitioner.

For petitioner : Mr.M. Ravi

For R.1 : Mr.R.S. Diwagar for
Mr.Rajinesh Pathiyil

ORDER

(Order of the Court was made by M VENUGOPAL,J.,)

Heard Both Sides.

2. The Petitioner has preferred the instant Writ Petition, praying for passing of an Order of this Court to call for the records relating to the Order passed in O.A.No.310/13/2014 dated 27.07.2018 on the file of the Second Respondent/Central Administrative Tribunal, Chennai and to quash the same and resultantly allow the Original Application by granting necessary relief.

3. According to the Petitioner, he was originally appointed as Inspector of Customs in the year 1975 and because of his sincere and efficient service, he climbed the ladder of hierarchy and reached the post of Deputy Commissioner of Customs, in which post, he retired from service on attaining superannuation on 31.10.2011.

4. The Petitioner, to his dismay, received a Charge Memo dated 29.10.2013, issued by the First Respondent, beyond the period of Four years from the date of alleged occurrence. In this connection, the Learned Counsel for the Petitioner submit that the Crux of the 'Disciplinary Proceedings' is that the Petitioner, while recommending disposal of certain 'Goods', through his Note dated 28.10.2009, addressed to the Assistant Commissioner of Customs (Disposal Wing), ACC, Chennai in F.No.S.Misc.161/2008 - Courier Cell, he had failed to verify as to whether there was any pending investigation/adjudication/Court Proceedings in respect of subject consignment with the Departmental Records. Further, the Petitioner was accused of failing to obtain necessary confirmation from all the concerned Units before recommending disposal of the pending consignments. Moreover, he had failed to notice that the Custodial and the Authorised Courier failed to issue Notice to the 'Importer' under Section 48 of the Customs Act, 1962

5. The prime contention advanced on behalf of the Petitioner is that the commencement of 'Disciplinary Proceedings' in respect of the alleged supervisory lapse is statutory barred, in view of Sub-clause (ii) of Clause (b) of Rule 9(2) of the Central Civil Services (Pension) Rules, 1972, which prohibits any 'Disciplinary Action' against the 'Retired Employee', after a period of four years from the date of alleged Ocurrence.

6. The date of occurrence, in accordance with Charge Memo, is only on 28.10.2009, the date on which, the Petitioner had submitted his Note. As such, it is emphatically submitted by this Court by the Learned Counsel for the Petitioner that the First Respondent Authority has no jurisdiction to commence any 'Disciplinary Proceedings' under the Pension Rules against the Petitioner on or after 28.10.2013.

7. Apart from that, the Learned Counsel for the Petitioner brings it to the notice of this Court that the Charge Memo was served on the Petitioner only on 30.10.2013, which is clearly beyond the period of Four Years from the date of alleged occurrence.

8. The Learned Counsel for the Petitioner takes a stand that there is no allegation against the Petitioner involving moral turpitude and further, the entries in the relevant records were only a 'Value Evidence' and not pending adjudication .

9. Advancing his arguments, the Learned Counsel for the Petitioner takes a stand that the Second Respondent/Central Administrative Tribunal, without properly appreciating the actual charge levelled against the Petitioner, had passed an impugned Order dated 27.07.2018, dismissing the Original Application No. 310/13/2014. filed by the Writ Petitioner (as an Applicant).

10. That apart, the Learned Counsel for the Petitioner submits that Rule clearly provides that no action shall be taken beyond the date of alleged occurrence that is said to have taken place. In short, the version of the Petitioner is that the Tribunal had committed an error in misinterpreting the statutory provisions.

11. The Learned Counsel for the Petitioner proceeds to point out that the Authority had resorted to selective initiation of disciplinary proceedings only against the Writ petitioner/Applicant, without initiating major penalty proceedings against any of the Officers who are responsible and accountable for the very same incident mentioned in the Charge Memo dated 29.10.2013

12. Added further, while no such proceedings was initiated against the Additional Commissioners, who allowed the subject goods to be detained for a prolonged period, without any adjudication process and while the Custodian of Courier Terminal i.e., M/s Esquire Express India Pvt Ltd is directly responsible for the safe custody of seized consignment, had allegedly wrongly included the subject goods in the list of uncleared

goods without even mentioning that they are seized goods, pending adjudication process, no action has been taken against the 'Custodian' and no such action was initiated against the undermentioned Officers in Disposal Section:-

S.No	Name	Designation	Action taken
1	Shri.R. Kaurnakaran	Joint Commissioner of Customs in charge of Disposal Section	Let off without any action
2	Shri.R. Kumar	Assistant Commissioner of Customs in charge of Disposal Section	Let off without any action
3	Shri.Mohammed Jinna	Superintendent of Customs in charge of Disposal Section	Let off without any action
4	Shri.Nirmal Raj	Superintendent of Customs in charge of Disposal Section	Let off without any action

13. The Learned Counsel for the Petitioner informs this Court that no action/major penalty proceedings were initiated against the following Additional/Joint Commissioners:-

S.No	Name	Designation	Action taken
1	Shri.D.K. Srinivas	Additional Commissioner in charge of courier cell and Adjudication and disposal unit	Let off without any action
2	Shri.M. Sri Hari Rao	Additional Commissioner in charge of Courier cell and Adjudication	Let off without any action
3	Shri K.V. Reddy	Joint Commissioner in charge of Courier Cell and Adjudication	Let off only with Administrative warning and no major or even minor penalty proceedings
4	Shri.C.Dhanasekaran	Additional Commissiner in charge of Courier Cell, Adjudication and Disposal Unit	Let off only with Administrative warning and no major or even minor penalty proceedings

S.No	Name	Designation	Action taken
5	Shri P. Subramanian (Retd.,)	Additional Commissioner in charge of Courier Cell, Adjudication and Disposal Unit	Let off only with issuance of Government displeasure without initiating any major or even minor penalty proceedings
6	Shri.K.M. Nagarajan (Retd.,)	Additional Commissioner in charge of Courier Cell, Adjudication and Disposal Unit	Let off only with issuance of Government displeasure without initiating any major or even minor penalty proceedings.

14. While winding up, it is projected on the side of the Petitioner that the Charge Memo issued to the Petitioner is only based on the Sanction Order and that the Concerned Authority had failed to consider that the sanction itself was accorded to commence the 'Disciplinary Proceedings' in respect of occurrence which took place on 28.10.2019, which is more than four years before 29.10.2013, which is the date of institution of 'Disciplinary Proceedings'.

15. The Learned Counsel for the Petitioner submits that the Petitioner's DCRG was withheld for the past seven years from the date of his retirement and his family was exposed to untold suffering. Hence, the Petitioner has filed the present Writ Petition, seeking the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

16. Per contra, it is the submission of the Learned Counsel for the First Respondent that the Petitioner failed to carry out the verification of Departmental Records and withdraw the subject consignment for disposal of the goods vide Note dated 28.10.2009 addressed to the Assistant Commissioner of Customs (Disposal Wing), ACC, Chennai inF.No.S.Misc.161/2008-Courier Cell. Moreover, the Petitioner had failed to notice that the 'Custodian' and the 'Authorised Couriers' failed to issue notice to 'Importer' under Section 48 of the Customs Act, 1962. As such, the alleged act of omission and commission on the part of the Petitioner had resulted in revenue loss of Rs.1,48,586/- besides fine and penalty that could have been imposed at the discretion of the Adjudicating Authority.

17. The Learned Counsel for the First Respondent contends that as per the statement of imputation of misconduct M/s Samson Lighting Pvt Limited, Chennai imported 20,000 pcs of Helogen Lamps in 30 cartons through courier mode from China which arrived by flight on No.BZ 201/04.04.2008 and a prior B/E was filed on 04.04.2008 under Form V for clearance of the goods. The 'Goods' were declared as 'Lamps" (Tubes small and big) under CTH 94055059 and the value was declared as Rs.22,470/- with a duty liability of Rs.7123.75. Goods were detained vide detention Memo 3609/04.04.2008 for valuation and duty payment. On examination of the Goods by Officers of Courier Cell, it was found to contain 10000 pcs of 500 watts Samson Halogen tubes and 10000 pcs of 1000 watts Samson Halogen tubes. The 'Invoice' value of goods as declared worked out to Rs.1.01 per small tube and Rs.1.21 per Big Tube, as the declared value appeared to be low, the Goods were detained and the file was referred to Air Cargo Intelligence Unit for further investigation.

18. In reality, the Goods were examined by ACIU Officers on 02.05.2008 and were seized under a Mahazar and these were handed over to 'Custodian' for safe keeping on 03.05.2008 under acknowledgment. In this case, Show Cause Notice was issued dated 27.06.2008 to the 'Importer' for rejection of the Declared value, enhancing the same to Rs.3,80,000/- in terms of Section 14 of the Customs Act, 1962 read with 4 of the Valuation Rules, imposition of duty of Rs.1,48,586/- and for confiscation and penalty.

19. Besides the above, when the Process of 'Adjudication' was pending, as the 'Goods were' lying for more than 30 days the issue of their disposal was processed in terms of Regulation 5 (5) of the Courier Import and Exports (Clearance) Regulations. The subject goods were ordered for disposal on 28.

20. At this juncture, Learned Counsel for the First Respondent strenuously takes a plea that the Petitioner had failed to carry out verification of Departmental Records an withdraw the subject consignment which was pending adjudication from the list of goods for disposal furnished by the 'Custodian'. Necessary confirmation from all the concerned units should have been obtained before recommending disposal of the pending consignments, which he had failed to perform. He had also failed to notice that the 'Custodian' and the 'Authorised Couriers' failed to issue notice to Importer under Section 28 of the Customs Act.

21. The Learned Counsel for the First Respondent brings it to the Notice of this Court that the Petitioner had recommended the note to one Shri Rajaram, Assistant Commissioner for

disposal of the said consignment lying for over 30 days to his Joint Commissioner K.V. Reddy and conveyed the decision of Joint Commissioner to the disposal branch vide his letter dated 28.10.2009 without reference to any pending adjudication, he was also handling the adjudication F.No.S.Misc.22/08 ACIU pertaining to the aforesaid 20,000 Halogen Lamps.

22. The said file was handled by the Petitioner 03.11.2009 and 12.11.2009 for purpose of personal hearing. Therefore, it is vehemently contended on behalf of the First Respondent that the Petitioner was aware of the pendency of adjudication proceedings in respect of the said consignments and he could have prevented the disposal of consignment for which necessary orders were issued on 28.10.2009 and thus misconduct on his part continued even after 28.10.2009 till he demitted the charge till 06.01.2010. Hence, the plea taken on behalf of the First Respondent is that as per Rule 9 of CCS (Pension) Rules, 1972, there is no express bar in respect of the proceedings on the ground of four years limitation period.

23. It transpires that the Second Respondent/Central Administrative Tribunal, Madras Bench in O.A.No310/13/2014 (filed by the Petitioner) had passed the Impugned Order dated 27.07.2018, wherein, at Paragraph No.5, it is observed as under:

> “5. We have considered the submissions. It is not in dispute that the note recorded by the applicant with regard to the subject matter which is alleged to have resulted in a financial loss to the respondents was dated 28.10.2009. It is also alleged that the applicant continued on the post of Deputy Commissioner thereafter and took no remedial measures to prevent/recover the loss. Accordingly, we are not inclined to hold that this inquiry is beyond the powers of the President in terms of Rule 9 of the CCS (Pension) Rules. As far as the veracity of the charges is concerned, the applicant would have ample opportunity to defend his case fully before inquiry officer and therefore, we see no scope for interference in the matter at this state.”

Ultimately, the Original application preferred by the Writ petitioner was dismissed without costs.

24. It is an axiomatic Principle in Law that a 'Charge Sheet' cannot be assailed before a Court of Law, unless and otherwise the same is tainted with malafide or issued without Jurisdiction. Further, it must be borne in mind that the aspect of 'Limitation' is a Mixed Question of Fact and Law'.

25. On a meticulous consideration of the contentions advanced on either side, this court taking note of the clear cut stand taken by the First Respondent in its counter filed before the Second Respondent/Central Administrative Tribunal, and the whole gamut of attendant facts and circumstances of the present case in a cumulative fashion which float on the surface, comes to an irresistible conclusion that the First Respondent had taken a crystal clear plea that the petitioner's 'Misconduct' continued even after 28-10-2009 until he demitted the charge on 6-1-2010 and therefore, in the considered opinion of this court, there is no express fetters showered on 4 years Limitation period as per Rule 9 of CCS (Pension) Rules 1972. Moreover, even though the petitioner had retired from service on 31-10-2011 and is receiving monthly 'Provisional Pension', this court is of the considered view that the petitioner can very well submit his written statement of Defence and take part in the 'Departmental Disciplinary Proceedings' initiated by the First Respondent and it is open to him to raise all 'Factual and Legal pleas', (including the aspect of Limitation, purported Selective Discrimination meted out by the First Respondent etc.,) before the Concerned Authority in airing his grievances, ofcourse in the manner known to Law and in accordance with Law.

26. Since the 'Departmental Disciplinary Proceedings' is pending against the petitioner and hanging like a Damocles Sword on him, it will be quite in the fitness of things that the First Respondent shall take an earnest and diligent steps to conclude the said disciplinary proceedings, pending against the petitioner as expeditiously as possible, in any event within a period of three months form the date of receipt of this order.

27. It cannot be gainsaid that the Concerned Authority after the completion of 'Departmental Disciplinary proceedings' is to pass a reasoned speaking order exercising his sound judicial discretion (by meting out the points raised) and the said order is to be passed by him in a Just, Fair, Free, Unbiased and Dispassionate manner within the time adumbrated by this court, ofcourse uninfluenced and untrammelled by any of the observations made by this court in this writ petition.

28. Before parting with the case, this Court makes it clear that if the Petitioner seeks time to produce necessary material (Documentary Evidence) on his side and further he desires to let in any oral evidence in the ''Enquiry Proceedings', then it may be permitted by the Concerned Appropriate Authority, as per Law. Further, the petitioner is directed to lend his assistance and unstinted cooperation to the Concerned Authority in completing the proceedings in comprehensive manner.

29. With the above observations and directions, the Writ Petition stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

sr

To

1. Union of India
rep by the Under Secretary to
Government of India,
Ad-V Section, Office of the Chief
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Central Board of Excise & Customs,
Department of Revenue,
Ministry of Finance,
6th Floor, Hudco Vishala Building,
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New Delhi - 110 066

2. The Registrar,
Central Administrative Tribunal,
Chennai - 104

+1cc to Mr.M.Ravi, Advocate SR.No.9500

+1cc to Mr.Rajnish Pathiyil, Advocate SR.No.9586

W.P.No.25525 of 2018

NRL(CO)
GMY(28/02/2019)