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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 587 OF 2018

Ajoy Banik

.. Petitioner

Versus

Union of India & Ors.

.. Respondents

Mr. Ramesh Ramamurthy a/w Mr. Saikumar Ramamurthy for
petitioner.

Mr. Ashok Shetty a/w Mr. Ashutosh Gole for respondents.

**CORAM: DIPANKAR DATTA, CJ &
M. S. KARNIK, J.**

DATE: MARCH 16, 2022

PC:

1. Dismissal of Original Application No. 707 of 2014 by the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal", for short) by its order dated June 21, 2017 is questioned by the original applicant in this writ petition dated July 28, 2017. The Tribunal declined to interfere on the ground that the original applicant (hereafter "the petitioner") had alternative remedies, either by way of initiating proceedings in contempt of the Tribunal's earlier order dated August 30, 2001 or to seek execution of such order by initiating appropriate proceedings. Holding that an independent original application would not be maintainable, on facts and

circumstances, the Tribunal granted liberty to the petitioner to institute appropriate proceedings against the respondent no.3, i.e., Chief Commissioner of Central Excise & Customs, subject to limitation, if any, for his failure to comply with the order dated August 30, 2001.

2. The basic facts leading to institution of Original Application No. 707 of 2014 need to be noticed.

3. A charge-sheet dated August 21, 1998 was issued to the petitioner. Upon an inquiry that followed, the inquiry officer submitted a report that the charges against the petitioner were not proved. An order was passed by the disciplinary authority of the petitioner agreeing with the findings of the inquiry officer and proposing closure of disciplinary proceedings. Such order was passed on the relevant file, but not communicated to the petitioner. It is on record that the proposed order of the disciplinary authority did not find concurrence with the Director General (Vigilance), Customs & Central Excise who sought for the opinion of the Central Vigilance Commission (hereafter "the CVC", for short).

4. On August 30, 2001, the next incumbent on the post of Commissioner of Customs (General) disagreed with the opinion of his predecessor-in-office and issued a show cause notice to the petitioner seeking explanation as to why major penalty should not be imposed. This disagreement note dated August 30, 2001 was subjected to challenge by the petitioner before the Tribunal in Original Application No. 875 of 2001. By a judgment and order dated January 17, 2003, the disagreement note dated August 30, 2001 was set aside and the disciplinary

authority directed to take action on the inquiry report in accordance with law and to pass an appropriate order without being influenced by any extraneous consideration and/or instructions issued by any authority within the scope of the statutory rule. The exercise was directed to be completed as early as possible, preferably within two months from date of receipt of the order. The original application, thus, stood allowed.

5. Aggrieved by the judgment and order of the Tribunal, the respondents in the original application instituted Writ Petition No. 2478 of 2003 before this Court. By a judgment and order dated August 11, 2009, a coordinate Bench dismissed the writ petition holding as follows:-

“....Having regard to the scheme of the Rules, once the Disciplinary Authority agreed with the report of the Inquiry Officer who exonerated the respondents, there was no occasion for the Disciplinary Authority to seek advice of the CVC. The CVC cannot in the peculiar facts and circumstances of the case influence the decision of the Disciplinary Authority. The reasons and conclusions of the CAT cannot be faulted on that score. In the result, petition fails and is dismissed accordingly. Rule discharged. No order as to costs.”

6. The judgment and order dated August 11, 2009 was carried to the Supreme Court in Special Leave Petition (C) No. 18096 of 2010; however, the said SLP was dismissed by an order dated January 10, 2011 on the ground of delay resulting in the judgment and order dated August 11, 2009 attaining finality.

7. The judgment and order of the Tribunal having merged in the judgment and order of this Court, the obvious consequence of the latter order attaining finality is that the option of the

respondents to reopen the disciplinary proceedings, which might have been permitted by the Tribunal, stood closed once and for all. However, since the respondents did not pass any formal order closing the disciplinary proceedings, the sealed cover procedure was adopted as and when the petitioner's case for promotion to higher posts came up for consideration before the Departmental Promotion Committee (hereafter "the DPC", for short).

8. Realizing that without a formal closure of the disciplinary proceedings he would not be offered promotion even if the DPC found him to be fit for promotion, the petitioner once again approached the Tribunal by filing the original application (O.A. No.707 of 2014) which came to be dismissed as noticed at the beginning of this order.

9. We have heard Mr. Ramamurthy, learned advocate for the petitioner and Mr. Shetty, learned advocate for the respondents at some length.

10. It is the contention of Mr. Ramamurthy that the Tribunal erroneously dismissed the original application without application of mind; and because of the failure and/or omission of the disciplinary authority to issue the order closing the disciplinary proceedings, the petitioner has not only not been promoted but even not paid his retiral benefits despite having retired on superannuation on December 31, 2018.

11. According to Mr. Shetty, the Tribunal did not commit any error in dismissing the original application. He submits that in terms of the liberty granted by the Tribunal by its order dated August 30, 2001, the disciplinary authority had issued a fresh

disagreement note (not part of the records) and since there has been no legal and valid closure of the disciplinary proceedings, the petitioner is not entitled to any relief whatsoever.

12. We have no hesitation in refusing to accept the aforesaid contention of Mr. Shetty. Even if an order has been made by the new incumbent disciplinary authority disagreeing with the proposal of the former disciplinary authority of the petitioner in terms of a liberty that could be traceable in the order passed by the Tribunal on August 30, 2001 to pass a fresh order on the proceedings, the issue appears to have been given a quietus by the coordinate Bench of this Court in the concluding paragraph of the judgment and order dated August 11, 2009 extracted supra. The coordinate Bench having held that the scheme of the rule does not permit a disciplinary authority to seek advice of the CVC after an agreement is recorded with regard to the views expressed by the inquiry officer, there was no scope for the disciplinary authority to act in breach of the observations made by the coordinate Bench while dismissing the respondents' writ petition. Since the judgement and order of the coordinate Bench has attained finality by reason of dismissal of the SLP, we need not examine whether or not the coordinate Bench was right in making the observations it did in such concluding paragraph.

13. It is in this factual background that we have to consider whether the Tribunal was right in refusing to entertain the original application filed by the petitioner on the ground that in the facts and circumstances of the present case a contempt proceeding or a proceeding for execution would have been

maintainable. We feel that the Tribunal adopted too technical a view and approached the problem from a wrong angle. In its approach, it ought to have responded affirmatively to what the justice of the case demanded. A full round of litigation having been completed right up to the Supreme Court, it was the duty of the Tribunal to ensure that the rights and liabilities of the parties which were finally determined are given proper shape by directing the respondent no.3, the disciplinary authority, to pass an order closing the disciplinary proceedings. The Tribunal failed to appreciate that its earlier judgment and order having merged in the judgment and order of this Court, a contempt application and/or an execution application would not have been maintainable before the Tribunal and an original application was the only remedy in view of the decision of the Constitution Bench of the Supreme Court in **L. Chandra Kumar vs. Union of India**.¹ In failing to ensure that the respondents close the proceedings by an appropriate closure order by making a direction in that behalf, manifest injustice has been caused to the petitioner by the Tribunal.

14. We, accordingly, set aside the order of the Tribunal impugned before us and grant an order in terms of prayers (a) and (c) of the writ petition, which read as follows: -

“(a) that this Hon’ble Court be pleased to issue a writ of certiorari or any other appropriate writ, order or direction calling for the record and proceedings pertaining to the passing of the judgment dated 21st June, 2017 by the C.A.T., Mumbai Bench in Original Application No. 707 of 2014 (Exhibit “A”) and after examining the legality and/or propriety of the said judgment this Hon’ble Court be pleased to quash and set aside the said judgment;

¹ AIR 1997 SC 1125

(c) In the alternative to prayer clause (b) above this Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction and direct the disciplinary proceedings initiated against the Petitioner under charge sheet memorandum dated 21st August, 1998 be treated as abandoned and/or closed as against the Petitioner."

15. All retiral benefits, to which the petitioner is entitled, shall be computed and released within a period of three months from date together with interest at the rate of 8% per annum from January 1, 2019.

16. What remains is consideration of the petitioner's other prayer, which is quoted below: -

"(d) This Hon'ble Court be pleased to issue a writ of mandamus or any other appropriate writ, order or direction directing the Respondents to grant the Petitioner all consequential service benefits in pursuance of prayer clauses (a) to (c) above and grant the Petitioner promotion as Assistant Commissioner from 2002, Deputy Commissioner from 2006 and Joint Commissioner from 1st January, 2014 and further as Additional Commissioner from 1st January, 2015 on par with his junior Uday Bhaskar Rakhee and grant the petitioner all consequential service benefits being continuity of service, due seniority from the date of promotion, fixation of pay in the promoted post, full arrears of pay and allowances of the each of the promoted post from the due date till date along with interest at the rate of 18% per annum on the said arrears from the due date till full payment."

17. Indubitably, the petitioner had not been granted promotion since the sealed cover procedure was resorted to. As noticed above, during the pendency of the writ petition, the petitioner has retired on attaining the age of superannuation on December 31, 2018.

18. With the closure of the disciplinary proceedings, there cannot be any legal impediment to direct that the sealed cover(s) be opened to give effect to the recommendation of the

DPC, if at all it is in favour of the petitioner. We, accordingly, direct the respondents to open the sealed cover(s) and to communicate to the petitioner the recommendation of the DPC within a month from date. If indeed the DPC found the petitioner to be fit for promotion and recommended him as such, the respondents shall proceed to order the petitioner's promotion from the date(s) he was entitled to the same in accordance with law. Monetary benefits arising out of such promotion(s) shall be made over to the petitioner as early as possible but not later than three months from date of issuance of the order(s) of promotion.

19. The writ petition succeeds and is allowed accordingly. No costs.

(M. S. KARNIK, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

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PANDIT
Date: 2022.03.21
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