

**HIGH COURT AT CALCUTTA
Civil Appellate Jurisdiction
Appellate Side**

Present:

The Hon'ble Justice Shekhar B. Saraf, J.

**WPA 17215 of 2022
[Assigned]**

**Shri Arup Ghosh
-versus-
Union of India & Ors.**

For the Petitioner	:	Mr. Arijit Chakrabarti Mr. Nilotpal Chowdhury Mr. Prabir Bera
For the Customs Authority	:	Mr. K.K. Maiti Mr. Tapan Bhanja
Heard On	:	October 6, 2023.
Judgement On	:	October 6, 2023.

Shekhar B. Saraf, J.

With the consent of the parties, the matter is taken up for consideration.

This is an application under Article 226 of the Constitution of India wherein the writ petitioner is aggrieved by the inaction on the part of the respondent authorities in completing the disciplinary proceedings within the 90 days period as per Section 17 of the Customs Brokers Licensing Regulations, 2018 (hereinafter called as 'CBLR, 2018').

The petitioner further seeks revocation of the suspension orders passed on May 10, 2021 that was reaffirmed on July 6, 2021.

The factual matrix of the case is that the petitioner was suspended for violating certain provisions of the CBLR, 2018 which was confirmed subsequently by the authorities. However, the authorities are failed to complete the disciplinary proceedings within the period provided. In fact, it is to be noted that the period would have come to a conclusion in the month of August 2021 but no progress whatsoever has been made with regard to the enquiry till the date of filing of this writ petition, that is, on July 28, 2022.

From a bare perusal of the writ petition, the affidavits exchanged between the parties and the submissions made by the parties, it is clear that the authorities are sitting over the matter and flouting the time limit mandated by the above Regulations. There is plethora of judgments on the point whether the period is mandatory or not. High Courts have held on different points of view on the matter of identical nature. However, without delving into the same, this Court is of the opinion that even if the period of 90 days is not mandatory keeping the disciplinary proceeding pending for over nine months after the completion of the 90 days, is an arbitrary action on the part of the authorities. No proper explanation has been given as to why the enquiry could not be carried out and the flimsy ground of transfer of an officer concerned is not a good ground. Till date no enquiry report is on record. This situation cannot be

allowed to continue as such action of the authorities, seems to be mala fide and arbitrary in nature.

Accordingly, the authorities are directed to complete the disciplinary proceedings within a period of three months from date after appointing a new officer for completing the said investigation.

It is trite law that a suspension cannot be for an indefinite period and since the authorities have not completed the investigation within the time frame, the suspension order shall stand in abeyance and the petitioner shall be allowed to work.

Needless to mention, upon completion of the enquiry and passing of the order by the authorities concerned, if the disciplinary proceeding is held against the petitioner, the petitioner shall not be allowed to work any further.

With these above observations and directions, WPA 17215 of 2022 is disposed of.

All parties are to act on the server copy of this order duly downloaded from the official website of this Court.

SD

(Shekhar B. Saraf, J.)