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W.P.No.10153 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on	:	13.06.2023
Order Pronounced on	:	07.07.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.DHANABAL

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- 1 The Government of India,
Represented by its Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110 001.
 - 2 The Government of India,
Ministry of Finance, Department of Revenue,
Represented by Deputy Secretary,
Central Board of Indirect Taxes & Customs,
2nd Floor, HUDCO Vishala Building, Bikhaji Cama Place,
R.K.Puram, New Delhi-66.
- ... Petitioners

Vs.

- 1 M.Pandaram
 - 2 The Central Administrative Tribunal,
Second Floor, City Civil Court Buildings,
Chennai-600 104.
- ... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of second respondent in O.A.No.310/0002/2022 dated 03.01.2023, quash the same as erroneous, illegal and contrary to the service jurisprudence as held by the Apex Court in catena of cases.

For Petitioners ... Mr.V.Sundareswaran

For R-1 ... Mr.N.Vijaynarayan
Senior Counsel for
Mr.C.Vigneshwaran

ORDER

P.DHANABAL,J

This Writ Petition has been filed by the petitioners to issue a Writ of Certiorari or any other appropriate writ direction or other orders to call for the records of second respondent in O.A.No.310/0002/2022 dated 03.01.2023, quash the same and to pass such other orders as this Hon'ble Court may deem in fit and proper in the circumstances of the case.

2. As agreed by both side counsels, this case has been taken up for



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disposal in the admission stage itself.

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3. The necessary facts to dispose of this writ petition can be stated as follows:-

(i) The first respondent joined the Customs Department as Preventive Officer in the year 1993 and thereafter, he was promoted as Superintendent in the year 2002 and posted at CONCOR ICD (Then CONCOR CSF) and as Assistant Commissioner in the year 2018. During the period 2009, when the first respondent was working as Superintendent in Chennai Customs House, he had issued “Let Export Order” of Shipping Bill Nos.3404489, 3404498 and 3404499 dated 18.06.2009 filed by M/s.A.L.Enterprises, Chennai in container HDMU 6703208 from Container Corporation of India, ICD, Thiruvottiyur, for the goods which had never entered the Port for export. Pursuant to the said “Let Export Order” M/s.A.L.Enterprises had got duty Draw Back amount of Rs.6.11 lakhs resulting in loss of Revenue to the Government.



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(ii) Based on the intelligence, the Directorate of Revenue Intelligence, (DRI), Chennai Zonal Unit, Chennai, seized red sanders from the export consignment in the name of M/s. Sri Sai Ram exports covered under Shipping Bills No.9029895/22.05.2012. On completion of investigation, the said case was adjudicated on 25.04.2014 by the Commissioner of Customs (Sea Port-Export), Chennai. During the course of investigation in the above said case in the year 2012-2013, it came to light that out of 55 Shipping Bills, M/s.A.L.Enterprises had filed 26 shipping bills during the year 2009-2010 and had received drawback fraudulently without receipt of any foreign remittances. It was found that the goods pertaining to M/s.A.L.Enterprises and M/s.Sri Sai Ram Exports were exported in the same container.

(iii) As per investigation, no physical export of goods had taken place against the said shipping bills and no sale proceeds were realized. Electronic Data Interchange (EDI) revealed that certain errors were noticed in the shipping bills and were sent to error queue in the EDI system. These shipping bills were forcefully amended in the system to push these shipping bills to the Drawback queue. The DRI took up investigation in



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respect of the alleged fraudulent availment of drawback to the tune of Rs.1.47 crores by M/s.A.L Enterprises, Chennai and 3 others during the period from June 2009 to December 2009. The DRI investigation had revealed that the goods were not exported and were not even brought to the Container Freight Station (CFS). The DRI had completed the investigation and filed the report in October 2018. In view of the above, DRI, CZU had referred the aforesaid four cases for vigilance investigation. Thereafter, the above said cases were referred to Directorate General of Vigilance (DGoV), New Delhi Headquarters by the Principal Commissioner of Customs, Chennai VIII Commissionerate, to identify the Superintendents who have granted Let Export Order in respect of shipping bills concerned.

(iv) Subsequently, the aforesaid cases were referred to South Zonal Unit of DGoV, New Delhi (Headquarters). As directed by DGoV, Headquarters, vide letters dated 16.12.2019 and 17.12.2019, DGoV, Chennai, conducted vigilance investigation and recommended initiation of regular departmental action for major penalties against the following persons.

Examiners: Smt.Jayasree Raja, Shri.G.Guruviah, Shri.D.Diwakar and



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Smt. N.Nalini (Nega).

Preventive Officer: Shri T.Albert Thambiraj

Tax Assistants: Shri.C.Suresh Babu and Shri.P.Charles.

Superintendents: Shri E.Venkateswara Rao, Shri T.C.Pari,

Shri M.Pandaram and Shri Harendra Singh Pal.

(v) The Directorate General of Vigilance, South Zonal Unit, vide letter dated 21.05.2021 submitted a consolidated investigation report to take departmental action for major penalties against Shri E. Venkateswara Rao, M.Pandaram (first respondent herein) and Harendra Singh Pal. The Central Vigilance Commission (CVC) issued first stage advice, vide Official Memorandum dated 29.01.2021 for initiating departmental proceedings for major penalties. Accordingly, the charge memorandum for major penalty proceedings, was issued to the first respondent on 26/29.11.2021 and others, with due approval of the Competent Authority.

(vi) The officer without inspecting/examining the Cargo and without following the instructions in the EDI system, granted Let Export Order, and the said act clearly shows the failure on the part of the officer who granted Let Export Order in respect of the 3 shipping bills.



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WEB COPY (vii) Aggrieved by the said charge memorandum, the first respondent filed Original Application in O.A.No.2 of 2022, before the Central Administrative Tribunal, challenging the charge memo, on the sole ground of delay. The second respondent/Tribunal heard the Original Application on 06.09.2022, and both the parties have submitted citations to support their contentions. The second respondent allowed the Original Application by quashing the charge memorandum, without appreciating the facts and ratio laid down by the Hon'ble Apex Court.

4. The first respondent appeared through counsel and has not filed counter affidavit and argued the case based on the available records.

5. The learned counsel for the Writ Petitioner has argued that the first respondent has filed the Original Application by challenging the charge memo on the ground of delay. Though, the year of occurrence is 2009, it was brought to the knowledge of the authorities only in the year 2012. For want of elaborate investigation and for collection of documents from various Departments, the investigation consumed lot of time.



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Immediately after investigation, the charge memo was issued to the first respondent as well as other delinquent officials. For other delinquent officials, except Superintendent cadre, already, charge memo was issued and Departmental enquiry was also initiated and final orders were passed by imposing appropriate punishments.

6. The learned counsel for the petitioners further argued that the Tribunal failed to appreciate the fact that though the incident happened in the year 2009 it was found out in the year 2012, the actual responsible persons had to be identified and action be taken against them. The Tribunal failed to appreciate that from the year 2012 onwards, the matter was investigated through DRI and the documents were collected up to the year 2018 and thereafter, the matter was investigated through vigilance and as per the vigilance report only, the charge memo was issued to the delinquent officials. As far as this first respondent is concerned, he admitted that, he ordered “let export” for 3 shipping bills filed by M/s.A.L.Enterprises and when once he admitted the order passed by him for “let export”, he is responsible for passing that order without verifying the physical



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availability of the goods. The Tribunal failed to appreciate the law laid down by the Hon'ble Supreme Court regarding delay in quashing the charges in disciplinary proceedings. Therefore the order passed by the Tribunal is liable to be set aside by allowing this Writ Petition.

7. The learned counsel appearing for the first respondent argued that, in this case, there was an inordinate delay of 12 years from the date of occurrence. The date of occurrence was in the year 2009 and the said occurrence was found in the year 2012, but the charge memo was issued only in the year 2021. The petitioners failed to explain the inordinate delay caused in proceedings for Disciplinary Proceedings (DP) and if the proceedings are continued, prejudice would be caused to the petitioner and there will be no fruitful purpose in conducting the DP for the so called lapses alleged to have been committed in the year 2009. Even according to the writ petitioners, the DRI Department has concluded the investigation in October 2018 and thereafter, 3 years' time had lapsed for proceeding with the case. Therefore, the petitioners have failed to explain the inordinate delay and further, the other persons are also involved in this matter. They have been prosecuted and only minor penalties were imposed upon them.



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Even for the major penalty charge, they awarded lenient punishment.

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8. Further argued that according to the petitioners/Government of India, three bills (Let Export Order) were issued. At that time, one Diwakar was working as Examiner, whose primary duty is to ensure physical verification and availability of the goods by checking the boxes. For him, a minor penalty of “Censure” was awarded. Therefore, the Tribunal has correctly pointed out the inordinate delay, which would cause prejudice to the first respondent, if the DP proceedings are continued. Therefore, the Tribunal has correctly allowed the application, thereby this Writ Petition is liable to be dismissed.

9. This Court heard both sides and perused the records.

10. In this case, it is admitted fact that the alleged date of occurrence said to have taken place in the year 2009 and the same was detected in the year 2012. The charge memo was issued only in the year 2021. According to the petitioners, the DRI Department took up the investigation and elaborately investigated and a report was filed on 17.10.2018. In that



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report, the DRI Department has concluded the investigation in the year 2018 and thereafter, vigilance enquiry was conducted and then only, show cause notice was issued.

11. On a perusal of the records, it is observed that the DRI Department had consumed so much of time for investigation i.e., from the year 2012 to 2018 , i.e., for nearly 6 years. The available records shows that there was no continuity in the investigation and there was long gap for each communications between the department and companies and there is no convincing explanation for such an inordinate delay. More over the investigation by DRI is only with regard to the identification of exporters and other documents. Even after Completion of DRI investigation in October 2018, the Department has not chosen to expedite the process for initiating the disciplinary proceedings and initiated the proceedings only in the year 2021 after a gap of 3 years by issuing charge memo. The Department had knowledge about the staff who were working at that particular point of time. While so, they can very well initiate proceedings as against the erring officers. But the Department waited and vigilance enquiry was being conducted. Even according to the vigilance enquiry,



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they have identified the staff, who were working at the particular point of time. The same particulars available very well with the Department, prior to the report of the vigilance Department enquiry. In spite of that the Department had kept the matter pending for 9 years and not even commenced any preliminary enquiry.

12. The main contention as against the first respondent is that, without verifying the availability of goods, Let Export Order was granted. Even according to the petitioners, it is the duty of the first respondent to verify and ensure the availability of goods and then only, he has to issue the LEO. It is admitted by the petitioners that the first respondent was Supervisor and some other Examiners were mainly engaged in duty, especially to verify the availability of goods. On a careful perusal of documents submitted by the petitioners, it is observed that the first respondent, during his enquiry by the Vigilance Department, stated that he physically verified the goods and the Examiner, whose main duty is to verify the goods, also made endorsement that he verified the goods by opening the boxes and then only he passed order of Let Export. Therefore, the said statement cannot be ignored. During the period of alleged



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occurrence, one Diwakar was working as Examiner, and charges were also framed for his lapses, but only minor penalty of censure was awarded to him. While so, after inordinate delay of 12 years, the proceedings against the first respondent is inappropriate.

13. Even according to the petitioners, the above said disputed shipping bills goods were originally not available in the Cargo and the Export General Manifest (EGM) datas were also manipulated. While so, there is no reference as to by whom the aforesaid EGM amendments were made. There is no any investigation report in this regard when the EGM entries were corrected. Once the Department had knowledge about the corrections made in the EGM data, it is their duty to find out as to who is responsible for the said corrections. But there are no details with regard to the corrections in EGM data. Further, whether the goods were physically verified or not, cannot be found after a lapse of more than one decade. The petitioners also admitted the delay, but their contention is that the charge memo cannot be quashed only on the sole ground of delay.

14. The learned Central Government Standing counsel appearing for



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the petitioners relied on the following judgments:-

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(i) State of Madhya Pradesh and Another Vs. Akhilesh Jha and Another reported in (2021) 12 Supreme Court Cases 460, wherein there was a delay of 2 years in concluding the disciplinary proceedings after framing charges and the Hon'ble Supreme Court in Para 15 held as under:-

“Every delay in conducting a disciplinary enquiry does not, ipso facto, lead to the enquiry being vitiated. Whether prejudice is caused to the officer who is being enquired into is a matter which has to be decided on the basis of the circumstances of each case. Prejudice must be demonstrated to have been caused and cannot be a matter of surmise.”

(ii) In the case of U.P. Rajya Krishi Utpadan Mandi Parishad and others Vs. Narendra Kumar Malik and another reported in 1993 Supp (3) Supreme Court Cases 483, wherein there was a fraud played by the delinquent and second time suspension order was passed and the Hon'ble Supreme Court in Para 5 held as under:-

“It is true that in the present case, the charge-sheet was filed after almost a year of the order of suspension. However, the facts pleaded by the appellants show that the defalcations were over a long period from 1986 to 1991 and they involved some



lakhs of rupees. It also appears that the authorities have approached the police and in the police investigation, the amount of defalcation is found to be still more. Since the matter is of taking accounts which are spread over from 1986 to 1991 and of correlating the entries with the relevant documents, and several individuals are involved, the framing of charges was bound to take some time. The Court has to examine each case on its own facts and decide whether the delay in serving the charge-sheet and completing the inquiry is justified or not. However, in the present case, the High Court has not quashed the order of suspension on the ground of delay in framing the charges. As stated earlier, it has set aside the order of suspension on the ground that the authority had no power to pass the second order of suspension in the same case.”

(iii) In the case of State of Uttar Pradesh and others Vs.Rajit Singh made in Civil Appeal Nos.2049-2050 of 2022, wherein punishment was challenged by the delinquent and the Hon'ble Supreme Court in Para 7 held as under:-

“7. Now, so far as the quashing and setting aside the order of punishment imposed by the Disciplinary Authority applying the Doctrine of Equality on the ground that other officers involved in the incident have been exonerated and/or no action has been taken against them, is concerned, we are of the firm view that on the aforesaid ground, the order of punishment could not have been set aside by the Tribunal and the High court. The Doctrine of Equality ought not to have been applied when the Enquiry Officer and the Disciplinary Authority held the charges proved against the delinquent officer. The role of the each individual officer even with respect to the same misconduct is required to be considered in light of their duties of office. Even otherwise, merely because some other officers involved in the incident are exonerated and/or no action is taken against other officers cannot be a ground to set aside the order of punishment when the charges against the individual concerned delinquent



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officer are held to be proved in a departmental enquiry. There cannot be any claim of negative equality in such cases. Therefore, both the Tribunal as well as the High Court have committed a grave error in quashing and setting aside the order of punishment imposed by the Disciplinary Authority by applying the Doctrine of Equality.”

(iv) In the case of Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey and others reported in (1995) 3 Supreme Court cases 134, wherein the delinquent did not co-operate for the DP enquiry and delay was also on the part of the delinquent and the Hon'ble Supreme Court in Para 7 held as under:-

“7. On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay. So far as the merits are concerned, we regret to say that the High Court has not dealt with the submissions and facts in support of the submission of the appellant that in spite of being given a number of opportunities the first respondent has failed to avail of them. If the appellant's allegations are true then the appellant cannot be faulted for not holding a regular inquiry (recording the evidence of witnesses and so on). The High Court has assumed. even without referring to Regulation 68 aforesaid that holding of an oral inquiry was obligatory. Indeed, one of the questions in the writ petition may be the interpretation of Regulation 68. On facts, the first respondent has his own version. In the circumstances, the writ petition could not have been allowed unless it was held that the appellant's version of events is not true and that the first respondent's version is true. In the circumstances, we have no alternative but to set aside the order under appeal and remit the matter to the High Court once again



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for disposal of the writ petition afresh in the light of the observations made herein. Since the matter is a very old one it is but appropriate that the matter is dealt with expeditiously. Perhaps, it would be appropriate if the Court looks into the records relating to the disciplinary proceedings also."

(v) In the case of Additional Director, Directorate of Revenue Intelligence, Chennai Vs.M.Rathakrishnan reported in 2017 SCC online Mad 37834, wherein the delinquent has challenged the show cause notice on the ground that the charges being Pre-determined and Pre-Judged and the Hon'ble Division Bench of this Court in para 13 held as under:-

"13. After going through impugned notice and the order of the writ court, and after considering the rival submissions, the contention of the appellants that the first appellant is only an investigating authority whose role ends upon issuing a show cause notice on conclusion of investigation and he is not the adjudicating authority and therefore, the words used in the show notices such as "concluded", "revealed", etc.. would not prejudice the case of the respondents, has to be countenanced and such words should be read in entirety. In the instant case, the investigating authority/first appellant is confined to investigating the case and submitting a report to the adjudicating authority and the first appellant cannot adjudicate the case as contemplated under the Act. As such, the investigating authority and the adjudicating authority are two different persons. Therefore, the decision relied on by the writ court in the case of Oryx Fisheries Private Limited v. Union of India reported in (2011) 266 ELT 422 (S.C.), wherein the investigating authority and the adjudicating authority was one and the same person, is not applicable to the facts of the present case. Therefore, the contention of the respondents herein that the investigating authority has predetermined and prejudged cannot be accepted. Hence, the grounds raised by the writ petitioners/respondents are liable to be rejected. Further, the respondents have challenged the show cause notice and whether



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the same can be examined in the Writ Petitions has to be considered by this Court in the light of the following decisions. Moreover, a writ against a show cause notice is not maintainable.

(1) In Union of India v. Kunisetty Satyanarayana, reported in (2006) 12 SCC 28: AIR 2007 SC 906, the Hon'ble Apex Court, at paragraphs 13, 14 and 16, held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show cause notice vide Executive Engineer, Bihar State Housing Board v. Ramdesh Kumar Singh, [JT (1995) 8 SC 331, Special Director v. Mohd. Ghulam Ghouse, [(2004) 3 SCC 440: AIR 2004 SC 1467]. Ulagappa v. Divisional Commissioner, Mysore, [(2001) 10 SCC 639], State of UP. v. Brahm Datt Sharma, [(1987) 2 SCC 179: AIR 1987 SC 943] etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show cause notice or charge-sheet is that, at that stage, the writ petition may be held to be premature. A mere charge-sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no Jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

(ii) In Ministry of Defence v. Prabhask Chandra Mirdha, reported in (2012) 11 SCC 565, the Hon'ble Apex Court has held as follows:-

"Ordinarily a writ application does not lie against a charge sheet or show cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do



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so. A writ lies when some right of a party is infringed. In fact, charge sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court."

(vi) In the case of Union of India Vs. Ashok Kacker reported in 1995 Supp (1) SCC 180, wherein no delay in disciplinary proceedings involved and the Hon'ble Supreme Court in Para 4 held as under:-

"4. Admittedly, the respondent has not yet submitted his reply to the charge- sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge-sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge-sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge-sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge-sheet and the appropriate course for the respondent to adopt is to file his reply to the charge-sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him.

(vii) In the case of State of Punjab and others vs. Chaman Lal Goyal made in Civil Appeal No.1101 of 1995 dated 31.01.1995, wherein major



part of the enquiry was over in the disciplinary proceedings and the

Hon'ble Supreme Court in para 14 held as under:-

“14. The High Court was relied upon the decision of this Court in State of Madhya Pradesh v. Bani Singh and Anr. MANU/SC/0251/1990 on the question of delay. That was a case where the charges were served and disciplinary enquiry sought to be initiated after a lapse of twelve years from the alleged irregularities, From the report of the judgment, the nature of the charges concerned therein also do not appear. We do not know whether the charges there were grave as in this case. Probably, they were not. There is another distinguishing feature in the case before us: by the date of the judgment of High Court, the major part of the enquiry was over. This is also a circumstance going into the scales while weighing the factors for and against. As stated herein above, wherever delay is put forward as a ground for quashing the charges, the court has to weight all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent.”

(viii) In the case of Secretary to Government, Prohibition and Excise Department Vs. L.Srinivasan made in Civil Appeal Nos.3658-59 of 1996 dated 15.02.1996, wherein Criminal case was pending and disciplinary proceedings enquiry was in progress and the Hon'ble Supreme Court in Para 3 held as under:-

“3. Order dated November 12, 1993 in O.A. No. 1702/93 and 2206/93 of the Tamil Nadu Administrative Tribunal, Madras is in question before as. The respondent while working assistant Section Officer, Home, Prohibition and Excise Department had been placed under suspension. Departmental inquiry is in process. (sic) are informed that charge sheet was laid for prosecution for the offences of embezzlement and fabrication of false records etc. and that the offences and the trial of the case



is pending. The Tribunal had set aside the departmental enquiry and quashed the charge on the ground of delay in initiation of disciplinary proceedings. In the nature of the charges, it would take long time to detect embezzlement and fabrication of false records which should be done to secrecy, It is not necessary to go into the merits and record any finding on the charge leveled against the charged officer since any finding recorded by this Court would gravely prejudice the case of the parties at the enquiry and also at the trial. Therefore, we desist from expressing any opinion on merit or recording any of the contentions raised by the counsel on either side. Suffice it to state that the Administrative Tribunal has committed grossest error in its exercise of the judicial review. The member of the Administrative Tribunal appears to have no knowledge of the jurisprudence of the service law and exercised power as if he is an appellate forum de hors the limitation of judicial review. This is one such instance where a member had exceeded his power of judicial review in quashing the suspension order and charges even at the threshold. We are coming across frequently such orders putting heavy pressure on this Court to examine each case in detail. It is high time that it is remedied.”

(ix) In the case of Union of India and another Vs. Kunisetty Satyanarayana reported in (2006) 12 Supreme Court cases 28, wherein community was suppressed and obtained community certificate and no delay involved and the Hon'ble Supreme Court in Para 14, 15 and 16 held as under:-

“14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has



been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

(x) In the case of Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha reported in (2012) 11 Supreme Court Cases 565, wherein bribe was involved and the Hon'ble Supreme Court in Para 12 held as under:-

"12. Thus, the law on the issue can be summarized to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the



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proceedings.”

(xi) In the case of the Chairman Life Insurance Corporation of India

and others Vs. A.Masilamani reported in (2013) 6 Supreme Court Cases

530, wherein LIC officials have violated the provisions of regulations and

disbursed the housing loan without following the norms and the Hon'ble

Supreme Court in Para 18, held as under:-

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limits of judicial review. In the event that the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show-cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by the court. The same principle is applicable in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question have to be examined taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration all relevant facts and to balance and weigh the same, so as to determine if it is in fact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated only on the ground of delay in their conclusion. (Vide State of U.P. v. Brahm Datt Sharma. State of M.P. v. Bani Singh Union of India v. Ashok Kacker, Prohibition & Excise Deptt. v. L Srinivasan, State of A.P. v. N. Radhakishan¹¹, M.V. Bijlani v. Union of India¹², Union of India v. Kunisetty Satyanarayana¹³ and Ministry of Defence v. Prabhash Chandra Mirdha¹⁴).”

(xii) The decision of the Hon'ble Supreme Court in State of Uttar

Pradesh and others Vs. Prabhat Kumar reported in 2022 Live Law (SC)

736, wherein the delinquent was under unauthorised absent.



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WEB COPY (xiii) The decision of the Hon'ble Supreme Court in the State of Punjab Vs. Nachhattar Singh (dead) Thr. LR. Reported in 2022 Live Law (SC) 901, wherein it relates to non supplying of documents along with charge memo. Therefore, on a careful reading of the said judgements submitted by the learned counsel for the petitioners will not be applicable to the present facts of the case, since the facts of each case are distinguishable from the case on hand.

15. The learned counsel for the first respondent has relied on the following judgements.

(i) In the case of State of Madhya Pradesh Vs. Bani Singh and another reported in 1990 (Supp) SCC 738, wherein the Hon'ble Supreme Court in Para No.4 held as under:-

“4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities,



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if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

(ii) In the case of P.V. Mahadevan Vs. M.D. TN Housing Board reported in 2005 (6) SCC 636, wherein the Hon'ble Supreme Court held in para No.11 as under:-

“ 11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would b cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered c enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.”



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(iii) In the case of Mr.M.V Bijlani Vs. Union of India reported in

2006 (5) SCC 88, wherein the Hon'ble Supreme Court while dealing with delay, in respect of concluding the Disciplinary proceedings observed in para No.19 as under:

“19. It is really a matter of great surprise that a disciplinary proceeding was initiated five years after the appellant handed over charge. At that time he was admittedly not having possession of any documents. The enquiry officer furthermore took a period of seven years to complete the enquiry. The Appellate Authority also took seven years in disposing of the appeal. Even then, the Appellate Authority did not go into the question as to whether the procedures laid down for holding the disciplinary proceedings had been followed or not. He did not go into the contentions of the appellant herein minutely. The memo of appeal filed by the appellant was very elaborate. He raised a number of contentions therein. The enquiry officer was charged with bias. He was also charged with unfair conduct. He was said to have committed a large number of irregularities in the departmental proceeding. The memo of appeal of the appellant was in about 65 typed pages. It was subdivided into five parts. He made all endeavors to deal with each and every finding of the enquiry officer and dealt with almost all the documents relied upon by the department. He also dealt with the deposition of the witnesses examined on behalf of the parties.”

(iv) In the case of Mr. Bhupendra Palsing Vs. Union of India reported in 2021 SCC Online Bombay 6073, a Division Bench of the High Court of Bombay elaborately dealt with the case regarding the delay in DP proceedings and in Para 60-61 the Bombay High Court held as follows:



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“60. Despite such decisions of the Supreme Court being brought to the notice of the Tribunal, it proceeded to hold against the petitioner on the ground that the Court or the Tribunal ought not to interfere at the stage of show-cause or charge-sheet. True. The Court does not ordinarily interfere at the show-cause or charge-sheet stage; however, interference in some very rare and exceptional cases can always be made and the show-cause/charge-sheet quashed if the same is found to be wholly without jurisdiction or for some other reason it is wholly illegal. The Tribunal proceeded as if in no case can the validity of a show-cause/charge-sheet be examined and that the employee must wait for a punishment to be imposed for approaching the Tribunal. The approach of the Tribunal was clearly wrong.

61. We are of the considered opinion that the reasons assigned by us while allowing Petition No. 5764 of 2021, as above, would squarely apply on facts and in the circumstances of the present case and that there being no valid and acceptable explanation for the delay of almost 6 (six) years in issuance of the charge-sheet coupled with the fact that the petitioner attained the age of superannuation on November 30, 2011, it would be just and proper and in the interest of justice to set aside not only the impugned judgment and order of the Tribunal dated March 1, 2019 but also the Memorandum of Charges dated December 4, 2009. It is ordered accordingly.”

On careful reading of the above judgments, it is clear that the inordinate delay has to be explained by the Department and we are of the opinion that the proposition held in the above cases are squarely applicable to the present facts of the case, since in the case on hand also there is an inordinate delay and the same has not been properly explained by the Department.



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WEB COPY 16. On coming to the present case, after considering the rival submission made by both sides and analyzing the judgements submitted by the learned counsel appearing for the petitioners and respondents, it is clear that, normally the Courts do not interfere in the disciplinary proceedings at the initial stage. But, at the same time, the above said principle cannot be applied in all cases and there are some exceptions and it varies case to case depending upon the nature of case. The Court has to examine each case on its own facts and decide as to whether the delay in serving the charge sheet and completing the enquiry, is justified or not. Further the Department has to offer proper, valid and acceptable explanation for the delay. In the absence of proper and acceptable explanations for the delay, the Courts can quash the charges depending upon the nature of case. In the case on hand, it is admitted fact that there was a delay of 12 years from the date of occurrence and around 9 years from the date of knowledge of the alleged occurrence.

17. The Tribunal, after taking into consideration of various judgements of the Hon'ble Supreme Court and High Courts and



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considering that without having basic materials, the petitioners came to the conclusion and initiated the said disciplinary action only in the year 2021, and if the enquiry had been permitted, it would be against law. On the Department's side, no valid and acceptable explanation was offered for the delay and almost after 12 years from the date of occurrence, charge memo was issued. Therefore, the Tribunal has allowed the application. As far as the delay of 12 years is concerned, the petitioners failed to explain the same properly.

18. Therefore, there is no infirmity found in the impugned order of Central Administrative Tribunal, thereby, this Court need not interfere with the impugned order of the Central Administrative Tribunal. Therefore, as discussed supra, this Writ Petition is devoid of merits and deserves to be dismissed. Accordingly, this Writ Petition is dismissed. No costs.

(D.K.K.J)

(P.D.B.J)

07.07.2023

Index: Yes/No

Speaking order: Yes/No

Neutral citation: Yes/No



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To

1. The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai – 104.
2. The Secretary to Government,
Ministry of Finance, Department of Revenue,
North Block, New Delhi-110 001.
- 3 The Deputy Secretary,
Central Board of Indirect Taxes & Customs,
2nd Floor, HUDCO Vishala Building, Bikhaji Cama Place,
R.K.Puram, New Delhi-66.



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D.KRISHNAKUMAR,J.

and

P.DHANABAL,J.

mpa

Pre-delivery Order in
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