



W.P.No.7562 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 12.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

THE HONOURABLE R.JUSTICE P.B.BALAJI

W.P.No.7562 of 2021 and

WMP No.8081 of 2021

Union of India, rep. by the Commissioner,
Large Tax Payer Unit (LTU),
Anna Nagar West Extension,
Chennai 600 101.

Now changed as Union of India,
rep. by the Assistant Commissioner,
O/o the Commissioner of Central Good and
Service Tax & Central Excise,
Chennai South GST Commissionerate,
692, MHU Complex, Anna Salai,
Chennai 600 035.

... Petitioner

Vs.

1.R.Sankaranarayanan

2. The Registrar, Central Administrative Tribunal,
Madras Bench, Additional City Civil Court Building.
High Court Campus, Chennai 600 104.

.. Respondents



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Prayer : Writ petition filed under Article 226 of the Constitution of India seeking to issue a writ of certiorari and quash the order of the Central Administrative Tribunal, Chennai Bench dated 30.10.2018 in O.A.No.310/00517/2017.

For Petitioner : Mr.Rajnish Pathiyil,
Senior Panel Counsel

For Respondents : Mr. Memon Karthik Mukundan
Neelakandan for first respondent

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This writ petition has been filed by the Union of India to quash the order passed by the Central Administrative Tribunal, Chennai Bench, dated 30.10.2018 in O.A.No.310/00517/2017, wherein, the impugned charge memo dated 23.02.2017, issued against the first respondent has been quashed by the Tribunal.

2. The brief facts leading to the filing of the writ petition is as follows.

The petitioner is the Union of India and the first respondent



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herein was working as a Senior Intelligence Officer (SIO), on deputation, in the office of the Directorate General of Central Excise Intelligence (DGCEI), Chennai Zonal Unit from 01.07.2003 to 29.08.2008. While he was in duty, he had investigated a case of duty evasion by M/s Industrial & Power Solutions, Ramapuram and he had conducted a search at the premises on 24.07.2007 and seized certain goods taxable under Excise Duty Laws. Further, he had prepared a draft show cause notice under the rules and forwarded to the Additional Director, Chennai Zonal Unit on 22.08.2008 for approval and he had also noted in the file that there could be a service tax evasion, which needed further investigation. As the period of deputation came to an end on 29.08.2008, the first respondent was relieved from his duties as SIO at DGCEI, Chennai, vide order dated 27.08.2008 and he was directed to hand over all the case files that he had attended, to his successor Mr.P.Srinivasan. The said Successor Mr.P.Srinivasan had modified the draft show cause notice prepared by the first respondent and placed the same for approval of the Additional Director. In such circumstances, the first respondent was issued with a charge memo dated 23.02.2017, alleging that he was not monitoring the case or its



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investigations in relation to M/s Industrial & Power Solutions and due to non issuance of the show cause notice, there occurred a loss of Rs.15 Lakhs to the Government. Therefore, he filed O.A.No.517/2017 before the Central Administrative Tribunal, Madras Bench to quash the above said charge memo. The Tribunal, vide order dated 30.10.2018, had allowed the application and quashed the charge memo. Challenging the above said order, the Union of India, has filed the present writ petition.

3. The learned counsel for the petitioner submitted that, the first respondent, in his file notes -XVII dated 23.01.2008, had mentioned about the service tax issue, in the case of M/s Industrial & Power Solutions, Chennai. However, he has not taken any further follow up with regard to the service tax issue and also had not mentioned about the same while submitting the draft show cause notice. He further submitted that, the non issuance of show cause notice in the case of M/s Industrial & Power Solutions, Chennai was came to the light, only after the assessee made a representation during October 2014 to the Chairman, CBEC, New Delhi and after a writ petition filing by him before this Court. Therefore, after coming to know about the



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irregularities on the part of the first respondent, the charge memo was issued on 23.02.2017. The specific allegation as against the first respondent is that, he has not monitored the case and proceedings and has not followed up the issue of service tax and inview of the same, a loss to the tune of Rs.15 Lakhs occurred to the Government.

3.1. The learned counsel for the petitioner further submitted that, though there is a delay on the part of the petitioner in issuing the charge memo, the reasons for the delay was properly explained by the petitioner, therefore, by accepting the reasons assigned for the delay, the Tribunal ought to have ordered to proceed the enquiry proceedings. But it has not been considered by the Tribunal in proper perspective and following the decision of the *Hon'ble Supreme Court in P.V.Mahadevan Vs.MD.T.N.Housing Board (2205) 6 SCC 636*, the Tribunal has quashed the charge memo on the ground of delay and laches. Therefore, the order passed by the Tribunal is liable to be set aside.

4. The learned counsel for the first respondent submitted that,



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the first respondent was working as Senior Intelligence Officer (SIO) in Directorate General of Excise Intelligence (DGCEI), Chennai on deputation from 01.07.2003 to 29.08.2008 and during this period, a search was made by him on 24.07.2007 at the premises of M/s Industrial & Power Solutions, Ramapuram, Chennai with regard to the evasion of central excise duty and certain records and excisable goods were seized. He further submitted that, the first respondent had prepared a draft show cause notice on 22.08.2008, however, he was relieved from duty on 29.08.2008, at the investigation stage itself and he had handed over all the files, that he had attended, to his successor, who in turn completed the investigation and took action to issue a show cause notice. Therefore, the allegation that there was omission to monitor the case does not arise. He also submitted that, though the charges relating to the incident took place in the year 2008, charge memo was issued on 23.02.2017, after an inordinate delay of 9 years. As such, the Tribunal has considered the case in proper perspective and has rightly quashed the impugned charge memo, which does not warrant any interference by this court and hence, he prayed for dismissal of the writ petition.



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5. Heard the learned counsel for the petitioner and the learned counsel for the first respondent.

6. The impugned charge memo, issued as against the first respondent, dated 23.02.2017, is extracted as under.

Statement of article of charges framed against Shri R.Sankaranarayanan, Superintendent of Central Excise, Chennai, the then Senior Intelligence Officer, DGCEI, Chennai Zonal Unit.

Article-I

That Shri R.Sankaranarayanan, Superintendent of Central Excise, Chennai was earlier working as Senior Intelligence Officer, DGCEI, Chennai Zonal Unit.

Shri R.Sankaranarayanan, while working as Senior Intelligence Officer, DGCEI, Chennai Zonal Unit, along with others, had attended to the works relating to investigation in respect of an offence case registered against M/s Industrial and Power Solutions, Chennai, for alleged non-payment of Central Excise duty on the Excisable goods manufactured by them. The case was initiated and investigated by Shri R.Sankaranarayanan, the then SIO and Shri S.Arulamudu, the then IO under Shri E.Annadurai and Shri L.Vasu, Assistant Directors. Shri R.Sankaranarayanan (SIO), who investigated the case, after submitting the draft show cause notice on 22.08.2008, was



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relieved on 31.08.2008. He had put up the draft show cause notice on 22.08.2008. At NS XVII, he had stated " during the same period, I & PS engaged M/s Sathya Engineering Consultant as sub-contractors to carry out Epoxy cladding of condenser at Thermal Power Stations, which falls under Maintenance and Repair Services. Investigations is being carried out on service tax angle." On verification from the SCN Register, it is seen that SCN No.77/2010 dated 24.12.2010 had been allotted in respect of the case pertaining to service tax on M/s I & PS and the amount involved had been mentioned as 15 lakhs. However, no such file seems to have been put up and no such file could be found in the unit. This proves that the controlling officer was not monitoring the case and / or its proceedings. On account of the same, there has been a clear loss o revenue of Rs.15 Lacs as no show cause notice appears to have been issued. Thus, it is evident that the issue pertaining to service tax had not been followed up and no SCN submitted for the case.

Thus, Shri R.Sankaranarayanan, Superintendent of Central Excise, Chennai had failed to maintain devotion to duty and acted in a manner unbecoming of a government servant in as much as he had violated Central Civil Services (Conduct) Rules, 1964 contravening the provisions of Rules 3(1)(ii) and (iii) of Central Civil Services (Conduct) Rules, 1964.

By the above acts of commission and omission, Shri R.Sankaranarayanan, Superintendent of Central Excise, Chennai has rendered himself liable for penal action under Rule 14 of Central Civil Services (Classification, Control and Appeal) Rules, 1965.



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7. As against the above charge memo, the first respondent had filed the O.A.No.517/2017 before the Tribunal. In the above said application, the writ petitioner herein has also filed a detailed counter affidavit by narrating the entire facts.

8 Now, the points to be considered are that,

- i) Whether the first respondent has not monitored the case of M/s Industrial and Power Solutions and its proceedings, during his tenure, thereby causing revenue loss to the government.
- ii) Whether the charge memo, dated 23.02.2017, issued after an inordinate delay of 9 years, to be ordered to be prosecuted?

9. Point No.1

According to the first respondent, after conducting search on M/s Industrial & Power Solution, Chennai on 24.07.2007 and seizing certain records and excisable goods, he had conducted the investigation on central excise angle and subsequently, he found that the above said company had engaged M/s Sathya Engineering consultants as sub-



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contractors to carry out epoxy cladding of condenser at Thermal Power Stations, which falls under maintenance and repair services and hence, there could be a service tax evasion. Therefore, he prepared a draft show cause notice on 22.08.2008 and forwarded it for getting approval to the Additional Director, Chennai Zonal Unit and had made an entry in the note file that, there could be evasion of service tax by the company, which needed further investigation. In such circumstances, the first respondent was called back to his parental unit, vide order dated 27.08.2008 and his tenure of deputation was ended on 29.08.2008 and he had handed over all the case files to his successor Mr.P.Srinivasan. The above facts were not denied by the writ petitioner.

9.1. It is to be noted that the first respondent had prepared only a draft show cause notice and had sent it for approval to the authorities concerned and thereafter, his successor, namely Mr.P.Srinivasan has modified the said show cause notice and had placed it for approval. Therefore, it is for his successor to get approval of the show cause notice and to issue to the tax evasor. The records filed by the writ petitioner itself shows that, in respect of M/s Industrial and Power



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Solution, Chennai, the show cause notice was approved only on 30.12.2010 by allotting SCN No.77/2010. At the time of approval of show cause notice, the first respondent had not been worked in the above said unit. However, for the search conducted on 24.07.2007, the impugned charge memo was issued to the first respondent on 23.02.2017, alleging that the issue of service tax had not been monitored and followed up and no show cause notice was submitted. Therefore, without verifying the relevant factors and records, the Department had issued the charge memo and the Tribunal has rightly observed that there is a lack of application of mind on the part of the disciplinary authority in initiating the proceedings.

10. Point No.2

The another aspect to be considered in the present writ petition is that, the charge memo was issued on 23.02.2017, after a lapse of 9 years from the date of incident that happened in the year 2008. The above aspect was duly considered by the Tribunal and has rightly observed that no satisfactory explanation was given for the delay of 9 years, after relieving the officer from his post to initiate disciplinary



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proceedings. Therefore, by relying upon the decision of the Hon'ble Supreme Court in ***P.V.Mahaevan Vs. MD., T.N.Housing Board reported in 2005(6) SCC 636***, (wherein, the Apex Court, in a similar case, has held that allowing disciplinary proceedings, after a long gap of time will be prejudicial to the delinquent officer and has quashed the proceedings) the Tribunal has come to the conclusion that permitting the Department to continue with the disciplinary proceedings, as per the charge memo will be against the principles of natural justice and hence, quashed the charge memo.

11. At this juncture, the learned counsel for writ petitioner submitted that, charge memo cannot be quashed on the ground that the proceedings have been initiated at a belated stage. To support his contentions, he has relied upon a decision of the ***Hon'ble Supreme Court in Secretary, Ministry of Defence and others vs. Prabhash Chandra Mirdha reported in (2012) 11 Supreme Court Cases 565***, particularly paragraph no.12, wherein it is observed as follows.



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“ Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot be 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 proceedings.

12. The learned counsel for the petitioner has also relied upon the another decision of the ***Hon'ble Supreme Court in Chairman, Life Insurance Corporation of India and others Vs. A.Masilamani reported in 2013(6) Supreme Court Cases 530***, wherein, at paragraph No.18, it has been stated thus.

“ 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



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of the disciplinary proceedings, cannot ordinarily be quashed by the court. The same principal 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.

13. The above said judgments of the Apex Court are not helping the case of the writ petitioner. Because, admittedly, the delay in issuing charge sheet had created prejudice to the first respondent, as he had already prepared a draft show cause notice and forwarded to the approval officer on 22.08.2008. Thereafter, he was relieved from the deputation duty, vide order dated 27.08.2009 and his deputation period was ended on 29.08.2008. A perusal of the records shows that the above said show cause notice was returned to the unit and it was modified and forwarded by the successor, viz., Mr.P.Srinivasan to the Additional Director at CHZU for approval. Subsequently, the show cause notice was approved only on 30.12.2010. It is to be mentioned that, there is no materials placed on the side of the Department to prove



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that the first respondent was responsible for the loss occurred to the Government.

14. At this juncture, it is useful to rely upon a decision of this Court *in W.P.No.15090 & 15164 of 2021 dated 30.08.2022 (K.Radhakrishnan and another Vs. Tamil Nadu Generation and Distribution Corporation Limited and others)*, wherein, it is held as follows.

14. **Inordinate delay in initiating Disciplinary Proceedings:**

In the instant case, the 3rd respondent had issued charge memo on 14.06.2019 and initiated disciplinary proceedings on the very same set of facts and evidence after the lapse of 11 years from the date of occurrence and nearly two years from the date of acquittal in the criminal case. The 3rd respondent ought to have levelled all the charges against the petitioner at the same time. The delay in initiating and proceeding with the departmental proceedings prejudicially affects the delinquent employees. Further, in the counter affidavit filed by the 3rd & 4th respondents, no valid reasons are mentioned for the inordinate delay of 11 years in commencing the disciplinary proceedings against the petitioners.

14.1 Since the proposition of law laid down by the Hon'ble Supreme Court that there cannot be inordinate delay in initiating



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disciplinary proceedings, which has also been followed by the Hon'ble Division Bench of this Court, as stated above, is squarely applicable to the facts of the case on hand, where the disciplinary proceedings were initiated after 11 years of framing charges for receipt bribe.

14.2 In this context, it is pertinent to rely upon the decision of the Hon'ble Supreme Court in **Noida Entrepreneurs Association vs. Noida and others** reported in 2007 (5) AIC 37 as well as the Hon'ble Division Bench of this Court in the case of **V.Boopathy vs. Unioin of India (W.P.No.26664 of 2014 dated 01.04.2015)**, wherein the Hon'ble Division Bench of this Court at paragraph No.17 held as follows:-

“17. In the above said facts and circumstances, it can be very well said that the initiation of the disciplinary proceedings by the issuance of the Charge Memo dated 18.12.2013 shall cause serious prejudice to the petitioner leading to miscarriage of justice. Delay of more than 16 years, a considerable part of which has not been satisfactory explained, will result in serious prejudice to the petitioner leading to miscarriage of justice. Hence we are inclined to accept the contention of the petitioner. In this regard, the Tribunal seems to have misguided itself in appreciating and applying the instructions given in the Compendium on Postal Complaints, 1998. We



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are unable to agree with the reasons assigned by the Tribunal for the dismissal of the Original Application. We are of the considered view that the case on hand is a fit one for quashing the departmental proceedings.”

Therefore, as per the ratio laid down in the above decisions as well as in the decision of the Apex Court in ***P.V.Mahadevan Vs. MD.T.N.Housing Board (2205) 6 SCC 636***, we have no hesitation to hold that the delay in initiating and proceeding with the departmental proceedings prejudicially affects the delinquent employees and as such, the charge memo issued against the first respondent cannot be allowed to be prosecuted, as the same is against the principles of natural justice. Further, considering all the facts and circumstances of the case, the Tribunal has rightly quashed the charge memo on the ground of delay and laches also and we find no reason to interfere with the order passed by the Tribunal.

15. Inview of the elaborate discussions made in the foregoing



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paragraphs, the point No.1 and 2 are answered in negative as against the writ petitioner and hence, the writ petition deserves for dismissal.

16. Accordingly, this writ petition is dismissed. No costs.

Consequently, connected miscellaneous petition is closed.

(D.K.K., J.) (P.B.B., J.)

12.09.2023

Index:Yes/No
Internet:Yes/No
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To

1. The Assistant Commissioner, Union of India,
O/o the Commissioner of Central Good and
Service Tax & Central Excise,
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692, MHU Complex, Anna Salai, Chennai 600 035.
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**D. KRISHNAKUMAR, J.
AND
P.B.BALAJI, J.**
mst

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