*   IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **W.P. (C.) No. 750/2010**

%   **Date of Decision: 05.02.2010**

UNION OF INDIA & ANR.   .... Petitioners
Through Dr. Ashwani Bhardwaj, Advocate

Versus

M. S. BHATIA   .... Respondent
Through None

CORAM:
HON'BLE MR. JUSTICE ANIL KUMAR
HON'BLE MR. JUSTICE MOOL CHAND GARG

1.	Whether reporters of Local papers may be allowed to see the judgment?	Yes
2.	To be referred to the reporter or not?	No
3.	Whether the judgment should be reported in the Digest?	No

MOOL CHAND GARG, J.
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C.M.Nos. 1567/2010 (exemptions)

Exemptions allowed subject to all just exceptions.

Application stands disposed of.

CM No.1569/2010 (delay)

For the reasons stated in the application, the delay is condoned.

Application stands disposed of.

W.P.(C) No.750/2010

1. The petitioners in the present writ petition have assailed the order dated 21.08.2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as the 'Tribunal'), whereby the learned Tribunal has quashed the charge sheet issued to the respondent after ten years of the date of the incident, more particularly because even the allegations were not particularized.

2. It is not disputed by the learned counsel for the petitioners that in the present case there is a delay of more than 11 years in issuing the charge sheet to the respondent who has already retired on 1.4.2009 as Superintendent (Customs & Central Excise) after completing 27 years of service.

3. The allegations made against the respondent pertains to the year 1997 when he was posted in Export Shed at ICD, Tughlakabad, New Delhi. As per the charge sheet issued to the respondent, the allegations made against him were as under:-

> STATEMENT OF ARTICLES OF CHARGES FRAMED AGAINST SHRI M.S. BHATIA, SUPERINTENDENT OF CUSTOMS & CENTRAL EXCISE, DELHI
>
> ARTICLE-I
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> That during his posting in Export Shed at ICD, Tughlakabad, New Delhi, Shri M.S. Bhatia, Supreindent, had given "let export" order in respect of Shipping Bills No. 1033401 to 1033403 and 1033411 all dated 23.9.98 without exercising necessary checks and scrutiny of documents in respect of the above mentioned shipping bills, thus, causing a loss of Rs. 12,06,819/- to the Govt. exchequer by way of disbursement of duty drawback to a firm M/s Rohini International having its office at H-305, New Rajinder Nagar, New Delhi, as no remittance has been received against the goods exported under the above mentioned shipping bills. He, thus, failed to maintain absolute integrity in discharge of his duty with devotion and diligence, acted in a manner unbecoming of a Govt. servant. He also

did not act in his best judgment and thus contravened the provisions of Rule 3(1)(ii) & (iii) of the CCS (Conduct) Rules, 1964

(PRAVEEN JAIN)
COMMISSIONER

4. The statement of imputation in support of articles of charges are available at page no. 36 of the paper book, which reads as under:-

STATEMENT OF IMPUTATION IN SUPPORT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI M.S. BHATIA, SUPERINTENDENT OF CUSTOMS & CENTRAL EXCISE, DELHI

That during his posting in Export Shed at ICD, Tughlakabad, New Delhi, Shri M.S. Bhatia, Superintendent had given "let export" order in respect of Shipping Bills No. 1033401, 1033402, 1033403 & 1033411 all dated 23.9,98 without exercising necessary checks and scrutiny of the documents in respect of the above mentioned shipping bills, thus, causing a loss of Rs. 12,06,819/- to the Govt. exchequer by way of disbursement of duty drawback to a firm M/s Romil International having its office at H-305, New Rajinder Nagar, New Delhi as no remittances has been received against the goods exported under the above mentioned shipping bills. Had Shri M.S. Bhatia, Superintendent, worked with devotion and diligence the loss of Rs.12,06,819/- caused to the Govt. exchequer could have been prevented. ON this ground a Show Cause Notice under DRI F.No. 23/154/98-DZU, dated 17.6.1999 was issued to him by the DRI, New Delhi while adjudicating the above show cause notice vide Order-in-Original No. AKR/CC/ICD/TKD/47 dated 05.9.2003 held Shri M.S.Bhatia, Superintendent guilty of dereliction of duty.

Shri M.S. Bhatia, Superintendent, thus, failed to discharge his duty with devotion and diligence and acted in a manner unbecoming of a Govt. servant. He also did not act in his best judgment and thus contravened the provisions of Rule 3(1) (ii) & (iii) of the CCS (Conduct) Rules, 1964

(PRAVEEN JAIN)
COMMISSIONER

5. A reading of the aforesaid goes to show that these are vague and do not particularize as to what necessary checks and scrutiny of documents were required to be done by the respondent at the relevant time i.e. on 23.9.1998. The charge memo has been issued on 26.3.2009 i.e. exactly after 11 years. As stated above, the respondent has already retired from service.

6. The Tribunal has taken note of not only the delay which has been caused but also the exoneration of the respondent under Section 113 and 114 of the Customs Act, 1962.

7. There is no dispute that during adjudication proceedings to which the respondent was also a party and did participate in the proceedings he was exonerated of the allegation made against him and no penalty was imposed upon him under the Customs Act.

8. The Tribunal has noticed in its order that even before the adjudicating authority there was no reference or particulars mentioned by the petitioners as to the manner in which the respondent has been found guilty of dereliction of duty. Admittedly, there is a delay of 11 years in this case of charging the respondent for having caused misconduct by alleged dereliction of duty.

9. No satisfactory explanation has been given by the petitioners about the delay. The Tribunal has considered the aforesaid aspect in detail and after taking note of the list of events brought to the notice of the Tribunal as mentioned in paragraph 14 of the impugned order and relying upon the judgment of the Apex Court in *Govt. of A. P. V. Appala Swamy, 2009 (1) SCC (L & S) 440* has observed that the explanation of delay tendered by the petitioners on the face of it is wrong as in the show cause notice issued in 1999, the loss to the Government was ascertained. The table given by the respondents to explain the delay after 10.03.1999 shows that they were waiting for 1st stage advice for major penalty which was given by the Central Vigilance

Commission on 15.7.2003 and the adjudication order was received on 5.9.2003 yet it took petitioners more than 6 years to issue charge sheet to the respondent. It has been observed that :-

> 26………….Though we are of the considered view that when a show cause notice was issued to applicant all the facts and circumstances regarding alleged default of applicant were known to them, yet they had waited without any reference to the context to the customs proceedings and ultimately without acting on it where the applicant was exonerated of the omissions which are now transformed into an alleged misconduct, the proceedings initiated in 2009 no satisfactory explanation has come forth. Merely giving the dates and stating the efforts made would not suffice, as there has to be credibility and reasonableness in the explanation. Applicant in whose reference on 8.5.2007 Central Vigilance Commission's 1st stage advice was not reconsidered, yet certified copies of the relied documents were obtained after about two years when these documents were available with the respondents in their adjudication proceedings under the Customs Act, the enquiry was belatedly held on initiation.
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> 27. From the point of view of alleged misconduct of applicant as well as he has no role to play as merely while functioning as Superintendent he has given "Let export" order in the same methodology, practice and customs which were prevalent and also followed in the department. Neither the applicant has derelicted in duty, nor by his willful act he had the intention to cause any willful loss to the Government, which is already recovered. Now, holding a disciplinary proceeding against applicant post-retirement though on voluntary grounds would not serve any purpose. At best, the alleged misconduct of applicant for his alleged negligence, which is not culpable one and shall not to be construed as a misconduct in view of the decision of the Apex Court in J. Ahmed's case (supra).
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> 28. Moreover, an error of judgment is not treated as a misconduct as per the decision of the Apex Court in Inspector Prem Chand v. Govt. of N.C.T. of Delhi & Others, 2007 (5) SCALE 421. The contention of the respondents and their reliance on the decision in Narain Singh (supra) whereby allegations were of serious nature giving loss to the public exchequer, the ratio would not apply in the instant case. After applying the test in Appala Swamy (supra) the applicant post retirement is now being confronted with the allegations of 1998 where it is not possible for him to procure his defence as well as this has caused prejudiced to him. Applicant from time to time has requested for withdrawing vigilance proceeding but this was not paid any heed to. We do not find any grave misconduct at the outset against applicant. Moreover, despite condoning the alleged misconduct of applicant, which has not been found otherwise in the Customs Act, not holding a proceeding for a period of 11 years the delay is inordinate as well as unexplained, causing prejudice to the applicant.
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> 29. Resultantly, for the foregoing reasons, OA is allowed. Impugned charge sheet is set aside. No costs.

10. Counsel for the petitioners have relied upon the following judgments:-

(i) Municipal Corporation of Delhi & Anr. Vs. R.V. Bansal, 130 (2006) Delhi Law Times 235 (DB);

(ii) Union of India & Ors. Vs. Upendra Singh, (1994) 3 SCC 357;

(iii) Dhondiram Tatoba Kadam Vs. Ramchandra Balwant Rao Dubal (since deceased) By His LRS. And Anr. (1994) 3 SCC 366;

(iv) Dy. Inspector General of Police Vs. K.S. Swaminathan, (1996) 11 SCC 498;

(v) State of Punjab and Ors. Vs. Ajit Singh, (1997) 11 SCC 368;

(vi) Secretary to Government, Prohibition & Excise Department Vs. L. Srinivasan, (1996) 3 SCC 157; and

(vii) Government of Andhra Pradesh and Ors. Vs. V. Appala Swamy, (2007) 14 SCC 49.

11. We have gone through the order passed by the Tribunal as well the judgments which have been cited before us. We find that in the facts of this case, the judgments relied upon by the petitioners are of no help to their case for the simple reason that as observed by the Tribunal there is no adequate explanation for not having issued the charge sheet soon after the incident was brought to the notice of the petitioners. Similarly, even the charges are not particularized so as to bring them within the definition of a grave charge. The requirement of Rule 9 of the CCS (Conduct) Rules is also not satisfied.

12. The issue of delay has also been discussed by the Apex Court in various judgments including the judgment delivered in the case of *State*

of Madhya Pradesh Vs. Bani Singh and Anr. 1990 (Supp) SCC 738, wherein it has been held:-

> 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, 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 investigation 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.

13. Similarly, in the case of *State of A.P. Vs. N. Radhakishan (1998) 4 SCC 154,* the Apex Court has been pleased to hold:-

> 19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of that matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings initiated against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings

> should be allowed to take their course as per relevant rules but then delay defeats justice. **Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.**

14. Taking into consideration the aforesaid as well as the judgment of which reference has been made by the Tribunal, we find no reason to interfere with the order passed by the Tribunal under Article 226 of the Constitution of India. The writ petition is accordingly dismissed.

CM No. 1568/2010 (Stay)

In view of the orders passed above, this application has become infructuous and is disposed of accordingly.

MOOL CHAND GARG, J.

FEBRUARY 05, 2010 **ANIL KUMAR, J.**

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