

(2018) 12 GAU CK 0009
In the Gauhati High Court
Case No : Writ Petition (C) 1399 of 2017

Union Of India And 3 Ors

APPELLANT

Vs

Anup K. Srivastava

RESPONDENT

Date of Decision : 10-12-2018

Acts Referred:

Public Premises (Eviction of Unauthorised Occupants) Act, 1971 — Section 3, 4(2), 7(3), 7, 9
Public Premises (Eviction of Unauthorized Occupants) Rule, 1971 — Rule 8
CCS (CCA) Rules, 1965 — Rule 14
Central Civil Services (Conduct) Rules, 1964 — Rule 3(1)(iii)
Constitution Of India, 1950 — Article 226

Citation : (2018) 12 GAU CK 0009

Hon'ble Judges : Arup Kumar Goswami, J;Ajit Borthakur, J

Bench : Division Bench

Advocate : S C Keyal, M L Gope

Final Decision : Dismissed

Judgement

Ajit Bothakur, J

1. Heard Mr. S. C. Keyal, learned Assistant Solicitor General of India, appearing on behalf of the writ petitioners. Also heard Dr. Anup Kumar Srivastava, respondent-in-person.

PETITIONERS' CASE:

2. By this writ petition, preferred under Article 226 of the Constitution of India, the petitioners-Department of Revenue, Ministry of Finance, Central Board of Excise & Customs, have challenged the legality and validity of the order, dated 31.08.2016, passed by the learned Central Administrative Tribunal (CAT), Guwahati Bench, in O.A. No. 040/00122/2016, whereby and whereunder the charge-sheet, dated 14.04.2016, and the Office Memorandum, dated 18.04.2016, against the sole respondent, herein, have been quashed and set aside.

3. The case of the petitioners, in a nut-shell, is that, they issued the Charge Memorandum, being No. 08/2016, dated 14.04.2016, and Office Memorandum, dated 18.04.2016, to the sole respondent under Rule 14 of the CCS (CCA) Rules, 1965, alleging wilful insubordination and disobedience of the order of the Central Board of Excise and Customs, New Delhi ('CBEC', for short).

4. Being aggrieved by the issuance of the Charge-Sheet, dated 14.04.2016, the sole respondent approached the CAT, Guwahati Bench, by way of filing the O.A. No. 040/00122/2016, seeking quashing and setting aside of the impugned Charge Memorandum, dated 14.04.2016 and Office Memorandum, dated 18.04.2016. The learned CAT, on 26.04.2016, allowed the above prayer of the respondent, herein. Being dissatisfied, the instant petitioners approached this Court by way of filing the writ petition being WP(C) 3123/2016 and this Court, vide order, dated 21.06.2016, set aside the impugned order, dated 26.04.2016, passed by the learned CAT, with a further direction to the learned CAT to hear the matter, afresh, after giving reasonable opportunity of hearing to both parties. The petitioners and the sole respondent, thereafter, filed the objection and rejoinder affidavits, respectively. The learned CAT, Guwahati Bench, disposed of the matter, vide judgment & order, dated 31.08.2016, again, quashing and setting aside the Charge Sheet, dated 14.06.2016, and Office Memorandum, dated 18.04.2016.

5. The circumstances leading to filing of the O.A, above-mentioned, by the sole respondent, is that, the Estate Officer, vide order, dated 05.06.2014, adjudicated the matter relating to unauthorized occupation of departmental/revenue pool accommodation by the respondent by holding that he was unauthorizedly occupying the accommodation w.e.f. 04.03.2005 to 07.03.2010 and that an amount of Rs. 21,62,165/-along with interest be realized from him after deducting certain amount paid by the respondent as licence fee. According to the petitioners, the sole respondent, who was occupying the departmental pool quarter at New Delhi on the basis of letter, dated 07.08.2006, was illegal, as the subsequent letter, dated 13.08.2007, issued by the departmental authority regarding occupation of the quarter by the respondent was, neither, indicative of giving any retrospective effect, nor, it was in supersession of letter, dated 07.08.2006. As per the petitioners, the respondent was occupying the accommodation unauthorizedly since 04.03.2005. The Charge Memorandum, dated 14.04.2016, was issued against the respondent after due compliance of the provisions of the rules and departmental formalities as well as the order, passed by the Estate Officer on 05.06.2014. Hence, there was no inordinate delay in issuing the Charge Memo as observed by the learned CAT, Guwahati Bench, in its order, dated 31.08.2016.

GROUNDS OF WRIT PETITION:

6. Being highly aggrieved of the order, dated 31.08.2016, passed by the learned CAT, Guwahati Bench, the petitioners, by filing the present writ petition, have raised the following grounds, amongst others:

(i). That the request of the respondent to the Central Board of Excise and Customs (CBEC) to retain the accommodation in Asian Games Village Complex at Delhi, while he was posted at Meerut, was rejected vide order, dated 07.08.2006. Hence, his accommodation was cancelled by the E.O. on 03.07.2006, with a direction to vacate it by 15.07.2006 and to pay a sum of Rs. 3,55,852/- for the period of unauthorized occupation.

(ii). That the petitioners had rejected the representation of the respondent by a detailed and speaking order in compliance of the order, dated 03.07.2006, passed by the learned CAT, Guwahati Bench, in O.A. No. 1777/2006.

(iii). In the meantime, against the petitioner's order, dated 29.05.2009, directing the respondent to vacate the accommodation as well as to pay Rs. 17,39,737/- as market rent etc., payable till 30.04.2009, with interest, the respondent herein, filed an appeal before the learned District Judge, Saket, New Delhi which was disposed of, vide order, dated 15.11.2011, by holding that the imposition of damages, noted-above, as without jurisdiction for want of any show -cause notice to him. However, in the said appeal, the respondent did not press for any relief against the direction of eviction in view of the fact that the accommodation had since been vacated by the respondent, on 31.10.2011, and he had been allotted another government accommodation in Kaka Nagar, New Delhi.

(iv). Against the issuance of another impugned order, dated 02.06.2012, the learned District Judge, Saket, New Delhi, on an appeal preferred by the respondent, by its order, dated 21.01.2014, observed that the said order directing the respondent to deposit Rs. 21,62,165/- for the period w.e.f. 04.11.2005 to 07.03.2010, suffered from want of jurisdiction and therefore, the matter was remanded back to the concerned E.O. with a direction to give an opportunity of hearing and pass fresh order, in accordance with law.

(v). The learned Tribunal failed to appreciate that the Charge-Sheet, dated 14.04.2016, had been issued for the respondent's disobedience of the CBEC order, dated 07.08.2006, and also in view of the order, dated 13.08.2007, the respondent did not become eligible for departmental pool accommodation at New Delhi on his transfer to Meerut.

(vi). The learned Tribunal failed to appreciate that the CBEC'S Circular, dated 13.08.2007, will be applicable from the date of issue of the said Circular and not with retrospective date.

(vii). Although the departmental proceedings against the applicant could not be initiated due to status-quo order passed by the learned CAT, Principal Bench, New Delhi, but the learned CAT incorrectly held that the issue of demand of damage rent is subjudice before the learned District Judge, Saket, which, however, has already been adjudicated by the Estate Commissioner. Therefore, the very basis of the Tribunal to hold that the issuance of Charge Sheet on 14.04.2016 smacks mala fide, is totally baseless.

ARGUMENTS:

7. Mr. S. C. Keyal, learned Assistant Solicitor General, of India, appearing on behalf of the petitioners, contended that the finding of the learned CAT to the extent that the matter relating to deposit of Rs. 21,62,125/- is pending adjudication, was contrary to the record, as the Estate Officer had already adjudicated the issue by its order, dated 05.06.2014, holding the respondent to be unauthorized occupant of the departmental/ revenue pool accommodation during the period w.e.f. 04.03.2005 to 07.03.2010 and further, asked him to deposit the above-quoted amount along with interest after deducting the amount paid by him, as license fee, and as such, the impugned order, dated 31.08.2016, passed by the learned CAT, is liable to be set aside and quashed.

8. Mr. S. C. Keyal, learned Assistant Solicitor General, of India, further contended that there is inherent contradiction in finding of the learned CAT that on the one hand, the matter is pending adjudication before the learned District Judge while on the other hand, the respondent was retaining the said accommodation on the basis of either Court's order/official orders whereas the Estate Officer vide his order, dated 05.06.2014, based under the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971, had already decided and found the respondent as unauthorized occupant of the Government Accommodation and as such, the impugned order, dated 31.08.2016, is liable to be set aside and quashed.

9. Mr. Keyal also contended that the finding of the learned Tribunal that the letter, dated 07.08.2006, which is the foundation of the Charge-Sheet, dated 14.04.2006, has been superseded by the Departmental letter, dated 13.08.2007, allowing the respondent posted in Delhi, Noida, Gaziabad, Faridabad and Gurgaon, to retain the Quarter in Delhi is not correct, because the letter, dated 13.08.2007, does not at all mention that the same is being issued in supersession of the earlier letter, dated 07.08.2006.

10. Mr. Keyal submitted that neither the provisions of the said letter, dated 13.08.2007, were given the retrospective effect nor the provisions of the said letter was applicable from the date of its issue, as the respondent was under unauthorized occupation of the Government accommodation since 04.03.2005 i.e. prior to the issue of the letter, dated 13.08.2007, and as such, benefit of the said letter is not extendable to him and hence, the finding of the learned CAT is perverse and in consequence, the impugned order, dated 31.08.2016 is not sustainable.

11. Mr. Keyal, learned Assistant Solicitor General, of India, contended that the Charge-Sheet, dated 14.04.2016, was issued to the respondent after completing the departmental procedure following the order, dated 05.06.2014, passed by the Estate Officer holding the respondent, as unauthorized occupant and as such, it cannot be said that the Charge-Sheet was issued after inordinate delay. Moreover, the petitioners were not afforded any opportunity to place on record

the materials before the learned Tribunal to show that there was inordinate delay in issuing the Charge-Sheet and therefore, the impugned order, dated 31.08.2016, is liable to be set aside and quashed.

12. Mr. S.C. Keyal, learned Assistant Solicitor General of India for the petitioners, submitted that Tribunal did not issue notice to the petitioners in O.A. No. 040/00122/2016 and as such, they did not get any opportunity to make reply explaining on each and every aspect of the case of the respondent since its inception. Mr. Keyal further submitted that the respondent was allotted with the accommodation in New Delhi on 30.04.1999, while he was posted as Additional Commissioner in the Directorate of Publication in New Delhi and even after transfer out of Delhi to Rajkot on 03.02.2005 and thereafter to Meerut on 13.06.2005, the respondent did not vacate the government accommodation in violation of the provisions of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and in complete defiance of the CBEC's decision, dated 07.08.2006, not to allow him to continue in occupation and further, the cancellation of the allotment made by the Estate Officer vide order, dated 03.07.2006. According to Mr. S. C. Keyal, the respondent resorted to insubordinate behavior by not responding to the repeated orders of the competent authority to vacate the accommodation and to pay charges, which accumulated to a sum of Rs.21,62,165/- for the period under unauthorized occupation of the government accommodation, after hearing the respondent, whereby he contravened Rule 3 (1) (iii) of the Central Civil Services (Conduct) Rules, 1964. Mr. Keyal emphatically submitted that the disciplinary action has been initiated after the Court of the learned District Judge, Saket, New Delhi passed on 15.11.2011, in PPA No. 68/2009 asking the authority to consider to draw up an appropriate proceeding for imposition/ recovery of damages under Section 7 of the Public Premises Act from the appellant-respondent herein, followed by another order, dated 21.01.2014, passed in PPA No.07/2013 whereby the Estate Officer concerned was directed to settle the matter at the earliest.

13. Per contra, Mr. Anup K. Srivastava, the respondent-in-person contended that the departmental proceeding has been initiated against him by the Department after unexplained and unreasonable delay of nearly 10 (ten) years on the basis of non-existent legal grounds with a mala-fide intention to stop his promotion to the next higher post of Principal Commissioner, Customs and Central Excise ignoring the revised policy of allocation and retention of government accommodation, dated 13.08.2007. Mr. Srivastava further submitted that the impugned Memorandum of Charge-Sheet, dated 14.04.2016, is bad inasmuch as, the same is against the impugned consequential order passed on 18.04.2016 arising out of the impugned Memorandum of Charge and the provisions of DoPT OM, dated 02.11.2012, as well as being contrary to the order, dated 23.09.2015, passed by the learned CAT in O.A. No. 3385/2015 and order, dated 08.02.2016, passed in CP No. 731/2015 by the learned Principal Bench, CAT, New Delhi for processing finalization of his promotion to the next higher post.

APPRECIATION:

14. We have given due consideration to the arguments advanced by learned Assistant Solicitor General of India for the petitioners and the respondent-in-person. Also perused the documents.

15. The basic dispute between the parties, as it appears from the record, lies in the respondent's continuous alleged unauthorized occupation of a departmental pool accommodation in New Delhi since the year 2000 and even during the period of his posting at Rajkot and Meerut as Commissioner, Customs and Central Excise and without payment of outstanding license fees amounting to Rs.21,62,165/- due thereon, which entailed the department drawing up of a disciplinary proceeding, after about 10 (ten) years, at a time, when his name was recommended on 09.03.2015 by the Departmental Promotion Committee (DPC) for promotion to the post of Principal Commissioner of Customs and Central Excise (SAG). By the instant petition, the petitioners have assailed the impugned order, dated 31.08.2016, passed by the learned CAT, Guwahati Bench, Guwahati, Assam in O.A. No. 040/00/ 122/2016, contending, inter-alia, that no opportunity of hearing to the respondents/ petitioners herein was given and thereby allowed the application of the petitioner/ respondent herein quashing the Charge-Sheet, dated 14.04.2016, and the impugned Memorandum No.08/2016, dated 14.04.2016, and consequently, the impugned order, dated 18.04.2016, which is extracted hereinbelow-

By Registered Post

"F No C-14011/14/2016-Ad V Government Ministry Department Central Board of of of Excise India Finance, Revenue & Customs (Office of Chief Vigilance Officer) 6th Floor, Hudco Vishala Building, Bhikaii Cana Place, New Delhi - 66 New Delhi, dated the 14th April, 2016

MEMORANDUM No.08/2016

The President proposes to hold an enquiry against Dr Anup Kumar Srivastava, Commissioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of imputation of misconduct or misbehavior in respect of which the inquiry is proposed to be held is set out in the enclosed statement of articles of charge (Annexure-I). A statement of imputations of misconduct or misbehavior in support of the article of charges is enclosed (Annexure-11). A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained are enclosed (Annexure-III & IV).

2 Dr Anup Kumar Srivastava, Commissioner is directed to submit within 10 days of the receipt of this memorandum a written statement of his defence and also to state whether he desires to be heard in person.

3 Dr Anup Kumar Srivastava, Commissioner is informed that inquiry will be held only in respect of those articles of charges as are not admitted. He should,

therefore, specifically admit or deny the articles of charge

4 Dr Anup Kumar Srivastava, Commissioner is further informed that if he does not submit his written statement of defense on or before the date specified in para 2 above, or does not appear in person before the Inquiring authority or otherwise fails or refuses to comply with the provisions of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 or the orders / directions issued in pursuance of the said Rule, the inquiry authority may hold the inquiry against him ex-parte

5 Attention of Dr Anup Kumar Srivastava, Commissioner is invited to Rule 20 of the Central Civil Services (Conduct) Rules, 1964, under which no Govt servant shall bring or attempt to bring any political or outside influence to bear upon any authority to further his interests in respect of matters pertaining to his service under the Government If any representation is received on his behalf from another person in respect of any matter dealt with in these proceedings, it will be presumed that Dr Anup Kumar Srivastava, Commissioner, is aware of such a representation and that it has been made at his instance and action will be taken against him for violation of Rule 20 of the Central Civil Services (Conduct) Rules, 1964

6 Receipt of this memorandum may be acknowledged (By Order and in the name of the President) (B K Mahanta) UNDER SECRETARY TO THE GOVT OF INDIA
End (i) Annexure Ito IV ANNEXURE-I

"STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST DR. ANUP KUMAR SRIVASTAVA, COMMISSIONER.

Article I

Dr Anup Kumar Srivastava, Commissioner, while posted as Additional Commissioner in the Directorate of Publication, New Delhi, was allotted a revenue pool accommodation House No S-111484, Asian Games Village Complex, New Delhi on 30. 04.1999 On his transfer from Delhi, initially to Rajkot on 03. 03. 2005 and subsequently to Central Excise Commissionerate, Meerut on 13. 06. 2005, he failed to vacate the Govt Premises / accommodation as per the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971. Even after his request for allowing him accommodation in Delhi during his posting at Meerut was rejected by the Board vide their letter F No 213/4/2006-Ad Vill(EC), dated 07.08.2006, he continued to unauthorisedly occupy the said accommodation. Since he did not vacate the accommodation and failed to deposit the Govt. dues, the Estate Officer cancelled the allotment vide order dated 03.07.2006 He was directed vide letter No I-4(23)Estate/2005/3903 dated 03.07.2006 to vacate the accommodation by 15 07.2006 and also to pay charges worth Rs 3, 55, 852/- for the period of unauthorized occupation But he continued to remain in unauthorised occupation of the said accommodation till 07 03 2010. As per the order dated 05 06 2014 passed by the Estate Officer in terms of the provisions of Public Premises (Eviction of Unauthorised Occupants) Act, 1971, the

outstanding dues towards unauthorized occupation of the said accommodation for the period 04.03 2005 to 07.03.2010, has been finally determined to be Rs 21,62,165/- as damage rent and due interest, which is yet to be paid by him

Thus, Dr Anup Kumar Srivastava, Commissioner has not only wilfully defied the lawful order passed by the Estate Officer to vacate the Government accommodation, but he has also defied the order dated 07 08.2006 of the Board (CBEC), which tantamounts to wilful insubordination and disobedience of the order of the Board. By the aforesaid acts of commission and omission, he has wilfully defied the orders of the authorities, which amounts to conduct unbecoming of a Government servant, thereby contravening Rule 3 (1) (iii) of the CCS (Conduct) Rules, 1964"..

ANNEXURE-II

"STATEMENT OF IMPUTATIONS OF MISCONDUCT OR MISBEHAVIOUR IN SUPPORT OF ARTICLE OF CHARGE FRAMED

AGAINST DR. ANUP KUMAR SRIVASTAVA, COMMISSIONER.

1 . Dr Anup Kumar Srivastava was allotted a revenue pool accommodation i.e S-I1/484, Asian Games Village Complex, New Delhi on 30 04.1999 while he was posted as Additional Commissioner in the Directorate of Publication, New Delhi

2 The officer was transferred out of Delhi to Rajkot vide Order No 29/2005 dated 03 03.2005 and was relieved on 03 03 2005 As per Rules , the Govt Premises / accommodation was to be vacated by the officer on his transfer out of Delhi , but he neither vacated the same nor applied for permission for retention of the same for a period of two months on normal licence fee and for six months on double licence fee.

3 In the meantime, the officer was transferred to the Central Excise Commissionerate, Meerut on 13 06 2005 and he joined there as Commissioner (Appeals) but he still did not vacate the aforesaid Govt accommodation.

4. The officer had made a request to the Customs & Central Excise Board for considering his request for allowing retention of accommodation in Delhi during his posting in Meerut The Board vide their letter F No 213/4/2006-Ad VIII(EC) dated Q7 08 2006 decided that since the station requested i e Noida, Ghaziabad being outside the Municipal Limit / jurisdiction of Delhi Commissionerate, the representation could not be accepted

5. Since the officer did not vacate the accommodation, as well as failed to deposit the Govt dues, the Commissioner of Central Excise, Delhi-I cancelled the allotment of the officer vide his order dated 03 07 2006 and the officer was so communicated vide letter No 1-4C235Ese7/2005/3903 dated 03 07 2006 with the direction to vacate the accommodation by 15.07 2006 and also to pay accommodation charges of Rs 3,55,852/- for the period of unauthorized occupation as per rules

6. Against the aforesaid order dated 03.07 2006, the officer filed an O.A in the CAT and the said O A was disposed off by the CAT with the direction to the Department that the present O A would be treated as a representation of the officer and would be decided through a detailed and speaking order

7. Thereafter, an eviction notice under Section 4(2) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued to the officer on 10 10 2006 and the said Show Cause Notice was adjudicated on 25 05 2009 By the aforesaid order, the officer was again directed to vacate the premises in question and pay an amount of Rs 17,39,737/- on account of license fee and market rent payable till 30 04.2009, with due interest.

8. Against the aforesaid order, the officer filed an appeal before the District Court vide PPA No 6812009 dated 27 7 2009 and the same was disposed of by the District Court vide Order dated 15 11 2011, with the observation that the Show Cause Notice issued to the officer was without jurisdiction and the same was set aside with the further observation that the department may in the future have proceedings against the officer in accordance with law,

9. In view of the directions of the Court dated 15 11 2011, a notice under Sub-Section 3 of Section 7 of Public Premises (Eviction of Unauthorised Occupants) Act, 1971 vide letter of the department being C.No 1-4(50)Estate/Misc./01.03./Pt /1782 dated 02 06 2012 was issued wherein the officer was directed to deposit Rs. 21,62,165/- for the period of 04.11 2005 to 07.03.2010 towards the dues payable for the permissible period of 2 months on normal licence fee, further 6 months on double licence fee and then market rent i e. Rs 41,310/- per month for the period from 04 11 2005 to 07 03 2010 The officer was also directed to deposit the interest applicable The Case was adjudicated on 18.01 2013

10. Against this order, the officer filed an appeal before the District Judge & A&J 1/c (south), Saket Court Complex, New Delhi vide PPA No. 07/2013 and took an objection that Dr John Joseph who was acting as the Commissioner (Estate Officer) was transferred from the said position and posted as ADG, DRI (Head Quarter, Delhi) and stood relieved w e f 11 01 2013 and thus, did not have the requisite jurisdiction of Estate Officer on 18 01 2013 when the order was issued.

11. The case was decided by District Judge Court vide order dated 24 01.2014 wherein the Court observed the order suffers from want of jurisdiction. The matter was remanded to the Concerned Estate Officer with a direction to give an opportunity of hearing and pass fresh order in accordance with law

12. In compliance with the Court order, a personal hearing was given to the officer on 3. 02.2014, which was duly attended by the officer and the said SCN was adjudicated by the Estate Officer on 05.06 2014, whereby the officer was directed to pay a sum of Rs. 21,62,165/- towards unauthorized occupation for the period of 04 03 2005 to 07 03.2010 for the accommodation in question.

13. Against this order, the officer filed an appeal again on 04 07 2014 to the District Judge (South), Saket Court Complex, New Delhi vide PPA No 03/2014 by questioning the authority of the Commissioner, Central Excise, Delhi-1 to act as an Estate Officer without there being a notification to this effect published in the official gazette as condition precedent to the PP Act, 1971".

16. Perusal of the impugned order, dated 31.08.2016, reveals that the learned CAT, Guwahati Bench, Guwahati adjudicated the reliefs sought by the petitioner/ respondent herein for setting aside and quashing of the Memorandum of charge, dated 14.04.2016, along with the Articles of charges and statement of imputations of misconduct or misbehavior and the disciplinary proceeding drawn against him and further, the O.M., dated 18.04.2016, arising out of the Memorandum of charge. The learned CAT, after hearing both the parties to the proceeding and appreciation of the pleadings along with the documents annexed thereto, allowed the application, on the basic ground of inordinate unexplained delay of 10 (ten) years in initiating the disciplinary proceeding against the petitioner/ respondent herein. Delivering the impugned order, the learned CAT observed that the delay in initiation of the disciplinary proceeding against the petitioner/ respondent herein caused serious prejudice to him in his promotion in the government service inasmuch as, the respondents/ petitioners herein failed to provide any convincing reason for the inordinate delay in initiation of the proceeding. In para-36 of the impugned order, the learned CAT observed as hereinbelow extracted:-

"35. In the present case, the allegations whatsoever leveled against the applicant are pertaining to year 2006 and whatever steps taken or not taken by the applicant in pursuance of the letters dated 03.07.2006 and 07.08.2007 were apparently within the knowledge of the respondents, yet they took ten years to initiate the disciplinary proceeding, more particularly, at a juncture, when the applicant was in the process of promotion to the post of Principal Commissioner with due recommendation of the DPC and at a time when his CP is pending before the CAT, Principal Bench for not taking any action in the matter of such promotion. We are of the opinion that if the allegation of defiance of letters dated 03.07.2006 and 07.08.2006 which are the foundation of the memorandum of charge dated 14.04.2016 were in mind of the respondents, then, what was the embargo to proceed with the disciplinary proceeding at that very time. In the present scenario of the case, the belated initiation of the disciplinary proceeding is not acceptable".

17. Scrutiny of the instant record, which is annexed with a bunch of documents, reveal that the petitioner was allotted a revenue pool accommodation in Asian Games Village Complex, New Delhi, on 30.04.1999, while he was posted as Additional Commissioner in the Directorate of Publication, New Delhi. The petitioner, thereafter, was transferred to Rajkot vide an order, dated 03.03.2005, and relieved of the post on the same day. It needs to be mentioned that as per Rules of Directorate of Estate, the Government premises, that is, accommodation

was to be vacated by the petitioner normally on his release on transfer from Delhi, but he continued to retain for a period of 2 (two) months on payment of normal license fee. In the meantime, the petitioner was transferred to the Central Excise Commissionerate, Meerut on 13.06.2005 as Commissioner (Appeal), but retained occupation of the said Govt. accommodation. However, the petitioner submitted a representation to the CBEC seeking permission to continue his accommodation in Delhi during his tenure in Meerut. The CBEC considered his representation and decided that since the station requested by the petitioner, namely, Noida, Ghaziabad fall outside the Municipal Limit/ territorial jurisdiction of Delhi Commissionerate, his representation could not be considered and vide letter, dated 07.08.2006, the decision was communicated to him. As the petitioner neither vacated the accommodation nor deposited the Govt. dues for occupation of the revenue pool occupation at New Delhi, the Commissioner of Central Excise, Delhi-1, cancelled the said allotment order issued in favour of the petitioner vide his order, dated 03.07.2006, which was communicated to the petitioner by letter, dated 03.07.2006, with a direction to vacate the accommodation by 15.07.2006 and also to pay outstanding accommodation charges of Rs. 3,55,852/- for the period of alleged unauthorized occupation. Against the aforesaid order, dated 03.07.2006, the petitioner filed an O.A. in the CAT being O.A. No.1777/2006 and the said O.A. was decided vide the order, dated 25.08.2006 with a direction to the Department that the aforesaid O.A. be treated as supplementary representation of the petitioner and to decide giving a detailed and speaking order. Thereafter, an eviction notice under Section 4 (2) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued to the petitioner on 10.10.2006 and his Show-Cause notice reply was adjudicated on 25.05.2009. By the aforesaid order, the petitioner was again directed to vacate the premises and to pay an amount of Rs.17,39,737/-, on account of licence fee and market rent payable till 30.04.2009. Against the aforesaid order, the petitioner filed an appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 before the Court of learned District Judge vide PPA No. 68/2009, wherein the petitioner pleaded that he had vacated the Public premises in question on 31.10.2011 and that another government accommodation in Kaka Nagar, New Delhi, was allotted, as he was posted back in Delhi. It may be mentioned that the charge do not reflect that the department was making a sincere and timely effort for recovery of licence fee/ damages for the period of so called unauthorized occupation of the Govt. accommodation by the petitioner. Vide judgment and order, dated 15.11.2011, the learned District Judge, Saket, New Delhi held that the Show-Cause notice issued to the petitioner was without jurisdiction and as such, the same was set aside with an observation that the Department may initiate proceeding against the petitioner in accordance with law for imposition/ recovery of damages under Section 7 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. In view of the directions of the said learned Court, dated 15.11.2011, a notice under Section 7 (3) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was issued to the petitioner on 02.06.2012 directing him to deposit Rs.21,62,165/-

for the period of 04.11.2005 to 07.03.2010 towards the outstanding dues for the permissible period of 2 (two) months on normal licence fee, further 6 (six) months on double licence fee and monthly rent of Rs.41,310/- for the period from 04.11.2005 to 07.03.2010 with interest thereon as applicable. Against the aforesaid order, the petitioner preferred an appeal under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 before the Court of learned District Judge, Saket, New Delhi, vide PPA No. 07/2013 and by judgment and order, dated 21.01.2014, the learned Court held the opinion that the said order suffered from want of jurisdiction of the Commissioner of Central Excise, Delhi-1 (Estate Officer). Further, a direction was given to afford an opportunity of hearing to the respondent and pass a fresh order in accordance with law within 3 (three) months. Accordingly, opportunity of hearing was given to the respondent on 03.02.2014 and after considering his case, directed the respondent to pay a sum of Rs.21, 62,165/- towards unauthorized occupation of the Govt. accommodation for the period from 04.03.2005 to 07.03.2010. Against the said order, the respondent preferred an appeal being PPA-03/2016 on 04.07.2014 before the learned District Judge (South), Saket, New Delhi challenging the legality and validity of the authority of the Commissioner, Central Excise, Delhi-1 to act as an Estate Officer without there being a notification to this effect, published in the Official Gazette as per law. In the reply affidavit, the Department submitted a copy of S.O. No. 2164 of Gazette of India, dated 24.08.1974, whereby the Collector of Central Excise, Delhi was declared to be appointed as Estate Officer in terms of Section 3 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and another notification No. 26/95-CE (NT), dated 06.06.1995, for the re-designation of Commissioner of Central Excise from Collector of Central Excise. The said PPA 03/2016 was disposed of by the learned District Judge, (South)Saket, New Delhi on 17.02.2017, whereby the matter was remanded back to the Estate Officer to determine the damages payable by the petitioner herein for the period 04.11.2005 to 13.08.2007, in terms of Rule 8 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

18. The record reveals that although the alleged un-authorized occupation of the Government accommodation by the petitioner continued from 04.03.2005 to 07.03.2010 as per the Article of charge, the Memorandum of charge bearing No. 08/2016 was, however, framed on 14.04.2016, that is, after more than 10 years, which, in our opinion, appears to be inordinate delay, without any satisfactory explanation by the department, in initiation of the disciplinary proceeding against the respondent.

19. Be it mentioned here that the Hon'ble Supreme Court and various High Courts, in a catena of decisions held inordinate delay without satisfactory explanation in initiation of disciplinary proceedings against government servants as unfair and violation of the principles of natural justice. We would relevantly refer to some of such decisions, which were also considered by the learned CAT, Guwahati Bench in O.A. No. 040/00122/2016:-

In State of Madhya Pradesh Vs. Bani Singh and another, 1990 Supp. SCC 738, the Hon'ble Supreme Court held that, "it would be unfair to permit the departmental enquiry to proceed at this late stage."

In P.V. Mahendevan Vs. Md, T.N. Housing Board, (2005) 6SCC 636, the Hon'ble Supreme Court held that.".....allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant

In Union of India Vs. Hari Singh, 2013 (298) E.L.T. 335 (Del), the Delhi High Court held that, "....delay in initiating disciplinary proceedings would constitute denial of reasonable opportunity to defend the charges in the case and therefore, amounts to violation of principles of natural justice."

In Damodar Valley Corporation & Ors v. Ballari Sarkar, 2010(1) SLR 496 the Calcutta High Court held that the disciplinary proceedings should be conducted immediately after commission of the alleged act or soon after discovery of the same. Disciplinary proceeding cannot be initiated after lapse of considerable period.

In Union of India & Ors vs Shri V.Vaite-WP (C) No. 214 (SH) this High Court held, "In the facts of the present case, we do not find any satisfactory explanation for the inordinate delay in issuing the charge memo. In our opinion, there exists no valid reason for inordinate delay in initiation and completion of the disciplinary proceedings. Therefore, proceedings are liable to be quashed on the ground of explained delay in initiating the charge sheet. Accordingly, charge memorandum dated 22.03.2006 is quashed and set aside.

In Union of India v V.K. Sareen, WP(C) No. 4757/2007 the Delhi High Court held, ".....It is trite law that disciplinary proceedings should be conducted soon after the alleged misconduct or negligence on the part of the employee is discovered. Inordinate delay cannot be said to be fair to the Delinquent Officer and since it would also make the task of proving the charges difficult. It would also not be in interest of administration. If the delay is too long and remains unexplained, the court may interfere and quash the charges. However, how much delay is too long would depend upon the facts of each and every case and if such delay has prejudiced or is likely to prejudice the delinquent in defending the enquiry ought to be interdicted."

20. The principles of law laid down in the aforesaid judgments, in our opinion, squarely apply to the facts of the present case. The Department/petitioners have issued memorandum of Charge after lapse of more than 10(ten) years. They were aware of the alleged irregularities committed by the respondent since the year 2005. There is no satisfactory explanation for the inordinate delay in issuing the memorandum of charge and as such, we are of the view that as held by the learned CAT, it will be absolutely unfair to permit the departmental disciplinary proceeding to continue at this belated stage to the prejudice of the charged officer, when the petitioners failed even to suggest remotely that the respondent

attributed to the delay.

21. Considered thus, in our view, the present writ petition is wholly inappropriate and not called for. For all these reasons, the judgment of the CAT cannot be faulted on any legally tenable grounds.

22. Resultantly, the writ petition stands dismissed.