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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1010/2002

New Delhi this the 12th day of September, 2002.

HON'BLE MR. M.P. SINGH, MEMBER (ADMNV)
HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)

C.L. Ambesh,
S/o Sh. Sukh Ram,
R/o 99, Scheme No.8,
Gandhi Nagar, Alwar
Rajasthan.

-Applicant

(By Advocate Shri R.K. Gupta)

-Versus-

1. Union of India through
the Secretary,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.
2. Central Board of Direct Taxes
through its Chairman,
North Block, New Delhi-I.
3. The Director General of Income
Tax (Vigilance),
(Dayal Singh Library Building,
Din Dayal Upadhyaya Marg,
New Delhi.

-Respondents

(By Advocate Shri V.P. Uppal)

ORDER

By Mr. Shanker Raju, Member (J):

By this OA applicant, presently Joint Commissioner of Income Tax has impugned respondents' order dated 28.1.2002, promoting Additional Commissioners to the grade of Commissioner as well as the memorandum dated August, 2001, whereby disciplinary authority disagreeing with the findings of the enquiring authority after recording his conclusion afforded an opportunity to the applicant to file his representation. Applicant has sought quashing of the impugned order and direction to the respondents to open sealed cover and to promote him as Commissioner of Income Tax from the date of his junior with all consequential benefits.

2. Applicant, an IRS of 1982 batch was denied the grade of Additional Commissioner and his name was also kept in sealed cover for promotion to the post of Commissioner of Income Tax on account of disciplinary proceedings initiated in 1991 where the chargesheet was issued on 11.5.94.

3. Applicant was served upon a memorandum for a major penalty under Rule 14 of the CCS (CCA) Rules, 1965 on 11.5.94 for the allegations of loss of documents seized by the officers during the search carried out in the case of Banke Bihari Agarwal of Bharatpur on 14.9.89 and for further misleading and exercising undue pressure and shifting responsibility for loss of documents. He was also charged for forwarding the appraisal report on search without approval and keeping the books of accounts unauthorisedly, amounting to lack of integrity, devotion to duty, unbecoming of a Government servant. Applicant filed his written statement denying the allegations. Thereafter the enquiry proceeded with examination of nine prosecution witnesses. Enquiry was entrusted to the Commissioner of Departmental Enquiries under CVC. Applicant also submitted his defence statement.

4. Enquiry Officer on 31.12.97 submitted enquiry report and all the charges were not proved. Thereupon the matter was forwarded to CVC for advice and by an advice dated 19.3.98 it was advised that the charges have been proved.

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5. On 5.9.2001 a disagreement memo was served upon the applicant with an opportunity to the applicant to file his representation, giving rise to the present OA.

6. Sh. R.K. Gupta, learned counsel appearing for the applicant has taken the following legal contentions to assail the impugned memo:-

i) Relying upon the decision of the Apex Court in State of M.P. v. Bani Singh, 1990 Supp. SCC 738 it is contended that though the incident basis of the disciplinary proceeding has occurred in 1989 but yet a chargesheet was issued to the applicant after five years, i.e., in 1994 without any reasonable and satisfactory explanation for this inordinate delay, vitiating the enquiry.

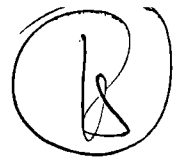
ii) Reference to the CVC of the enquiry report without being put to the disciplinary authority is violative of Rule 15 (3) of the CCS (CCA) Rules, 1965. In this backdrop it is stated that nowhere in the statutory rules a provision exists to refer the finding to the CVC before the penalty stage. It is further stated that from the definition clause in Rule 2 (d) Commission means the Union Public Service Commission and as the enquiry report has been sent where the applicant was exonerated to the CVC who disagreed with the same and referred the case back to the disciplinary authority. In absence of any such provision in the rules any other instructions contained in the Vigilance Manual being an administrative or executive instruction shall not over-ride the provisions of statutory rules, i.e., CCS (CCA) Rules, 1965. It is further stated



that the instructions can supplement but not supplant and in case of conflict between the executive instructions and the rules made under the provisions of Article 309 the latter shall have to be prevailed. He placed reliance upon the decision of the Apex Court in Union of India v. Somasundaram Viswanath, (1989) 1 SCC 175 and Paluru Ramkrishnaiah and Ors. v. Union of India and Another, (1989) 2 SCC 541 to substantiate his aforesaid plea.

iii) It is stated that the CVC's advice is only advisory and not binding upon the disciplinary authority and it is stated that after the first advice of the Commission the disciplinary authority disagreed with it, the matter was re-referred to the CVC and the second advice which has been sent has not been served upon the applicant depriving him a reasonable opportunity to defend. It is stated that whereas in view of the settled position of law in case of disagreement with the enquiry officer the disciplinary authority has to record only tentative reasons and thereafter according reasonable opportunity to the delinquent official to pass a final order. Whereas in the present case from the perusal of the disagreement note it transpires that instead of arriving at a tentative conclusion and recording reasons the issue has been pre-determined and the disciplinary authority has already proved the charge against the applicant, making the show cause now an empty formality.

7. Rebutting the contentions Sh. V.P. Uppal took a preliminary objection that the OA is pre-mature, as no final decision has been arrived at by the disciplinary authority and moreover, the Tribunal has no jurisdiction to



interfere with the disciplinary proceeding at an inter-locutory stage, unless malafides are established, which does not exist in the present case.

8. Sh. Uppal, as regards consultation of CVC is concerned, stated that as per the CVC letter dated 13.4.64 compiled in Vigilance Manual Part-II, as the enquiry was entrusted to Commissioner for Departmental Enquiries the report is to be submitted to the Commissioner for Departmental Enquiries to the CVC, who will examine the report and refer the case to disciplinary authority togetherwith its advice for further action. In this conspectus it is stated that the provisions of Manual are not in any manner conflict with the provisions of CCS (CCA) and being supplementary the procedure adopted is in accordance with rules. It is further stated that after the applicant has replied to the memorandum the matter is sent for consultation to UPSC and their advice is awaited. In their reply it is contended that the applicant was denied the grade of Additional DIT, Commissioner of Income Tax as a disciplinary proceeding is pending and his case is kept in sealed cover as per the instructions of the Government which are upheld by the Apex Court in several pronouncements.

9. In so far as the procedural requirement for CVC to allow opportunity of being heard to a charged officer before giving its advice the same is nowhere laid down in any rules or instructions. However, the advice is recommendatory and the final decision is to be taken by the disciplinary authority on receipt of the representation and on consultation with the UPSC.

10. In so far as communication of advice of CVC is concerned, it is stated that only one advice has been sent through letter dated 19.3.98 which has already been communicated to the applicant. In so far as tentative conclusion is concerned and pre-decision of the disciplinary authority by proving the charges are concerned, it is contended that the disciplinary authority in accordance with the decision of the Apex Court in Bank of India v. Degla Surya Narayan, 1995 (5) SCC 762 disagreed with the finding and has recorded its reasons after recording the findings and thereafter an opportunity has been afforded to the applicant to file his representation. The same would be considered in consultation with the UPSC safeguarding the interest of the applicant. It is stated that no prejudice has been caused to the applicant on that count.

11. In so far as delay in holding the proceeding is concerned, it is contended that during the camp of DIT Ahmedabad at Jaipur in August, 1992 it has been transpired that the applicant was transferred out of investigation but has kept the keys of cupboard which was opened on 28.2.92 and thereafter after a preliminary investigation the enquiry was initiated in 1994. As such there is no inordinate delay on the part of the respondents, vitiating the enquiry.

12. We have carefully considered the rival contentions of the parties and perused the material on record. At the outset, having regard to the decision of the Apex Court in Union of India v. Upendra Singh, 1994

(2) SLJ 77 it does not lie within the jurisdiction of this court to interfere at an inter locutory stage as a judicial review in a disciplinary proceeding. The same can be resorted to only if the chargesheet is based on no misconduct or vitiated by malafides. Apart from this, the scope of interference at an inter locutory stage is not permitted.

13. If one has regard to the aforesaid decision the contention of the applicant that the disciplinary authority in the disagreement note relying upon the advice of CVC disagreed with the finding of enquiry officer where the applicant was exonerated and proved the charge. The issue is pre-decided, showing the pre-determined mind of the disciplinary authority to impose the penalty upon the applicant, cannot be countenanced. Though the disagreement note is not happily worded but in view of Degla Surya Narayan's case (supra) disciplinary authority has come to its own conclusion by recording finding on the charges and observing the same to be accorded an opportunity to the applicant to represent. A final decision is to be arrived at after the matter has been consulted with the UPSC and after meticulously dealing with the contentions of the applicant taken in his representation in response to the disagreement note. The disciplinary authority is yet to take a final decision in the matter. The apprehension of the applicant and his contention is imaginary and is not well founded.

14. In so far as the issue of consultation with the CVC is concerned, we find that as per the Vigilance

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Manual and moreover the Government of India CVC letter dated 28.2.2000 it is incumbent upon to serve upon the CVC's second stage advice which has accordingly been complied with by the respondents by communicating the same to the applicant.

15. In so far as objection as to referring the matter to disciplinary authority by the enquiry officer and not to the CVC is concerned, in view of the provisions of CVC Vigilance Manual in case the proceedings are conducted by the Commissioner of Departmental Enquiries the finding of the Enquiry Officer is to be sent to the CVC and their advice shall be submitted to the disciplinary authority for its onward appropriate action. As the Vigilance Manual is the compendium of instructions by the Government and in no manner conflict or supplanting CCS (CCA) Rules, 1965 the decisions cited by the applicant shall not apply and are distinguishable.

16. In so far as supply of first advice by the CVC is concerned, in view of the consistent stand of the respondents that the only advice which has been tendered is dated 19.3.98 which has already been supplied to the applicant, the plea taken by the applicant does not hold water and is rejected.

17. In the result and having regard to the reasons recorded above, we do not find any merit in the present OA, which has been filed at an inter-locutory stage, is dismissed, as pre-mature. No costs.

18. Before parting with the case, we would like to observe that as the enquiry has already taken almost 8 years to complete and as the matter has been referred to UPSC for consultation by the disciplinary authority, the respondents are directed to finalise the proceedings within a period of six months from the date of receipt of a copy of this order. The grounds taken by the applicant in this OA apart from what has been dealt with are left open. The applicant shall be at liberty to assail any final order passed in appropriate proceedings in accordance with law.

S. Raju
(Shanker Raju)
Member (J)

M.P. Singh
(M.P. Singh)
Member (A)

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