

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2599/2002

New Delhi, this the 23rd day of May, 2003

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri V.K. Majotra, Member (A)

R.K. Kapoor
S/o Late Sh.R.D. Kapoor
R/O 29B, Pocket A, DDA Flats
Ashok Vihar, Phase III
Delhi. Applicant

(Shri P.R. Toora, Advocate)

versus

Union of India, through

1. Secretary
Dept. of Revenue
Ministry of Finance
North Block, New Delhi
2. Chairman
Central Board of Direct Taxes
(Dept. of Revenue)
North Block, New Delhi
3. Chief Commissioner of Income Tax
Income Tax Department
Central Revenue Building, New Delhi .. Respondents

(Shri V.P. Uppal, Advocate)

ORDER

Justice V.S. Aggarwal

Applicant (R.K. Kapoor) who joined the Income Tax Department as Inspector of Income Tax had earned certain promotion during the tenure of his service. In October, 1993, he was promoted as Deputy Commissioner of Income Tax. By virtue of the present application, he seeks quashing of the Memorandum/charge-sheet of 29.11.2001 for committing the alleged irregularities and further a direction to make the payment of commuted value of pension, retirement gratuity and leave encashment with interest.

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2. According to the applicant, he superannuated on 29.11.2001 and at the relevant time, he was holding the post of Joint Director of Income Tax New Delhi. After he superannuated, on 4/5/12.2001 a charge-sheet was served proposing to hold an enquiry in terms of Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short, "the Rules") for the alleged misconduct on behalf of the applicant. The applicant had submitted a reply requesting respondent No.2 to drop the proceedings, but his request had been rejected and even his leave encashment/retirement gratuity and commuted value of pension had been withheld. By virtue of the present application, the abovesaid reliefs are being claimed contending that the disciplinary proceedings under Rule 14 of the Rules cannot be initiated against him after he had superannuated and otherwise also the dues which had been withheld had been so done illegally.

3. In the reply filed, it has been alleged that the applicant superannuated only on 30.11.2001 and not on 29.11.2001. According to the respondents, an Inspector was deputed to serve a copy of the charge-sheet on the applicant. He found the applicant's house to be locked. The charge-sheet was served by fixation. When the Inspector again visited the applicant's house on 30.11.2001, the same was still found locked and it was in this process that the charge-sheet could not be served personally on or before 30.11.2001. It was insisted that there is no mala fide intention in serving of the charge-sheet and that the dues claimed had rightly been

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withheld.

4. During the course of submissions, the applicant's learned counsel contended that the applicant could not have been proceeded after he had superannuated nor the proceedings could continue without the sanction of the President. At the threshold only, we deem it unnecessary to probe further into this argument because in the present case, the order clearly shows that it in the name of the President that the inquiry is being held. When such is the situation, a separate order on that count would totally be uncalled for.

5. In that event, plea had been raised that there is inordinate delay to initiate the departmental proceedings and, therefore, the same should be quashed.

6. We do not dispute the proposition that if there is inordinate delay in initiation of the departmental proceedings which cause prejudice to the concerned enquiry in that event, in appropriate cases, the same can be quashed. It varies with the facts and circumstances of each case as to whether there is inordinate delay and further, if any, prejudice is caused or not.

7. The facts of the present case indicate that the statement of imputation of misconduct pertained to the applicant's dereliction of duty for the years 1998-1999 and 1999-2000 when certain assessment were purported to have been made with respect to certain assessees. We

A handwritten signature in black ink, appearing to read "CAG".

need not dwell in this regard into the said controversies which are yet to be enquired into pertaining to the merits of the imputation and charge-sheet. Suffice to say that the Memorandum was served in November 2001. This clearly reveals that there is no inordinate delay to prompt this Tribunal to quash the same.

8. The main argument advanced, however, was that the applicant superannuated on 29.11.2001 and the charge-sheet is alleged to have been served on 4/5.12.2001. According to the learned counsel, this could not have been so done. On facts, this plea is being controverted. According to the respondents, on 29.11.2001, the applicant was not found at his place and, therefore, the charge-sheet was affixed outside his house. Furthermore, as per the respondents' learned counsel, the same had been issued before the applicant superannuated.

9. At the first instance, we deem it necessary to mention that the applicant superannuated not on 29.11.2001 but on 30.11.2001. It becomes necessary to dwell into the rules on the subject because the applicant himself had placed on the record, the order dated 30.11.2001 which clearly indicated that he superannuated on 30.11.2001.

10. Respondents relied upon a decision of the Supreme Court in the case of **Delhi Development Authority Vs. H.C. Khurana**, (1993) 3 SCC 196. In the cited case, a

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preliminary Memo was served on the Executive Engineer Shri H.C.Khurana alleging certain irregularities. A charge-sheet was framed on 11.7.1990. It was despatched on 13.7.1990, but Shri H.C.Khurana had proceeded on two months' medical leave and it could not be served. A Departmental Promotion Committee meeting took place. Keeping in view the earlier decision to initiate disciplinary proceedings, the sealed cover procedure was adopted. The Supreme Court thereupon was concerned with the question as to the meaning of the word "issued" and held:-

"15. The meaning of the word 'issued', on which considerable stress was laid by learned counsel for the respondent, has to be gathered from the context in which it is used. Meanings of the word 'issue' given in the Shorter Oxford English Dictionary include: 'to give exit to; to send forth, or allow to pass out; to let out;....to give or send out authoritatively or officially; to send forth or deal out formally or publicly; to emit, put into circulation'. The issue of a charge-sheet, therefore, means its despatch to the government servant, and this act is complete the moment steps are taken for the purpose, by framing the charge-sheet and despatching it to the government servant, the further fact of its actual service on the government servant not being a necessary part of its requirement. This is the sense in which the word 'issue' was used in the expression 'charge-sheet has already been issued to the employee' in para 17 of the decision in Jankiraman. (1991) 4 SCC 109".

It is abundantly clear from the aforesaid that the decision referred to in the case of H.C.Khurana (supra) was confined to the peculiar facts recorded above because he was claiming promotion to the post of Superintending Engineer from the date his juniors were promoted and the sealed cover procedure could not be adopted. This is not the position in the present case and, therefore, we have

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no hesitation in concluding that the cited decision will have no application herein.

11. Reliance was further placed on a decision of the Supreme Court in the case of **State of Madhya Pradesh v. Onkar Chand Sharma**, (2001) 9 SCC 171. Herein Shri Onkar Chand Sharma while posted as Deputy Inspector General of Police had been placed under suspension. The order of suspension was followed by an order dated 5.5.1983 requiring him to submit his written statement of defence. Shri Onkar Chand Sharma challenged the validity of the order of suspension on the ground that there was contravention of the provisions of second proviso to Rule 3 of the All India Services (Discipline and Appeal) Rules, 1969. It was once again concluded that the charge-sheet would be taken to have been issued on the day, it was prepared and signed by the competent authority. Even the said decision will not come to the rescue of the respondents because herein, the question in controversy is as to if the applicant superannuated before the charge-sheet was served or not. Another controversy further is as to whether the charge-sheet was issued even before he superannuated and if it was properly affixed or not. These are questions which can be gone into only by the disciplinary authority in case the applicant submits a proper representation in this regard. Therefore, further opinion need not be expressed.

12. In that event, it was contended that gratuity

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of the applicant could not have been withheld and reliance on behalf of the applicant was placed on a decision of the Supreme Court in the case of **D.V. Kapoor Vs. Union of India & Ors.**, AIR 1990 SC 1923. In paragraph 7, the Supreme Court held:-

"7. Rule 9 of the rules empowers the President only to withhold or withdraw pension permanently or for a specified period in whole or in part or to order recovery of pecuniary loss caused to the State in whole or in part subject to minimum. The employee's right to pension is a statutory right. The measure of deprivation therefore, must be correlative to or commensurate with the gravity of the grave misconduct or irregularity as it offends the right to assistance at the evening of his life as assured under Art. 41 of the Constitution. The impugned order discloses that the President withheld on permanent basis the payment of gratuity in addition to pension. The right to gratuity is also a statutory right. The appellant was not charged with nor was given an opportunity that his gratuity would be withheld as a measure of punishment. No provision of law has been brought to our notice under which the President is empowered to withhold gratuity as well, after his retirement as a measure of punishment. Therefore, the order to withhold the gratuity as a measure of penalty is obviously illegal and is devoid of jurisdiction."

13. These findings of the Supreme Court had come into being in the facts of the case of **D.V. Kapoor** (*supra*). In the case of **D.V. Kapoor**, the disciplinary proceedings had been initiated. Pending the same, he sought voluntary retirement and was allowed to retire, but was put on notice that the disciplinary proceedings initiated against him would be continued under Rule 9 of the Civil Services Pensions Rules, 1972. An enquiry was conducted with respect to the alleged charges. Thereupon, the President on consideration of the report agreed with the findings of the inquiry officer and in

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consultation with the Union Public Service Commission decided that the entire gratuity and pension had to be withheld on permanent basis. This was done as measure of punishment. The Supreme Court, therefore, held that it would not be withheld as a measure of punishment. Rule 3(o) of the Pension Rules defines the pension to include gratuity except when the term pension is used in contradistinction to gratuity. Herein, it cannot be taken in the facts that the term "gratuity" is used in contradistinction of the word "pension". Therefore, in this back-drop, the only conclusion that can be arrived at in the facts of the case is that the gratuity cannot be released to him.

14. The last submission in this regard was that even leave encashment is not being released. Reliance in this regard is being placed on sub-rule (3) to Rule 39 of the Central Civil Services (Leave) Rules, 1972. The same reads:-

"39. Leave/Cash payment in lieu of leave beyond the date of retirement, compulsory retirement or quitting of service

(3) The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him on conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any."

Perusal of the aforesaid clearly shows that one of the necessary conditions to be satisfied in this regard is



that the authority competent to grant leave can withhold whole or part of the cash equivalent of the earned leave if in the view of such authority, there is possibility of some money becoming recoverable from him on conclusion of the proceedings against him. This satisfaction of the concerned authority has to be in writing. Our attention has not been drawn to any such view that had been expressed by the competent authority to withhold the leave encashment for reasons referred to above. In the absence of the same, we are of the considered opinion that leave encashment could not have been withheld that was due to the applicant in the facts of the present case.

15. For the reasons given above, we only partly allow the application and hold:-

(a) that the applicant in the facts of the case is not entitled to the gratuity claimed;

(b) that the applicant is entitled to leave encashment.

The same should be released to him at the earliest preferably within a period of three months from the date of receipt of a copy of this order;

(c) that in case, the applicant submits a detailed representation mentioning the facts to the disciplinary authority about the time and date when the alleged Memorandum was served, the disciplinary authority would consider the same and pass an appropriate speaking order after looking into all

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the pros and cons of the same; and

(d) however, we make it clear that in case such a representation is made, the disciplinary proceedings shall continue, but final orders against the applicant shall not be passed till the disciplinary authority decides on the questions raised and referred to above.

16. In the circumstances of the case, we make no order as to costs.

V.K.Majotra

(V.K. Majotra)
Member (A)

V.S. Aggarwal

(V.S. Aggarwal)
Chairman

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