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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

M.A. No.1042/99 IN
O.A. No.108/99

HON'BLE SHRI JUSTICE V. RAJAGOPALA REDDY, VC(J)
HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

New Delhi, this the 29th November, 1999

R.C. Prasad
S/o Shri Thakur Prasad
Aged 53 years
R/o 580, Mahavir Nagar
Tonk Road, Jaipur (Rajasthan) ...Applicant

(By Advocate: Shri Manu Mridul)

Versus

1. Union of India, Through
Secretary, Central Board of Direct
Taxes, Ministry of Finance,
North Block, New Delhi
2. The Chief Commissioner of Income Tax
New Central Revenue Building
Statute Circle
Jaipur, Rajasthan
3. Commissioner of Income Tax
New Central Revenue Building
Statute Circle
Jaipur, Rajasthan ...Respondents

(By Advocate: Shri V.P. Uppal)

O R D E R (ORAL)

By Reddy, J.

Heard the counsel for the applicant and the
respondents.

2. The applicant is an Income-tax Officer. He was
served a charge-sheet on 23.8.1995. Three articles of
charge have been imputed against him and they read as
follows:-

"ARTICLE-I

That Shri R.C. Prasad while
functioning as Income-tax Officer, Jhunjhunu
during 1990 failed to maintain absolute
integrity and devotion to duty and committed
gross misconduct in as much as:-

He without any jurisdiction

(A)

of Shri Vimal Kumar Agarwal son of Shri Madan Lal Agarwal, resident of near Swinton School, Mirzapur Gorakhpur (UP) (known to Shri R.C. Prasad, who also hails from Gorakhpur), passed the assessment orders in a haphazard way falsely justifying his actions and thereby wrongfully facilitated the said assessee in wrongful capital formation :-

A.Y.	Date of submission of I-tax return	Date of asstt.	Income declared	Income assessed
86-87	30.3.90	16.4.90	15,950/-	18,450/-
87-88	29.3.90	30.3.90	18,200/-	18,200/-
88-89	24.4.90	30.4.90	18,200/-	18,200/-
89-90	24.4.90	30.4.90	18,200/-	18,300/-
90-91	24.4.90	30.4.90	18,200/-	18,300/-

Shri R.C. Prasad thereby contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Service (Conduct) Rules, 1964.

ARTICLE-II

Shri R.C. Prasad while functioning as Income-tax officer, Jhunjhunu during 1989-90 failed to maintain absolute integrity and devotion to duty and committed gross misconduct in as much as :-

Shri Prasad without any jurisdiction entertained the following income-tax returns of Smt. Amita Kedia C/o M/s Rangoon Cloth Store (who also hails from Gorakhpur), passed the assessment orders in a haphazard way falsely showing the investigations conducted by him and thereby wrongly facilitated the said assessee in wrongful capital formation:-

A.Y.	Date of submission of income-tax return	Date of asstt.	Income declared	Income assessed
86-87	20.2.90	30.3.90	17,850/-	18,850/-
87-88	21.7.1989	21.7.89	18,175/-	18,175/-
88-89	21.7.89	21.7.89	18,200/-	18,200/-
89-90	30.8.89	30.3.90	18,250/-	18,350/-

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Shri R C Prasad thereby contravened Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of Central Civil Services (Conduct) Rules, 1964.

ARTICLE-III

Sh. R C Prasad while functioning as Income-tax officer, Jhunjhunu during 1990 failed to maintain absolute integrity and devotion to duty and committed gross misconduct in as much as :-

That he procured Demand draft No. 738100 for Rs.25,000/- on 25.5.90 from the Bank of Baroda, Gandhi Chowk, Jhunjhunu drawn on Bank of Baroda, Tanda (Faizabad) in the name of his father Sh. Thakur Prasad. He has no satisfactory explanation regarding acquisition of said Rs.25,000/- and also failed to report this transaction to the department as per Rule 18 of the Central Civil Services (Conduct) Rules, 1964.

Shri R C Prasad has thus failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Government servant and has thereby violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

3. It is the case of the applicant that though he has submitted his explanation to the charge-sheet in September, 1975, the respondents have not even appointed the Enquiry Officer till August, 1998. It is further his case that as the CBI had enquired into the above allegations and submitted its report on 3.7.1995 stating that there was no evidence establishing the above charges. The present O.A. is filed aggrieved by the charge-sheet issued to the applicant and also against the enquiry. Two grounds are raised by the learned counsel for the applicant. The inordinate delay in both the institution of the disciplinary proceedings as well as in the holding of the enquiry proceedings against the applicant, vitiated the charge and enquiry and (2) In view of the finding given by the CBI in its report dated 3.7.1995

Or

in respect of the identical allegations which are now sought to be enquired into, it is not open to the respondents to proceed with the enquiry. The learned counsel for the respondents, however, submits that as the CBI has been enquiring into the allegations against the applicant, the respondents could not initiate disciplinary proceedings against the applicant. Soon after the report was filed by the CBI in July, 1995 the charge-sheet was issued to the applicant. Learned counsel also points out that the respondents could not appoint enquiry officer till 1997 awaiting the appointment of enquiry officer by the Central Vigilance Commission and immediately thereafter an enquiry officer has been appointed. It is further pointed out that the delay if at all is due to the non-cooperation of the applicant.

4. We have carefully considered the contentions advanced by the 1d. counsel. The charges relate to the tax assessments made by the applicant during 1990. It is seen from the counter that the CBI received an FIR in respect of this assessment on 10.7.1992. Admittedly, the CBI has been investigating into the matter and it submitted the report only in 1995. The charge memo has been issued to the applicant immediately thereafter in August, 1995. The instructions given in chapter 3 of the Vigilance Manual at 1.7, clearly states that the departmental enquiry under the discipline and appeal rules should be held in abeyance until such time the CBI enquiry has been completed. In view of the above the respondents could not conduct the enquiry till the

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D report was given by the CBI. It is contended by the learned counsel for the applicant that even after the charge-sheet was served, enquiry officer was not appointed till 1998, i.e. even after a period of three years from the date of the charge-sheet. A perusal of Annexure R-4 dated 20.11.1997, the letter addressed by the Asstt. Commissioner of Income-Tax (Vigilance) to the Commissioner of Income-Tax it is clear that the respondents received the communication from the CVC advising the department itself to appoint the enquiry officer. Thus it is evident that the respondents had been awaiting the appointment of enquiry officer by the CVC to conduct the enquiry. Subsequent to the above proceedings, on 18.2.98, a list of names of the enquiry officers had been submitted by the Asstt. Commissioner of Income Tax. Thereafter the present enquiry officer Mr. M.L. Gusail has been appointed in the case. The said enquiry officer, it is stated, has been proceeding with the enquiry. In the above circumstances, it cannot be said that there is unexplained delay on the part of the respondents in either initiating the disciplinary proceedings or conducting the same against the applicant.

5. The charges also do not appear to be not serious. The applicant was alleged to have assessed the returns of income-tax of Shri Vimal Kumar Agarwal who is alleged to be the close associate of the applicant and that he has acted without the jurisdiction. Several other allegations including favouritism have been alleged in the charge-sheet. In

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the circumstances we do not think that this is a fit case in which charge-sheet should be quashed on the mere ground of delay, which in the present case the respondents have, as stated above, clearly explained.

6. It is true, that it is contended by the learned counsel for the applicant, the CBI has given a report stating that the evidence collected does not prove the allegation of reward of Rs.25,000/- alleged to have been received by the applicant from the assessees Mr. Vimal Kumar Agarwal and Smt. Amita Kedia. But there are other allegations of assessment without jurisdiction as well as favour shown to the assessees. In the circumstances it cannot be said that it was not open to the respondents to proceed with the present enquiry or the remaining charges.

7. Serious grievance is made by the counsel for the applicant ^{that} [^] the applicant was not given his due promotion though he was considered by the DPC in February, 1995 much before filing the charge-sheet only on the ground that criminal proceedings and subsequently the disciplinary proceedings were pending now. It is true that the delay in conducting the disciplinary proceedings would seriously prejudice the promotional and service career of the charged officer. It is, therefore, incumbent upon the disciplinary authority to have completed the enquiry with all expedition.

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g. In the circumstances we direct the respondents to complete the enquiry within three months from the date of receipt of a copy of this order and pass the final order by the disciplinary authority. It is needless to say that the applicant should actively cooperate in the enquiry. The O.A. is accordingly disposed of. No costs.

Shanta Shastray
(SMT. SHANTA SHAstry)
MEMBER (A)

Rajagopala Reddy
(V. RAJAGOPALA REDDY)
VICE CHAIRMAN (J)

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