15

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1128/1999

New Delhi, this 28th day of January, 2000

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)
Hon'ble Smt. Shanta Shastry, Memebr(A)

S.K. Sharma
L-63, Srinivaspuri
New Delhi-110 066 . . Applicant

(By Shri A.K. Behera, Advocat)

versus

1. Chief Secretary
Govt. of NCT of Delhi
5, Sham Nath Marg,Delhi-54

2. Commissioner of Salex Tax
Govt. of NCT of Delhi
Bikri Kar Bhavan
New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER(oral)

By Reddy, J. -

The applicant, while working as Assistant Sales Tax Officer(for short, ASTO) was served with a show cause notice on 8.1.97 calling upon him to explain why he had issued 250 statutory forms to M/s.Veer International, a registered dealer, without ensuring any safeguard of the government revenue involved therein. The applicant submitted his reply stating that the forms have been issued by him only after verifying the antecendents as required under rules. Again on 7.3.97, he was issued another notice calling upon him why he had issued 63 statutory forms to M/s. Graphic House, 225 forms to M/s.P.S.Enterprises and 315 forms to M/s.U.K.Sales without ensuring any safeguard of government revenue involved therein. In the reply dated 12.3.97, applicant has stated that there was nothing adverse available on record against the aforementioned dealers. He thus denied the allegations made in the show cause notices.

Thereafter, the applicant was served with charge memo dated 19,8,98, which contains the following article of charge:

> "The said Sh. S.K. Sharma while functioning as ASTO in Ward 105 committed misconduct as much as he had issued statutory forms in bulk quantities to M/s.Veer International, M/s. Graphic House, M/s.PS Enterprises and M/s.U.K.Sales without ensuring any safeguard of Government revenue involved therein and also without verifying the antecedents of the dealer, which caused heavy losses to the Government revenue".

Alongwith the article of charge, the statement of imputation has also been served upon the applicant. As per the charge memo, the allegation was that applicant had issued statutory forms without verifying the antecedents of the dealers causing heavy loss to the Government revenue.

2. An enquiry was sought to be held against him under Rule 14 of CCS(CCA) Rules, 1965. The applicant was asked to submit explanation to the charge. Without filing any explanation to the charge, the applicant filed this OA challenging the charge memo and the enquiry that was sought to be held against him.

3. Shri A.K. Behera,learned counsel for the applicant submits that the function of the applicant in issuing the statutory forms under Rule 8 of Delhi Sales Tax Rules (for short, Rules) is quasi-judicial in nature and disciplinary proceedings cannot therefore be initiated under the Conduct Rules. He also contends that the applicant had complied with all the legal formalities before issuing the statutory forms to the registered dealers as per Rule 8 of the Rules as well the circulars

(17)

relevant thereto. He therefore contends that the charge and the enquiry sought to be held against the applicant are illegal and have to be quashed.

4. Learned counsel for the respondents however submits that the applicant is alleged to have not complied with the legal requirements of verifying the antecedents of the dealers before issuing the statutory forms, thus he is guilty of misconduct. He also contends that by the aforesaid action of the applicant, government has suffered huge loss to the tune of few crores of ruppes. He further contends that the action of the applicant is in violation of the Rules and circulars. Hence he is liable to be proceeded with under the Conduct Rules.

5. Having heard the arguments advanced by the learned counsel for the applicant and the respondents, we are of the view that there is no susbstance in the pleas of the applicant's counsel.

6. The applicant was at the relevant time working as ASTO. It is not in dispute that he was empowerd to issue the stututory forms to the registered dealers under Rule 8 of the Delhi Sales Tax Rules. It is also not in dispute that the applicant had issued the forms to the dealers mentioned in the charge. The only allegation made in the charge-sheet was that he had issued these forms without verifying the antecedents of the dealers which caused heavy loss to the Government revenue. In the statement of imputation, he was alleged to have given forms to several dealers without ensuring any safeguard of government revenue by way of invoking

18

the provisions of Section 18 of DST Act, 1975 or by exercising no check over the activities of the dealers. The question that is involved in this case is whether the disciplinary proceedings could be initiated against the applicant. Let us consider what are the 'Statutory Forms' and under what provisions of the ACT or Rules the applicant has issued the Forms.

7. S.4 stipulates the rate of tax on the "taxable turnover". Sub-sec(2) defines "taxable turnover" which remains after deducting the turnover in respect of goods which are tax free or having tax concession as shown in clause (a)(v). 2nd proviso to sub-sec.(2), which stipulates that no deduction in respect of any sale be given unless the deductions are claimed on the prescribed forms to be issued by the assessing authority. Thus by producing these statutory forms (S.T.1) the dealer could claim deductions in the turnover which would enable him to pay less tax. Section 18 of the ACT, to the extent to which we are concerned, envisages that the assessing authority shall demand an additional surety from the dealer to his satisfaction keeping in view the quantum of purchases to be covered by the statutory forms asked for by the dealer. Circular No.32 of 1979-80 lays down that statutory forms whether under the Central Sales Tax Act or Local Act shall henceforth be issued by the appropriate assessing authority by whom a dealer shall be assessed. Circular No.18 stipulates that written instructions have been issued to all the ward officers to meet full requirements of the dealers if there is nothing adverse against them. Circular No.19 lays down

19

that assessing authorities have to bear in mind that they should reject the applications only for valid reasons. Circular No.8 of 1991-92 stipulates the following guidelines to be followed:

1. Failure to file the return for the current quarter shall not be taken as a disqualification for the purpose of issue of statutory forms, if the last returns have been filed in time.

2. Total outstanding dues below Rs.2500 will not disqualify the dealer to obtain the forms.

3. Dues on account of levy of interest need not be a deterrent in the issue of forms.

8. Rule 8 of the Rules is important which provides that the dealer will be issued forms by the assessing authorities, when there is nothing adverse against the dealer and the authority is satisfied about the activities of the dealer. Rule 8(4)(a)(b) and (c) are in the following terms:

(a) If, for reasons to be recorded in writing, the appropriate assessing authority is satisfied that the declaration forms have not been used bona fide by the applicant or that he does not require such forms bona fide, the appropriate assessing authority may reject the application or it may isswue such lesser number of forms as it may consider necessary.

(b) If the applicant for declaration forms has, at the time of making the application, failed to comply with an order demanding security from him under sub-section (1) of section 18, the appropriate assessing authority shall reject the application.

(c) If the applicant for declaration forms has, at the time of making the application -

(i) defaulted in furnishing any return or returns in accordance with the provisions of the Act or these Rules, or in payment of the due according to such return or returns; or

(ii) defaulted in making the payment of the amount of tax assessed or the penalty imposed by an appropriate assessing authority, which the applicant admits to be due from him and which is not in dispute; or

(iii) been found by an appropriate assessing authority having some adverse material against him, suggesting any concealment of sale or purchase or of furnishing inaccurate particulars in the returns;

the appropriate assessing authority shall, after affording the applicant an opportunity of being heard, withhold, for reasons to be recorded in writing, the issue of declaration forms to him and the appropriate assessing authority shall make a report to the Commissioner about such withholding within a period of three days from the date of its order:-

Provided further that notwithstanding the provisions of any other rule, the issue of declaration forms to an applicant to whom a certificate of registration under the Act has been granted for the first time, shall be withheld by the appropriate assessing authority, until such time as all the returns for the return period commencing from the date of validity of this certificate of registration are furnished and tax due according to such return is paid by him¿.

(d) Where the appropriate assessing authority does not proceed under clause (a), clause (b) or clause (c), it shall issue the requisite number of declaration forms to the applicant."

9. It is thus imperative that the officer should make an enquiry to find whether the dealer had used the forms bonafide or paid the surety amount or he had defaulted in furnishing any returns or in payment of tax or penalty. He should also verify whether there was any other adverse material against him either of concealment of sale or purchase or furnishing inaccurate particulars in the returns. If any of the above is found, the assessing authority shall withhold issue of the forms. Thus it is evident, the primary legal requirement of the STO/ASTO is to make an enquiry for the purpose of verification as to the antecedents of the dealer concerned.

21

10. It is relevant at this stage to notice the reply given by the applicant to the show cause notices given to him by the Department. The applicant has taken pains to explain how he had made attempts to satisfy himself and only after going through the antecedents that there was nothing adverse against the dealers, he issued the forms. It is therefore clear that it was required of him, under law, before he decides to issue the forms to make an enquiry as to the antecedents of the registered dealers.

11. In view of the above position, what is to be seen is whether the charge against the applicant is tenable in law? It is not our function at this stage to decide whether the charge is true or not as the enquiry is yet to be conducted. Taking the allegation as it is, whether can it be said that it either did not constitute a misconduct in law or that it cannot be enquired into?

12. The learned counsel Shri Behera points out that the discretionary/quasi-judicial function may be right or wrong as he may pass a wrong order but that cannot constitute a misconduct. It is true that when an order is passed by the applicant in issuing the forms either by issuing the forms or rejecting an application, whether such an order is right or wrong cannot be gone into except by way of appeal under the Act. Learned counsel also relies upon the judgement in the case of M/s.Shadi Ram Udmi Ram Vs. Commissioner, ST, Delhi decided on 1.6.94 by the Sales Tax Appellate Tribunal, wherein it has been held that:

"It is surprising to note that the concerned STO has been sitting over the matter for the last one year. She has approached the matter in a lackadaisical manner. It must be borne in mind that while dealing with such like matter, she works as a Judge and, therefore, she could brook no inteference. She is not to act as a Post Office simpliciter to carry out the directions given by the superior authorities. Even if she was instructed by the CSO or the ZEO to carry out their instructions, it was imperative upon her to pas a speaking order. She is not bound to carry out the instructions of her superiors in this regard. She is required to pass independent, judicious prescipicacious and unbiased order. She is not supposed to seek assistance from a superior officer while passing quasi judicial order. Sheis take a decision of her own."

13. But the gravaman of the charge is not that the order passed by the applicant was erroneous. What he is accused of is that he neglected in not verifying the antecedents of the dealers before issuing the forms. As we have seen supra, he has to comply with many legal requirements before he issues the forms. Can he afford to ignore the precautions to be taken by him under the statutory requirements? The answer is a big 'NO'. Safeguards or precautions as stated supra are incorporated in the ACT and the Rules in order to safeguard the revenue of the Government which in the instant case is in crores of rupees. If, in a particular case, when a dealer escaped from paying duty and it came to light that the officer concerned has ignored to make the required enquiries and if an honest enquiry was made against the dealers the officer could not have issued so many forms, then, in our view, it amounts to misconduct and it is open to the authorities concerned to charge sheet the officer. This will not amount to holding enquiry into the exercise of his quasi-judicial function. It is not to find whether he passed a wrong order. It is not to find whether he had made any attempt that is required of him under law. His

conduct is under enquiry. He is not required in such an enquiry, to satisfy that the enquiry made by him was fool-proof or that in all respects his assessment of the dealer was right. He might have gone wrong with all that. If he satisfies that he has made an enquiry honestly and bonafide that was sufficient defence in such an enquiry.

14. Learned counsel for the applicant relies upon the judgement in the case of Z.B.Nagarkar V. UOI & Ors. JT 1999(5) SC 366. In this case, the Collector of Central Excise was proceeded against in the departmental proceedings on the order passed by the officer in not imposing penalty on the assessee. The Supreme Court held that the proceedings initiated were illegal. The question that arose was whether merely because penalty imposable has not been imposed which was obligatory for the officer to impose, could it be said that it was a case of misconduct and he was liable to proceeded againgst? The Court held that it was not that the appallant did not impose penalty because of any negligence on his part but it was thought by him that it was not a case to impose penalty. Even if the imposition of penalty was imperative there was nothing wrong or improper on the part of the officer to form an opinion that the imposition of penalty was not obligatory. It cannot be said that by not imposing the penalty the officer has favoured the assesssee to show undue favour to him and that in the absence of any basis for the disciplinary authority to reach such conclusion even prima facie, disciplinary proceedings cannot be initiated against the charged officer. Thus the case is

distinguished on facts. What was found fault with the officer is not in the validity of issuing the 'forms' but as to his misconduct in not taking the required precautions before they are issued.

15. It should be noted that the Supreme Court in the above case approved the judgement in Government of Tamil Nadu Vs. K.N.Ramamurthy JT 1997(7) SC 401. In the said case, the respondent working as Deputy Commercial Tax Officer was served with the following charges:

(i) That he failed to analyse the facts involved in each and every case referred to above;

(ii) that he failed to check the accounts deeply and thoroughly while making final assessment;

(iii) that he failed to subject the above turnover to tax originally; and

(iv) that he failed to safeguard government revenue to a huge extent of Rs.44,850/-.

16. The charges were held proved and he was imposed with punishment of stoppage of increment for three years with cumulative effect. The respondent approached the Tamil Nadu Administrative Tribunal which set aside the disciplinary proceedings. The Tribunal had taken a view that the proceedings were of quasi-judicial nature and the respondent cannot be proceeded against. In the appeal the Supreme Court held that the finding accepted by the disciplinary authority was to the effect that by the act of negligence in making the assesssment the delinquent caused loss to the government exchequer, thus the appeal was allowed. This decision shows that failure to make the required analysis of the accounts and checking the same properly, while making the assessment would amount to misconduct.

25

17. Again in UOI Vs. K.K.Dhawan, JT 1993(1) SAC 236, which was also approved by the Supreme Court in Nagarkar's case, the respondent was working as Income Tax Officer. A charge memo was served on him to hold enquiry against him under Central Civil Services (Classification, Control and Appeal) Rules, 1965. The charge framed against him was that he had completed assessment of nine firms in an irregular manner in undue haste and apparently with a view to conferring undue favour upon the assessees concerned. CAT allowed the application filed against the proposed action holding that the order passed by the respondents was quasi-judicial and could not have formed the basis of disciplinary action. When the matter came before the Supreme Court, the court held that "Certainly, therefore, the officer who exercises judicial or quasi judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness of legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer". It was further observed that if the officer acted negligently or omitted the prescribed conditions which are essential for the exercise of statutory powers, it would amount to misconduct.

18. In the instant case also, if he ignores to examine the antecedents of the dealers resulting in loss of revenue to government, he will be exposed to the charge of misconduct. In this case we are not concerned what order that has been ultimately passed but the conduct of the officer prior to the issue of the forms. We therefore find that the charge is valid and sustainable.

19. The next contention that is raised is as to the the delay caused by the respondents in initiating disiplinary proceedings. It is stated that though the incident occurred in 1994 when the applicant had issued statutory forms, the charge has been issued in 1998. There is thus unexplained delay of four years and the delay vitiated the disciplinary procoeedings. It is however the case of the respondents in the counter that though sincere efforts were made to complete the investigation at the earliest possible time the approval of the various authorities in the matter at different stages had taken a long time. Hence there was delay in issuing the charge-sheet.

20. It should be noticed that the applicant has been placed under suspension by order dated 5.6.95 in contemplation of DP against him. He was continued in suspension pending the investigation into the case. Applicant filed OA No.769/97 on 2.4.97 challenging the order of suspension. Meanwhile the applicant was issued the show cause notice dated 8.1.97. After he had explained to the show cause notice, another show cause notice was to be issued on 7.3.97. After receipt of the explanation by the applicant the present impugned order has been issued to the applicant in 1998. Thus, it is

evident that since 1995 the department has been contemplating to take action against the applicant. It cannot therefore be said that the department had woken up suddenly after 4 years in issuing the charge-sheet. As stated in the counter affidavit, approval of several officers were also required in finalisation of the charge-sheet and necessarily, therefore, much time must have consumed in the process. Thus, in our view, the delay is properly explained. It is true, as contended by the learned counsel for the applicant, that delay vitiates enquiry. The decisions relied upon, namely, State of AP Vs. N.Radhakrishnan (1998)4 SCC 154 and M.N.Qureshi Vs. UOI (1989) 9 ATC 500 supports his contention that the charge should be quashed when there is unexplained delay. We are however of the view that in the instant case, the delay has been properly explained. Moreover as the applicant is no longer under suspension, he cannot complain of prejudice. It is not also the case of the applicant that because pendency of disciplinary proceedings, his promotional chances are affected or delayed. For the aforesaid reasons, the contention of the learned counsel for the applicant in this regard is rejected.

21. It is lastly contented by the learned counsel for the applicant that the Tribunal passed an order dated 22.4.97 in the earlier OA No.769/97 filed by the applicant directing the respondents to pay arrears of subsistence allowance and pass appropriate orders as to how the suspension period should be treated, within a period of two weeks. Subsequently, respondents filed MA 1448/97 in OA 769/97 seeking extension of time to

implement the order passsed in that OA on the ground that the orders could be passed only after completion of disciplinary proceedings. It is contended by the learned counsel for the applicant that the respondents were directed in the MA to complete the disciplinary proceedings within a period of one year but it was taken much later. The applicant has not taken a specific plea in this behalf nor raised any ground in the present OA. Moreover, we do not find any such order in the MA. The objection, therefore, is devoid of substance.

22. In view of the foregoing discussion, finding no merit, the OA is dismissed, without however ordering costs.

(Smt. Shanta Shastry)
Member(A)

(V.Rajagopala Reddy)
Vice-Chairman(J)

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