

Central Administrative Tribunal
Principal Bench

New Delhi, dated this the 11th JULY, 2000

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MR. KULDIP SINGH, MEMBER (J)

O.A. No. 2056 of 1999

Shri Puneet Gangal,
S/o Shri Vishnu Swarup Gangal,
R/o 2-C/20, New Rohtak Road,
New Delhi-110005.

... Applicant

(By Advocate: Shri Shyam Babu)

Versus

Union of India through
its Secretary,
Ministry of Finance,
Dept. of Revenue,
North Block,
New Delhi-110001.

.. Respondent

(By Advocate: Shri V.P. Uppal)

C.P. No. 75 of 2000
in
O.A. No. 1072 of 1999

Shri Puneet Gangal

.. Petitioner

(Applicant in person)

Versus

1. Shri P.G. Mankad,
Secretary,
Dept. of Revenue,
North Block,
New Delhi-110001.

2. Shri Ravi Kant,
Chairman,
Central Board of Direct Taxes,
North Block,
New Delhi-110001.

.. Respondents

(By Advocate: Shri V.P. Uppal)

ORDER

MR. S.R. ADIGE, VC (A)

As O.A. Nos. 2056/99 and 1072/99 and C.P.
No. 75/2000 involve common question of law and fact
they are being disposed of by this common order.

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2. Applicant is an officer of the 1977 batch of the Indian Revenue Service. A copy of the order of the Additional Collector, Customs, Airport, Madras dated 30.6.94 (copy on record) reveals that applicant while working as Dy. Commissioner of Income Tax was apprehended by the Customs Authorities at Madras Airport on 31.8.92 while returning from Singapore for having been in possession of 1.23 Kgs. of gold valued at Rs.3,46,473/-. Since import of gold to India without R.B.I's permission was prohibited at the relevant time. The Dy. Collector Customs (Airport) after considering applicant's submissions ordered confiscation of the said gold seized from him and also imposed personal penalty of Rs.30,000/- which later on appeal was reduced by the Collector of Customs to Rs.20,000/- by his order dated 5.5.95 (copy on record).

3. Applicant does not deny the specific averment of respondents in Paragraph 5 of their short reply in O.A. No. 2056/99 that pursuant to his being apprehended by the Customs Authorities on 31.8.92 he was in custody for more than 48 hours as result of which he was placed under suspension w.e.f. 1.9.92 in terms of Rule 10(2) CCS (CCA) Rules vide order dated 9. 9.92 (Annexure P-1 in O.A. No. 1072/99).

4. Thereupon respondents by Memo dated 13/17.1.95 (Annexure C in O.A. No. 2056/99) asked applicant to show cause why disciplinary proceedings

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should not be initiated against him for proceeding abroad
~~made~~ on frequent occasions without obtaining
permission of the competent authority; for
deliberately giving false information in his
4 application for casual/earned leave regarding the
reasons for the same; for not explaining the source
of funds as required under rules in respect of his
repeated trips abroad; and for being caught smuggling
gold bars weighing 1.23 kgs. worth Rs.3,46,473/- in
contravention of the laws of the country.

5. Applicant submitted his reply on 26.8.95
(Annexure D in O.A. No. 2056/99) in which he
pleaded guilty to serious breach of CCS (Conduct)
Rules in not taking permission for the listed trips
abroad and for giving false declarations in his leave
applications. He, however, sought to attribute these
grave omissions to his disturbed state of mind and
his ambition to do something more in life than merely
attending to routine Government work. He, however,
denied having funds in excess of his known source of
income, and also denied the charge of smuggling gold
into the country. He prayed that a sympathetic view
be taken of his case and he be reinstated.

6. Thereupon respondents issued impugned
Memo dated 12.8.99 (Annexure A in O.A. No.2056/99)
informing applicant that they proposed to hold an
inquiry under Rule 14 CCS (CCA) Rules, 1965. The
substance of the imputation of misconduct or
misbehaviour in respect of which the inquiry was
proposed to be held was set out in the Seven Articles

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of Charge (Annexure 1 to Memo dated 12.8.99), which were supported by other Annexures as prescribed under rules.

(22)

7. While in O.A. No. 2056/99 applicant seeks setting aside of the impugned Memo dated 12.8.99 and the charge sheet attached to it, in O.A. No. 1072/99 applicant seeks revocation of his suspension as also enhancement of his suspension allowance with retrospective effect.

8. The main ground advanced by applicant in O.A. No. 2056/99 is that the delay in issuing the charge sheet after seven years despite documentary and oral evidence being in respondents' possession for this entire period, and for no fault on applicant's part is unexplained and is, therefore, arbitrary and unjustified, and will seriously prejudice applicant in his defence in the D.E. It is also contended that some of the articles of charge are factually incorrect and Charge No. V is vague.

9. The main ground advanced in O.A. No. 1072/99 is that FR 53 mandatorily requires the authorities to review the suspension after three months but the same was not done in the present case, and no reviews were regularly held thereafter. It is also contended that under rules a charge sheet should be filed within three months of the suspension and when it is not possible to file the charge sheet

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within three months the reasons for the same should be communicated in writing to the suspended official which has not been done in the present case either. (23)

10. The question which falls for adjudication is whether these grounds are sufficient to warrant intervention by the Tribunal at this stage of action initiated by respondents.

11. In this connection we have heard applicant's counsel Shri Shyam Babu as well as applicant himself. Shri Uppal appeared for respondents and has also been heard.

12. As regards OA No. 2056/99, we are not persuaded to take the view that the time that has elapsed between applicant being apprehended on the charge of smuggling gold into the country in 1992 and the issue of the charge sheet in 1999 is by itself sufficient to warrant quashing of the chargesheet at this stage. We note that applicant himself took eight months to submit his reply to the show cause notice issued to him in January, 1995, and in that reply he has himself acknowledged having committed serious breach of CCS (Conduct) Rules.

13. Respondents have pointed out in their reply that consequent upon applicant's reply dated 26.8.95 being found unacceptable, information regarding applicant's alleged misconduct for the purpose of framing charge had to be collected from various sources such as Commissioner, Income Tax, Hyderabad, Customs authorities, Air India and Indian Air Lines. In this connection, paragraphs 5(A) and 5(B) of respondents' reply indicate the efforts taken by respondents for collection of information. It is well recognised that

collection of such information from varied and disparate sources takes time and it therefore cannot be said that the delay is unexplained. Applicant's counsel has relied upon the Hon'ble Supreme Court's ruling in State of Andhra Pradesh Vs. N. Radhakrishnan 1998 (4) SCC 154 to contend that delay in initiating the proceedings vitiates the case but that ruling is in the context where the delay is unexplained which is not the case here. Another ruling relied upon by applicant's counsel is State of Madhya Pradesh Vs. Bani Singh AIR 1990 SC 1308. That is also a case where there was no satisfactory explanation for inordinate delay of more than 12 years in initiating the proceedings. The passage of time in the present case is nowhere ^{near} 12 years. That ruling is also therefore distinguishable from the present case. Another ruling cited by him is Shri Ramesh Kumar Devan Vs. UOI & another 1990 (3) SLJ 241 which is also on the question of delay in initiating departmental proceedings but for the reasons discussed above the present ruling is also not applicable to the present case.

14. On the other hand respondents have also cited several rulings in support of their contention that the disciplinary proceedings should not be interfered at this interlocutory stage. Only one or two such rulings need be noticed. In Secretary to Govt. of Prohibition, Excise Deptt. Vs. L. Srinivasan 1996 (1) ATJ 617, the Hon'ble Supreme Court passed severe stricture on the Tribunal for quashing a departmental enquiry ^{merely} on the ground of delay noting that the charge of embezzlement and fabrication of false record was extremely serious

and it would take time to detect such charge and collect materials in respect of the same. Indeed the parameters for judicial interference in departmental proceedings have been laid down by the Hon'ble Supreme Court in UOI Vs. Upendra Singh 1994(27) ATC 200 wherein it has been held that

"In the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law."

15. In the present case, neither can it be said that no misconduct or other irregularity has been made out nor can it be said that the charges framed are contrary to any law. Indeed the charges framed against applicant as already noticed above are of extremely serious nature, which inter alia include the charge of smuggling gold into the country. Applicant has himself admitted of having committed serious breach of C.S (Conduct) Rules and of grave acts of omission and commission and we have already noticed that the time taken by respondents to frame the charges was on account of need to collect accurate information regarding applicant's various acts of alleged misconduct.

16. The Hon'ble Supreme Court in several judgments have severely deprecated the practice of Courts/ Tribunals interdicting departmental proceedings at interlocutory stages unless there are overwhelming reasons to warrant the same. In the present case we see no such reason and the impugned order dated

12.8.99 therefore requires no interference. If any of the charges are vague or factually incorrect as contended by applicant, it is open to him to bring to the notice of the disciplinary authority in his defence statement. The OA No.2056/99 is therefore dismissed.

17. In regard to OA No.1072/99 applicant has prayed for revocation of suspension order dated 9.9.92 and for enhancement of suspension allowance with retrospective effect.

18. Para 6 in Chapter 1 of Swamy's Compilation on Suspension & Reinstatement, 14th Edition, 1997 contains guiding principles for resorting to suspension. Paragraph 6,1(iv) lays down that

"Where a preliminary enquiry revealed a prima facie case justifying criminal or departmental proceedings, which are likely to lead to his conviction and/or dismissal, removal or compulsory retirement from service, it is appropriate to place that official under suspension".

In the present case, one of the charges against the applicant is that he brought gold valuing Rs.3,46,473/- (1.23 kgs) out of unknown and undisposed sources into the country. There can be a little doubt if this charge is proved, it is likely to lead applicant's removal or dismissal from service. This ground itself is sufficient to warrant the continuance of applicant's suspension. This will, however, not preclude respondents themselves from revoking applicant's suspension if they are so disposed of to do so after the periodic reviews which they are required to conduct in accordance with rules and instructions on cases where an official is under continued suspension.

19. In so far as the enhancement of applicant's subsistence allowance from retrospective date, which has also been sought for in OA No.1072/99 is concerned, we note that pursuant to CP No.75/2000 filed by

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applicant vide our order dated 16.12.99 we had directed respondents to review the quantum of suspension allowance admissible to applicant in terms of the relevant rules and instructions on the subject, and take a final decision in the matter within 6 weeks from the date of receipt of a copy of this order. When the C P had come up for hearing on 23.12.99, respondents' counsel had invited our attention to respondents' reply in which they had contended that the competent authority had reviewed the suspension order dated 9.9.92 in November, 1999 itself and decided to continue the suspension without variation in the subsistence allowance and necessary orders had been issued on 24.4.2000.

20. Not being satisfied with the aforesaid reply, by our order dated 28.4.2000 we directed Respondents 1 and 2 to appear in person on 31.5.2000 and explain why contempt proceedings should not be initiated against them for not complying ^{with} our order dated 16.12.99 and we had also directed that if by that date respondents passed a detailed, speaking and reasoned order in accordance with rules and instructions on applicant's claim for enhancement of subsistence allowance, their personal presence would be exempted.

21. When C.P.No.75/2000 came up for hearing on 31.5.2000, respondents' counsel invited our attention to reply affidavit of respondents dated 29.5.2000 enclosing a copy of detailed order dated 25.5.2000.

22. In the aforesaid order dated 25.5.2000, it is stated that the criminal offence for which applicant was placed under suspension was pending trial even

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admissible to the applicant in terms of the relevant rules and instructions on the subject and take a final decision in the matter within 6 weeks from the date of receipt of a copy of the order under intimation to applicant and release all such sums as are admissible to applicant forthwith thereafter.

26. We have already noticed that pursuant to our subsequent order dated 28.4.2000 in this CP respondents have passed a detailed, speaking and reasoned order dated 25.5.2000 which is annexed with respondents' reply affidavit dated 29.5.2000.

27. In this connection, after these OAs and CP had been heard and orders were reserved, applicant filed an unnumbered MA across the Bar contending that he had received the Govt. summons in the criminal case regarding the gold into the country instituted in 1992 only on 28.6.2000, and hence respondents' contention that the delay in the prosecution of the criminal case was on his account was factually incorrect. With that MA applicant has enclosed a copy of summons from the Chennai Court dated 12.6.2000 directing him to appear on 5.7.2000. We notice that the case was instituted sometime in 1992 and we find it difficult to believe that this is the ~~govt.~~ ^{publ-} summons issued by the Court to applicant.

28. Furthermore applying the Hon'ble Supreme Court's ruling in J.S. Parihar Vs. G. Duggar & Ors. JT 1996(9) SC 608 to the aforesaid order dated 25.5.2000, it is clear that there is no ground for initiating contempt action against respondents and the order dated 16.12.99 in OA No.1072/99 must be deemed to have been complied with. If the applicant is aggrieved by the aforesaid order dated 25.5.2000, then in accordance with the Hon'ble Supreme Court's ruling in Parihar's case (supra),

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that gives a fresh cause of action which he may challenge separately in accordance with law, if so advised.

29. Under the circumstance, subject to what has been stated above, OAs No.2056/99 and 1072/99 with CP No.75/2000 are dismissed. No costs. Notices are discharged.

(KULDIP SINGH)
MEMBER (J)

(S.R.ADIGE)
VICE CHAIRMAN (A).

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[Signature]
Court Offices
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