IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

(13)

O.A.No. 521 /1998 Date of Decision: 16-11-1998

Shri G. Ramdas .. APPLICANT

(By Advocate Shri P.P. Khurana

versus

Union of India & Ors. .. RESPONDENTS

(By Advocate Shri V.P. Uppal

CORAM:

THE HON'BLE SHRI T.N. Bhat, Member (J)

THE HON'BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES

2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

(S.P.Biswas)
Member(A)

Cases referred:

1. UOI Vs. J. Ahmed AIR 1979 SC 1022
2. K.P.Tewari V. State of MP JT 1993(6) SC 287
3. E.S.Reddi V. Chief Secy. to Govt. of AP & Ors. 1985(3)SLR Vol.40
4. UOI V. Upendra Singh JT 1994 (1) SC658
5. UOI V. R.K. Dhawan JT 1993(1) SC 236
6. UOI Vs. A.N. Saxena 1992(3) SCC 124
7. UOI Vs. Ashok Kakkar 1995 SCC (L&S) 374
8. MD,MMWSSB & Anr. Vs. R.Rajan & Ors. 1996(1) SCC 338
9. State of MP V. J.S. Bansal & Anr. JT 1998(1) SC 514

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.521/1998

New Delhi, this 16th day of November, 1998

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(J)

Shri G. Ramdas
s/o Shri Subba Rao
D-9, Income Tax Colony
Peddar Road, Bombay-26 .. Applicant

(By Shri P.P. Khurana, Advocate)

versus

Union of India, through
Secretary
Department of Revenue
Ministry of Finance
North Block, New Delhi .. Respondent

(By Shri V.P. Uppal, Advocate)

ORDER
Hon'ble Shri S.P. Biswas

The applicant, an officer of Indian Revenue Service (IRS for short) of 1965 Batch, is aggrieved by A-1 Memorandum of major penalty charge-sheet dated 8.1.96 proposing to hold a departmental enquiry against him under Rule 14 of CCS(CCA) Rules, 1965. The charge against the applicant is that while functioning as Commissioner of Income-Tax (CIT for short)/Central I, Madras, he gave a number of improper and perverse orders detrimental to the interests of Union of India.

2. The Article of Charge framed against the applicant mentions the following:

(15)

> "Shri G. Ramdas, while functioning as Commissioner of Income-Tax (Central)-I, Madras, set aside more than 100 income-tax and wealth-tax assessments and penalty orders relating to family members of Ram Gopal Didwani Group u/s 264 of the I.T.Act/25(1) of the W.T.Act, purely with a view to enable these assessees to approach the Income Tax Settlement Commission for settlement of their cases, and reduing the demand raised in this group of cases to virtually nil, in utter disregard of the earlier orders passed by the Income Tax Settlement Commission and the Central Board of Direct Taxes rejecting the assessee's petitions under Sections 245D(1) and 273A respectively. Further, while submitting his report to the Settlement Commission under Section 245D(1), Shri G. Ramdas deliberately suppressed vital facts material for consideration of the assessee's applications for admission on merits".

Shri P.P. Khurana, learned counsel for the applicant argued very strenuously to say that though the applicant submitted his statement of defence on 7.5.96, inordinate delay has already taken place in finalising the proceedings and this has adversely affected applicant's career prospects. It was incumbent on the part of the respondents to have given their urgent attention to the defence statement of the applicant and come to a conclusion whether it was worthwhile to continue to keep the **"Sword of Damocles"** hanging over the applicant. The applicant has assailed the charge-memo on a large number of grounds. We have focussed on the major ones only. Thus, the applicant would argue that he has been picked up for a hostile and invidious discrimination. The Chief Commissioner of Income-Tax (CCIT for short)

whose instructions he had to obey, and obedience of which has been the root cause behind issuance of the charge-sheet against the applicant, has been allowed to take voluntary retirement with necessary vigilance clearance in early 1996. Similarly, officers of the rank of DCIT and ACIT who were equally involved in the case of Didwani Group of Assessees have also been left out. Respondents even did not take any action against the senior departmental representative who was equally at fault.

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3. Respondent's charge that the action of the applicant was actuated by malafide is negatived by the admissions of Income Tax Settlement Commission (ITSC for short) itself. Applicant's stand of recommending the assessment cases to the ITSC stands well supported when the review petition by the department was dismissed by ITSC vide their orders dated 22.1.96 stating that "We have, thus, come to the conclusion that there is complexity of investigation involved in these cases which factor by itself would entitle the applicants for approaching the Settlement Commission. The nature and circumstances of the cases which were taken note of in the earlier orders of the Settlement Commission have also changed considerably and in the changed circumstances we consider that the applications are suitable for settlement".

4. That apart, respondents have failed to appreciate that the orders passed under Section 264 of IT Act, 1961 is a quasi-judicial order. It is well settled in law, the counsel for the applicant submits, that where an officer in exercise of quasi-judicial powers takes action under any statutory provisions, the decisions taken thereupon are not subject to disciplinary action even if the officer commits an error of judgement.

5. Shri Khurana has cited a long chain of case laws in support of several stands taken by the applicant. We bring out only those crucial for our purpose. Thus, the decision of the Hon'ble Supreme Court in the case of **UOI Vs. J. Ahmed AIR 1979 SC 1022** has been cited to support applicant's contention that error of judgement or negligence do not **ipso facto** constitute a "**misconduct**". Learned counsel for the applicant also drew support from the judgement of the Hon'ble Supreme Court in the case of **K.P.Tewari V. State of M.P., JT 1993(6) SC 287** wherein it has been held that every error cannot be attributed to improper motive. In the case of **E.S. Reddi V. Chief Secretary to the Govt. of A.P.& Ors., 1985 (3) SLR Vol.40,** the irregularities and the resultant suspensions were not preceded by any enquiry and the Hon'ble High Court ordered reinstatement of the charged official. The same situation prevails for the applicant herein, the learned counsel argued. Again, he urged that respondent's reading of judgement in **UOI V. Upendra Singh, JT 1994 (1) SC**

658 appears to be faulty inasmuch as while they have referred to only one part of what the Hon'ble Supreme Court had laid down in that case. Respondent has singularly failed to notice that in the same judgement the Hon'ble Supreme Court had said that it would be open to the Tribunal to interfere "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 or the charges framed are contrary to any law.

6. Shri V.P. Uppal, learned counsel, arguing on behalf of respondent, opposed the contentions and submitted that there has been no deliberate delay in conducting the proceedings. Enquiry and Presting Officers have been appointed and the inspection of defence documents by the applicant has been allowed. The regular hearing is likely to commence very shortly. Because the charges against the applicant are being looked into through an ongoing proceedings, the department has not come out with detailed comments in respect of the merits of the charges at this stage. Citing from the judgement of the Hon'ble Supreme Court in the case of UOI V. K.K. Dhawan, JT 1993(1) SC 236, respondent would submit that no government servant can escape disciplinary proceedings even if he is acting as quasi-judicial authority in case he is alleged to have committed some misconduct/lapses or irregularity either with a view fo oblige himself or acted negligently in exercise of his power/

jurisdiction. The counsel further submitted that the Tribunals/Courts are not to intervene in any case of disciplinary proceedings at the initial stage and the proceedings initiated with the issue of charge-sheet shall be allowed to go unhindered. The court/Tribunal can only interfere if the competent authority acts totally arbitrarily or with malafide. Respondent contended that CCIT's instructions are based on a report dated 7.2.94 submitted by the applicant. CCIT's instruction is dated 25.4.94 but in 18 cases, the orders under section 264 of IT Act were passed by the applicant on 31.3.94 which is much before the written instruction of CCIT. The applicant, therefore, cannot seek any protection of having acted only on the orders of a higher authority.

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7. We have heard the rival contentions of learned counsel for both parties and perused the records. The only issue that arises for determination is whether the case legally calls for our intervention at the interlocutory stage.

8. Citing the decisions of apex court in the case of K.K. Dhawan (supra), the learned counsel for the applicant sought to justify that it is a case befitting interference by the Tribunal since charges framed (read with imputation of articles of charges) do not disclose any misconduct or make out a case of disciplinary proceedings. Other irregularities cannot be alleged to have been made and that the charges framed are contrary to law.

It is also significant to note that respondent has not controverted the submissions of the applicant in that it was the CCIT (Central) South Zone, Bangalore who called upon the applicant to send a report as to whether it would be prudent and advisable to allow the assessees to approach the ITSC for the settlement of the entire income tax matters of Didwania Group spread over a period of more than three decades. The applicant would submit that orders under Section 264 were passed on 31.3.94 in anticipation of written instructions only to reduce uncollectible demand from the registers of the department by the end of the financial year. Orders of CIT were issued and served only after the instructions of CCIT were received. It has been further submitted that the respondents have nowhere alleged that the applicant has caused any loss of revenue to the exchequer while acting on the instructions of CCIT.

9. In the background of materials placed before us, the question whether the orders/instructions passed by the applicant in various cases were part of his inherent powers, duties/responsibilities or based on the instructions of his superiors or whether these orders were passed improperly, malafidely and perversely, with an intention to provide undue reliefs to the assessees, as contained in the charge-memo, can be conclusively answered only after the truth of the charges

against the applicant has been enquired into and a finding is reached. Such an enquiry is wholly outside the jurisdiction of the Tribunal.

10. In this connection, the Hon'ble Supreme Court in **Upendra Singh (supra)** has observed as under:

> ".....The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority, as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court.
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> .....
>
> "Now if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges?"

11. It is important to mention that Shri Upendra Singh was also an IRS officer against whom a memorandum of charges was issued accompanied by a statement of imputation of misconduct or misbehaviour in respect of articles of charges for giving alleged illegal and improper directions to the assessing officer in respect of certain firms of builders and developers thereby violating the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS(Conduct) Rules, 1964. As soon as the memo of charges was served upon Shri Upendra Singh, he approached the Principal Bench of the Tribunal, which admitted the OA and passed an interim order

restraining respondents from proceeding with the disciplinary action for a period of 14 days and meanwhile called upon the Union of India (UOI for short) to file their reply. Against the said interim order by this Tribunal, the UOI approached the Hon'ble Supreme Court by way of CA 4316/91 which was allowed by the apex court. The apex court, vide its order dated 10.9.92 directed the Tribunal to deal with the matter in the light of the observations made by it in the case of **UOI Vs. A.N. Saxena, 1992(3) SCC 124.** When the matter came back to the Tribunal, it went into the correctness of the charges on the basis of materials produced by Shri Upendra Singh and quashed the charges holding that the same did not indicate any corrupt motive or any culpability on the part of Shri Upendra Singh. It is against this order of the Tribunal that the UOI filed CA 7484/93 which was decided by the apex court on 17.2.94. The appeal was allowed; the order of the Tribunal was set aside; disciplinary enquiry against Shri Upendra Singh was ordered to be proceeded unhindered and expeditiously and the ratio as extracted by us in para 10 herein above was recorded.

We are of the view that the aforesaid ratio in Upendra Singh's case is fully applicable to the facts and circumstances of the present case.

12. Suffice it to say that much water has flown since E.S. Reddi's case was decided by the Hon'ble High Court of A.P. as cited by the applicant. Subsequent decisions of the Hon'ble Supreme court lay down that an OA impugning the charge sheet without awaiting the decision of the disciplinary authority has to be held as pre-mature in terms of law laid downby the apex court in the case of **UOI Vs. Ashok Kakkar 1995 SCC (L&S) 374.**

13. We also find yet another decision of the apex court in **Managing Director, Madras Metropolitan Water Supply and Sewerage Board and Anr. Vs.R. Rajan and Ors. 1996(1) SCC 338,** wherein it has been held that:

> "As rightly held by the learned Single Judge and the Division Bench, no interference was called for at an interlocutory stage of the disciplinary proceedings. The enquiry was no doubt over but the competent authority was yet to decide whether the charges against the respondents are established either wholly or partly and what punishment, if any, is called for. At this stage of proceedings, it was wholly unnecessary to go into the question as to who is competent to impose which punishment upon the respondents. Such an experience is purely academic at this stage of the disciplinary proceedings."

From what has been indicated herein above, it would be evident that as per the law laid down by the apex court in a long line of decisions, entertainment of petitions by the Tribunal at an interlocutory stage of disciplinary proceedings and interference by it at that pre-mature stage would be unwarranted.

14. When disciplinary proceedings are continuing based on sufficient materials on either side, it is unnecessary for the Tribunal/Court to examine the merits of pleas taken by interested parties. As against applicant's detailed defence statement dated 7.5.96, the respondent in his counter dated 26.5.98 has come out with specific lapses attributable to applicant. These claims and counter-claims are subject matter of disciplinary proceedings and findings in respect of individual disputed items are expected when the proceedings are completed. This Tribunal can ill afford to interfere at this very stage.

15. The applicant would then argue that initiation of these proceedings is bound to prejudice his career prospects since he is due for promotion to the next higher grade. It is apposite to mention here that promotion cannot be claimed as a matter of right, but one has the right to be considered. Disciplinary enquiries, if pending, cannot defeat that right (emphasis added). If the applicant is in the zone of consideration for promotion, adoption of "Sealed Cover procedure" by respondents to be resorted to in such cases, will protect applicant's interest.

16. In view of the aforesaid discussions, the OA deserves to be dismissed and we do so accordingly. We shall, however, fail in our duty if we ignore the fact that by now more than two years have

passed and there are no signs of departmental proceedings coming to an end shortly. There are guidelines to complete such proceedings within 180 days. IRS Officers belonging to 1965 batch are apparently due for promotions to the level of CCIT and we do not have the details if DPCs for considering promotions for these group of officers have taken place or not. Under these circumstances, to serve the interest of justice, we direct the respondent to strictly follow (1) the "Sealed Cover procedure" and ensure that delays in finalising the proceedings should not prejudice applicant's case for promotion when it was due to him provided he is found fit and not guilty in the departmental proceedings and (ii) that the departmental proceedings, still pending against the applicant, shall be completed, if applicant cooperates, within a period of six months from the date of receipt of a copy of this order. Our directions aforementioned find full support from the judgement of the Hon'ble Supreme Court in the case of **State of MP V. J.S. Bansal & Anr. JT 1998(1) SC 514** decided on 9.2.98.

Application is disposed of as aforesaid. No costs.

16.11.98.

(S.P. Biswas)
Member(A)

(T.N. Bhat)
Member(J)

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