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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. NO. 1599/96

New Delhi this the 21st day of March, 2000

HON'BLE MR. JUSTICE ASHOK AGARWAL, CHAIRMAN
HON'BLE MR. V.K. MAJOTRA, MEMBER (A)

Shri Surender Mohan Saxena
S/o Late Shri Gauri Sahai Saxena
R/o 28, MIG Flats,
Prasad Nagar,
New Delhi.

..Applicant

(Applicant present in person)

Versus

1. Union of India
through Secretary,
Ministry of Finance,
North Block, Central Secretariate,
New Delhi.
2. Central Board of Direct Taxes
through, Chairman, North Block,
New Delhi.
3. Chief Commissioner of Income Tax,
Central Revenue Building, IP Estate,
New Delhi.

..Respondents

ORDER (Oral)

By Mr. V.K. Majotra, Member (A)

The applicant was appointed as Assistant Commissioner of Income Tax in the year 1984. Vide Memorandum dated 19.11.91 departmental proceedings under Rule-14 of the CCA(CCA) Rules, 1965 were initiated against him, charging that while working as Assistant Commissioner of Income Tax, Investigation Circle, Bareli during the years 1987 and 1988, a search was conducted on 15.10.87/16.10.87 in the case of M/s Tandon Jewellers of Shahjahanpur. The

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applicant in his capacity as the Assessing Officer, opened a sealed box on 14.7.88, containing gold and silver articles seized during the course of the above searches, in connection with release of the seized gold ornaments. The sealed box stated to be containing the remaining seized articles was redeposited by the applicant in Government Treasury. It was alleged that the applicant asked two of the original authorised officer S/Shri Suman Gupta and G.S. Mishra to open the sealed box on 9.12.88 for valuation of the seized silver articles. On such valuation, it was discovered that seized silver articles approximately 19 kgs and valued at about Rs. 1 lakh were lost. It was alleged that the applicant had acted in violation of Income Tax Rules as well as departmental instructions, resulting in loss to the Government and he tried to shift the blame on the other officers. In the process he violated Rules 3 (1) (i), (ii) and (iii) of CCS (Conduct) Rules, 1964. Rule-112 of Income Tax Rules 1962 lays down the procedure in connection with the Search and Seizure of articles. However, no panchnama was drawn for opening and resealing the box on 14.7.88. Subsequently, on 9.12.88, the sealed box was again opened by the applicant for the valuation of the seized silver articles. On this occasion, the applicant took two of the original authorised officers S/Shri Suman Gupta, and G.S. Mishra even though these

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officers were not present at the time of the opening and resealing of the box on 14.7.88 and even though the seals placed on the box were of the Charged Officer and not of these authorised officers. On 9.12.88, the applicant did not associate himself with the opening and resealing of the box deliberately even though he had gone to Shahjahanpur specifically for this purpose and was present in the Income Tax office. Whereas under Section 112(13) read with Rules 112 (1) and 112 (7) of Income Tax Rules, 1962, it is the duty of the Assessing Officer to prepare proper panchnama in respect of the opening as well as resealing of the sealed box, it is alleged that he neither prepared inventories of the articles found by him in the sealed box on 14.7.88 or the articles placed by him in the box before the resealing of the same. The applicant had taken a defence that his presence and signature on the acknowledgment dated 14.7.88 were only incidental and all the responsibility is that of the custodian. He had also taken a plea that the Income Tax Act/Rules do not envisage preparation of a panchnama each time the sealed box is opened or resealed. The Enquiry Officer in his detailed Enquiry Report has held that a panchnama was required to be drawn on 14.7.88 when the box was opened to release the gold but no such panchnama or inventory was prepared in respect of articles found in the sealed box at the time of its

opening, nor in respect of articles left behind in the box at the time of resealing. Thus he had failed in his duty as the assessing officer. ^{At the time} he did not sign on the memo prepared on 9.12.88 when the box was re-opened for the second time, though he was present at Shahjehanpur that day in the capacity of the assessing officer of the case. The applicant was provided Enquiry Officer's report and his comments were also called upon the Enquiry Officer's report. The UPSC was consulted on the merits of the case. In the opinion of the UPSC the applicant was guilty of not discharging his duties properly inasmuch as he failed to get a panchnama/inventory made at the time of opening and resealing of the box on 11.7.88. which has resulted in a loss to the Government. The UPSC advised that the ends of justice would be met by imposing a penalty of (i) Recovery from the charged officer of loss caused to the Government and (ii) "Censure" for not following the prescribed procedure and norms. The Disciplinary Authority found the advice of UPSC most reasonable and passed an order dated 11.6.96 imposing the impugned penalty.

In the present OA, the applicant has assailed the Enquiry Officer's report dated 15.4.94 as well as the impugned order dated 11.6.96 on the ground that the Enquiry Officer has not given any conclusive findings and that UPSC and the Disciplinary Authority have not held the applicant guilty for violation of

any CCS (conduct) Rules, and the punishment has been awarded to the applicant illegally. The applicant has also taken exception to the recovery of a sum of Rs. 1 lac from his gratuity. According to him, recovery should be made at the rate of one-third of the basic pay and from the salary alone. The applicant has sought setting aside of the impugned order dated 11.6.96 as also the report of the Enquiry Officer dated 15.4.94. He has also sought that respondents should be directed to open the sealed cover containing the recommendations of the DPC held in the year 1993, & January, 1994 for his promotion to the post of Dy. Commissioner of Income Tax and further that the respondents should be directed to promote him to the said post with all consequential benefits..

In their counter, respondents have contended that the Enquiry Officer's report is a well reasoned document wherein Enquiry Officer has carefully analysed the rival submissions before reaching the conclusions. It has further been stated that in the enquiry prescribed procedure has been fully followed and the UPSC after analysing and examining all the facts and evidence on record came to a considered opinion that the applicant was indeed guilty of not discharging his duties properly inasmuch as he failed to get a panchnama/inventory made at the time of opening and resealing of the box on 11.7.88 which has resulted in a loss to the Government. UPSC also

advised on recovery from the applicant of loss caused to the Government as well as on Censure for not following the procedure and norms. Respondents have further maintained that the disciplinary authority have passed the impugned order on analysing the entire case and finding the advice of the UPSC most reasonable. Citing the ratio in the case of Parma Nand wherein the Hon'ble Supreme Court had held that where an enquiry consistent with the rules and the principles of natural justice has been held and on the basis of such an enquiry the Disciplinary Authority finds that the delinquent officer is indeed guilty of misconduct, then the decision to impose penalty or the quantum of penalty is not open to review by the Courts. The order is open to review only if it is passed with malafide intention, is arbitrary or perverse. Since this is not a case here the decision to impose a penalty on the applicant does not suffer from any infirmity and should be upheld. Respondents have pleaded that the DPC in connection with the promotion of the applicant was held after the issue of the charge sheet and therefore the recommendations of the DPC were kept in the sealed cover which was required to be opened in case the applicant was exonerated in the DPC proceedings. Since these proceedings culminated in the imposition of penalty of Censure and recovery of Rs. 1 lac from the applicant, the sealed cover was not opened. The applicant filed a rejoinder as well.

We have heard the applicant at length and also perused the material available on records. The Enquiry Officer has held that the Charged Officer failed to follow the procedure laid down in Rule 112 of Income Tax Rules, 1962 and in the Search and Seizure Manual while opening and resealing the sealed box on 14.7.88. He has held that the Charged Officer became the Assessing Officer on 28.10.87 when he received the documents, Treasury receipts, keys etc. from Shri M.L. Aggarwal, ITO, Shahjahanpur who was the custodian. Therefore, it was the Charged Officer's i.e. applicant's duty to draw a panchnama or to ensure that a panchnama was drawn on 14.7.88. However, no panchnama or inventory was made in respect of articles found in the sealed box at the time of its opening and also in respect of articles retained in the box after release of the gold ornaments. The applicant also did not sign on the memo prepared on 9.12.88 when the box was re-opened second time though he was present at Shahjahanpur that day in the capacity of the Assessing Officer of the case. We do not agree with the applicant that it is not obligatory to prepare a panchnama at the time of resealing, as there are no clear instructions on the point. When a panchnama or inventory has to be prepared at the time of Seizure it naturally follows that on resealing also panchnama and inventory must be prepared. The Enquiry Officer has given a very reasonable report mentioning

the entire evidence and the rules. The UPSC also has similarly made very detailed and reasoned recommendations observing that :

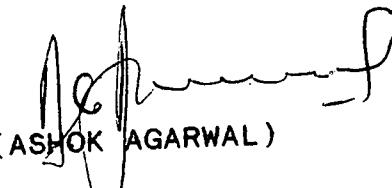
"It cannot be held with certainty that the loss did occur on 14.7.88 when the box was first opened and later resealed and the gold ornaments released in the absence of clear evidence on record the benefit of doubt would go to the charged officer as for the alleged malafide lapse/misconduct. Therefore, the Commission hold the second component of the charge relating to the malafidial loss of the silver articles worth Rs. one Lakh is not proved against the charged officer".

From the reports of the Enquiry Officer, the recommendations of UPSC and the orders of the Disciplinary Authority we have no cause for interfering with the conclusion that the applicant had failed in his duty in not preparing the panchnama on 14.7.88 as also not signing the memo prepared on 9.12.88. If the applicant had carried out the requirements of procedure in the matter of preparation of panchnama while opening and resealing the box loss to the Government would have been prevented. Hence holding the applicant liable to causing loss to the Government is justified in our view. We are also of the opinion that when the applicant has not been

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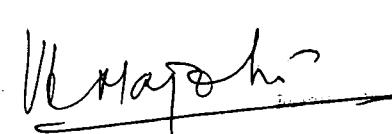
exonerated in the disciplinary proceedings, it was not necessary to open the sealed cover in connection with the recommendations of the DPC regarding promotion.

For the reasons given above, we find this OA devoid of merit and is accordingly dismissed. No costs.



(ASHOK AGARWAL)

CHAIRMAN



(V.K. MAJOTRA)

MEMBER (A)

cc.