

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No. 2264 Of 1997

New Delhi, dated the 22nd MAY 1998

(3)

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)

Shri V.D. Trivedi,
D-2/11, Subramania Bharti Marg,
New Delhi-110003. APPLICANT

(By Advocate: Shri O.S. Bajpai)

Versus

Union of India through
the Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Dept. of Revenue,
North Block,
New Delhi.

.... RESPONDENT

(By Advocate: Shri V.P. Uppal)

JUDGMENT

BY HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)

Applicant who is an IRS officer (1965 batch) impugns the Memorandum dated 13.6.97 (Ann. III) proposing to hold a departmental enquiry against him under Rule 14 CCS (CCA) Rules, 1965 on the charge that while functioning as CTT (A), Chandigarh and Ambala during 1991-93 he passed a number of improper, malafide and perverse orders with deliberate interest to provide undue relief to the assessees in the following cases:

1. M/s Tara Brothers Associates

Year 1990-91

2. M/s Laxmi Sagar HUF & Panna Lal HUF

Assessment Year 1984-85 to 1991-91

3. M/s Gulati Saree Centre

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4. M/s Sylco Furnishers
Assessment Year 1991-92

5. M/s Bhanumal Inderlal
Assessment Year 1991-92

6. M/s Naresh Kumar
Prop. Inder Lal Jewellers
Assessment Year 1991-92

(A)

and by his above erroneous, malafide, decisions applicant as CIT (A) caused substantial loss of revenue to the Govt. Applicant is thus charged with having failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Govt. servant and thereby having violated the provisions of Rules 3(1)(i), 3(1)(ii) and 3(i)(iii) CCS (Conduct Rules).

2. The substance of imputation of misconduct is set out in Ann. I to that Memo, while further details in support of the Articles of Charges are available in Ann. II, and the list of documents/witnesses by which the Articles of Charge are proposed to be sustained at Ann. III/IV respectively to that Memo.

3. The main ground taken by the applicant in the O.A. is contained in Para 4.16 namely that he had passed the orders in the aforementioned cases not as an Assessing Authority but as an Appellate Authority, and if there was an honest

difference of opinion approach and perception between the lower and the appellate authority, no motive could be attached. Applicant has also emphasised that there would be no apprehension of loss of revenue either because a further appeal against his orders could always be made in the I.T. Act and then a reference to the High Court. Applicant therefore has averred in Para 4.17 of the O.A. that there is no truth in the imputation of misconduct made against him and the same are false, mischievous and motivated, with a view to stop his further promotion. Details in respect of each of the aforementioned 6 cases have been furnished by him to support the averments.

3. We have heard applicant's counsel Shri Bajpai and respondent's counsel Shri Uppal. During the course of hearing Shri Bajpai has elaborated upon the averments noticed in Para 3 above and has emphasised that the imputation of misconduct is based upon information which was not authentic, constitutes a breach of natural justice as well as betrays lack of application of mind. Besides referring to the various rulings mentioned in the body of the O.A. itself Shri Bajpai has also cited the rulings reproduced in JT 1993 (6) SC 287; 1972 (83) ITR 508; and ATR 1974 SC 1471 in support of his submissions.

4. Shri Bajpai is entirely correct when he asserts that if an appellate authority, acting in the bonafide discharge of his duties and responsibilities has an honest difference of opinion, approach or perception, his conduct is protected by his office. By the same token, the conduct of an authority found to have been discharging his duties and responsibilities in a malafide manner, with the dishonest intention of causing wrongful loss or wrongful gain to others is certainly culpable and gets no protection by his office as it constitutes misconduct in the discharge of his duties.

(b)

5. In the present matter before us the question whether the orders passed by applicant in the various cases mentioned in Para 1 above were in the bonafide discharge of his duties and responsibilities and based upon an honest difference of opinion, approach and perception as averred by him, or whether these orders were passed improperly, malafidely and perversely with the deliberate interest of giving undue relief to the assessees, as contended ~~by~~ in the charge memo can be conclusively answered only after the truth of the charge against applicant is enquired into and a finding is reached. Such an enquiry is wholly outside the jurisdiction of the Tribunal.

A

6. In this connection the Hon'ble Supreme Court in UOT & Ors. Upendra Singh (1994) 27 ATC 200 has observed as follows:

..... 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 or the appellate 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. It would be sufficient to quote the decision in H.B.Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal Vs. Gopi Nath & Sons. The Bench affirmed the principle thus:

'Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extent to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself.'

Now if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is understandable how can that be done by the tribunal at the stage of framing of charges?"

(8)

7. In this connection it is important to mention that Shri Upendra Singh was also an TRS 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 and 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 CAT, P.B. who admitted the OA and passed an interim order restraining respondents from proceedings with the disciplinary action for a period of 14 days and meanwhile calling upon the UOT to file their reply. Against the said interim order the UOT approached the Hon'ble Supreme Court by way of CA-4316/91 which was allowed by the Hon'ble Supreme Court who by its order dated 10.9.92 directed the Tribunal to deal with the matter in the light of the observations made by the Hon'ble Supreme Court in UOT Vs. A.N. Saxena. 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 UOT filed

CA-7484/93 which was decided by the Hon'ble Supreme court on 17.2.94, by which the appeal was allowed; ~~and~~ the order of the Tribunal was set aside; ~~and~~ the disciplinary enquiry against Shri Upendra Singh was ordered to be proceeded unhindered and expeditiously; and the ratio extracted in Para 6 above was recorded.

8. We hold that the aforesaid ratio, in Upendra Singh's case (Supra) is fully applicable to the facts and circumstances of the present case. Various other judgments have also been cited by respondents' counsel Shri Uppal, but in our view the foregoing is sufficient to establish that the O.A. warrants no interference. It is dismissed. *No costs.*

Lakshmi Swaminathan

(Mrs. LAKSHMI SWAMINATHAN)
MEMBER (J)

Anil Chhajgi

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

/GK/