CENTRAL ADMINISTRATAIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(18)

O.A. NO.2755 OF 1997

New Delhi this the 22nd day of August, 2000

Hon'ble Mrs. Lakshmi Swaminathan, M (J)
Hon'ble Mr. S.A.T.Rizvi, M (A)

Shri Suraj Bhan
(By Advocate: Mrs. Avnish Ahlawat) ....Applicant

VERSUS

Union of India & Ors.
(By Advocate: Sh. Vijay Pandita) .....Respondents

1. To be referred to the Reporter or not? Yes

2. To be circulated to other Benches of the Tribunal? No

(S.A.T. RIZVI)
MEMBER (A)

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HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. S.A.T. RIZVI, MEMBER (A)

Shri Suraj Bhan, Dy. Director, Rural Development, Mori Gate, Delhi.

.....Applicant

(By Advocate: Mrs.Avnish Ahlawat)

Versus

1. Union of India through Lt. Governor of Delhi, Govt. of N.C.T., Delhi, New Delhi.

2. Dr. P.Ranaswamy, Enquiry Officer, Commissioner for Departmental Enquiries, C.V.C.Bikaner House, Pandara Road, New Delhi.

3. Shri R.Raghuraman, Dy.Dev. Commissioner, Govt. of Delhi, 5/9, Under Hill Road, Delhi-54.

....Respondents

(By Advocates: Sh. Vijay Pandita)

O R D E R

Hon'ble Mr. S.A.T. Rizvi, Member (A):

Sh. Suraj Bhan has filed this OA against the penalty of reduction in pay by three stages in the time scale of pay imposed upon him with immediate effect with a further direction that he would earn his first increment in the reduced stage after one year vide order dated 13.11.96 (Annexure A). He was, at the time, a Sales Tax Officer incharge of Ward No.46 (Old). He has also challenged the order dated 13.12.96 (Annexure AA) by which his pay has been fixed in accordance with the punishment order aforesaid. By bringing an amendment to the OA, he has also challenged the order dated 10.2.98 passed by the Lt.Governor, Delhi, in the Review Petition filed by the applicant in January, 1997. The main

grounds taken are that the Lt.Governor's order inflicting punishment on the applicant is perverse and is based on no evidence. The respondents have controverted the issues raised by the applicant.

2. We have heard the learned counsel for the parties and have perused the records. We now proceed to deal with the specific issues relevant to the case raised by the parties.

3. To begin with, we find that the proceedings have been undertaken in accordance with the relevant rules and that due and adequate opportunity was given to the applicant to defend himself against the charges of misconduct etc. Thus, the requirements of natural justice have been fully met in this case. We have perused the detailed enquiry report dated 31.8.95 at the instance of the learned counsel for both the parties, and have also carefully gone through the punishment order dated 13.11.96 as also the order dated 13.12.96, referred to above. We have also seen the order passed by the L.G. in the Review Petition. It is seen that, in the enquiry report, the E.O. has brought out all the relevant facts and circumstances albeit without taking good care to analyse the evidence in detail and has arrived at the conclusion that the article of charge stood proved somewhat abruptly. However, this circumstance alone cannot prejudice the case of the applicant in that there is clear evidence of application of mind at the level of the Disciplinary Authority, who actually decided to inflict the aforesaid punishment vide order dated

13.11.96. The Disciplinary Authority/L.G. has, in his said order, stated as follows:-

> "Perusal of the relevant records reveals that the case file was transferred to the charged officer on 29.10.90 with a caution note to verify the transactions of the firm before issuing statutory forms to it. The specific charge against the officer was that he issued 20 ST-35 forms to the dealer on 30.11.90 in total disregard of the cautionary advice of the transferor ward. The charged officer did not apply his mind in the issuance of statutory forms to the newly shifted dealer in his ward. In the light of the caution note of the transferor ward, the charged officer should have got verification of the business activities done before issuing any statutory forms to the dealer. It is on record that the additional surety of Rs. 5 Lacs demanded by the charged officer was not filed by the dealer, and instead the dealer disappeared."

Later, in the same order, he has mentioned that he did not find any reason to differ from the findings of the Inquiry and has categorically stated that the charged officer (Applicant) was certainly guilty of negligence and dereliction of duty resulting in a heavy loss to the Govt. exchequer. We conclude, therefore, that the punishment order in question is a speaking and a reasoned order which is based on evidence that became available during the enquiry and on the Enquiry Officer's report.

4. The learned counsel for the applicant has also taken the ground of the aforesaid order of punishment being perverse, and, in order to bring him the charge of perversity, has drawn our attention to the facts of the case in some details. We would, in what follows, discuss this matter in necessary detail.

5. The available facts are that the dealer by the name of M/s. Kwality Agencies got himself registered under the Sales Tax Act sometime in September, 1990 and, within days, shifted his business headquarters to another Ward, namely, Ward No.46 (Old). The original registration was, as stated, in Ward No.33. At the time of transfer of the case file of the dealer from Ward No.33 to Ward No.46 (Old), a note of caution had been added to the effect that before issuing the statutory forms to him, the activities/ transactions of the dealer should be verified. The main charge accordingly is that the applicant did not care to carry out any sort of verification before issuing 20 ST-35 forms to the dealer on 30.11.90 within one month of the receipt of his case file from the previous Ward No.33. The file is stated to have been received in Ward No.46 (Old) towards the end of October, 1990. He is also charged with failure to get the shifting of the business premises of the dealer duly recorded on the registration certificate and in the other relevant record pertaining to him. The applicant is further charged with having ignored taking of requisite steps to safeguard the revenues of the Govt. and of having thereby failed to maintain integrity and devotion to duty in terms of Rules 3 of the C.C.S. (C.C.A.) Rules.

6. We have, after a careful perusal of the enquiry report and the defence put forward by the applicant, convinced ourselves that the applicant actually did not proceed to verify the transactions etc. of the dealer in the manner expected of him. In short,

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all that he has stated in his defence is that he never entertained any doubt about the bonafide of the dealer in his capacity as the Assessing Authority and also never felt the need to undertake any investigation into his affairs/activities. We are surprised at this attitude on the part of the applicant. He has, at one place, mentioned that he asked for additional surety from the dealer amounting to Rs.5 Lacs but we find that this action was the result of a physical check independently carried out by the Enforcement Agency and was not the outcome of any initiative on the part of the applicant. He has nowhere stated that the dealer in question had filed the additional surety as directed by him. The respondents have stated that the said dealer resorted to heavy purchases/sales and this called for caution on the part of the applicant. However, the applicant has tried to suggest that heavy purchases/sales are just part of the game and such transactions need not necessarily worry the Assessing Authority. The respondents have pointed out that the dealer had resorted to the purchase of nearly Rs.5 Crores in a short time and that, inter alia, on this account, he (dealer) was assessed to a tax of Rs.74 Lacs or so, but nothing was paid by the dealer. This fact has not been controverted by the applicant in unequivocal terms. There is also a mention in the records that the enquiry made by the Enforcement Agency had revealed that the said firm/dealer was found to be bogus, and that the verification made at both the places of business of the dealer had led to a serious doubt about the existence of the firm/dealer. In such a scenario, it is natural to assume that if the applicant

had taken effective steps to verify the activities of the dealer in terms of note of caution communicated to him by Ward No.33, the applicant might well have rejected the application of the dealer for issuance of ST-35 forms, and, at the same time, might have been successful in averting financial loss to the Govt. The records have also revealed that a number of ST-35 and ST-1 forms were issued to this very dealer by the Ward No.33 authorities even after he had shifted his business headquarters to the Ward No.46 (Old). According to us, an alert Sales Tax Officer would have taken note of this and would have acted in time to prevent financial loss to the Govt. The applicant has a routine and perfunctory answer to the charge of non-recording of the modified address of the dealer on the Registration Certificate and in the other relevant records pertaining to the dealer. The applicant has clearly stated that this was a small error committed by a Clerk and was of no great consequence by itself. This is not acceptable. In his defence, the applicant has placed on record certain circulars issued by the Administration Department which lay down that statutory forms should be issued to the dealers without undue harassment and whenever their need was found to be genuine. In the light of this, he has tried to argue that he was, in a way, compelled to issue the forms. We have perused the said circulars and find that the instructions contained therein do not envisage a compulsive arrangement of the kind referred to by the applicant. On the other hand, these instructions leave enough room for the Assessing Authority to exercise discretion in the matter and issue the statutory form or

refuse to do so depending on the legitimacy of the need of the dealer and the picture emerging from the verification of his past transactions. As against the aforesaid circulars, the respondents have placed on file alongwith their reply a few circulars which clearly lay down that the Assessing Authority should take abundant care at the time of issuance of statutory forms. We have had occasion to peruse these other circulars as well and, as a result, feel better placed to see the game in proper perspective. For these reasons, we do not find it possible to persuade ourselves to share the belief of the learned counsel for the applicant that the orders passed by the Disciplinary Authority in this case are perverse. With this, the main pleas of the applicant that there was no evidence in support of the charges levelled against him and that the orders passed by the Disciplinary Authority were perverse, fail and are thus found to be un-acceptable.

7. The learned counsel for the applicant has also raised the question of legality of action taken against a Sales Tax Officer in respect of quasi-judicial orders passed by him. The learned counsel has, in this connection, referred to certain judgements of the Hon'ble High Court. However, this issue has been contested by the respondents, who have referred to Hon'ble Supreme Court's judgements dated 27.3.92 in the case of U.O.I. Vs. A.P.Saxena and dated 27.1.93 in the case of U.O.I. Vs. K.K.Dhawan, AIR 1993 (1) SC 473, respectively. We are in agreement with the respondents that in terms of the aforesaid judgements of the Hon'ble Supreme Court,

disciplinary action is possible against a Govt. servant even where quasi-judicial powers have been exercised, subject to the condition that the officer/Govt. servant is found to have acted in a manner that would reflect adversely on his reputation for integrity, or on his good faith or devotion to duty. In other words, if a Govt. servant has acted in order to unduly favour a party or he has been actuated by corrupt motive etc., he can be proceeded against departmentally as in this case.

8. In the same context, the learned counsel for the respondents has also brought to our notice the judgement of this Tribunal dated 5.12.97 in the case of K.L.Kadam Vs. U.O.I. & Ors. (OA-495/95). The observations made by this Tribunal in the said judgement are reproduced below for the sake of convenience:-

> ".....in the circumstances, we are of the considered opinion that the respondents may not have the jurisdiction to proceed against the petitioner for an irregularity committed outside his capacity as a Govt. servant unless the master-servant relationship continues to subsist and his act or omission substantially affect reputation with regard to his integrity, and devotion to duty. In the present case, the irregularity amount to misappropriation has in fact cast a serious repercussion on his integrity and devotion to duty and the same being one committed while the employer-employee relationship continued to subsist, we are of the opinion that the defence of the error of jurisdictional fact is not available to the petitioner."

9. The learned counsel for the applicant has also made a reference to the power available to the Lt.

Governor to entertain and dispose of Review Petitions filed by the Govt. servants and has questioned its legality. A look at the Rule 29-A of the C.C.S. (C.C.A.) Rules, 1965, is necessary to understand the implication of this contention. The said rule provides as follows:-

> "The President may, at any time, either on his own motion or otherwise review any order passed under these rules, when any new material or evidence which could not be produced or was not available at the time of passing the order under review and which has the effect of changing the nature of the case, has come, or has been brought, to his notice."
>
> (Emphasise added)

The Lt. Governor has clearly mentioned that the petitioner had not, in his Review Petition, furnished any new material or evidence in support of his case in the manner provided in the above rule. We are prepared to accept this position and would like to decide the matter accordingly.

10. After a fairly detailed discussion of this case as above, we also consider it proper and necessary to observe that the failure of the Enquiry Officer to analyse the evidence and to indicate his conclusions in clear terms is, generally speaking, likely to lead to failure of justice inasmuch as to the extent the Enquiry Officer does not indicate his conclusions based on a careful analysis of the evidence on record, the charged officer is, to the same extent, unable to put up a proper and effective defence which should be deemed to be his right. Fortunately, in the present case, the apparent

failure on the part of the Enquiry Officer to analyse the evidence on record and to reach firm conclusions about the guilt of the charged officer, has not resulted in failure of justice but this is entirely due to the pains taken by the Lt. Governor in assessing the evidence himself and in passing an appropriate order which is, as already stated, a speaking order as well as a reasoned order. The situation has, therefore, been saved here and it is not possible in this case to suggest that because of the Enquiry Officer's failure, as above, the applicant (charged officer) could not get full justice. The respondents would do well to keep these observations in mind in future.

11. In the result, in the peculiar facts and circumstances of this case, the OA has failed to succeed and is ~~rejected~~ dismissed without any order as to costs.

(S.A.T.Rizvi)
Member (A)

(Mrs. Lakshmi Swaminathan)
Member (J)

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