

(97)
Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2181/94

New Delhi this the 2nd Day of November, 1994.

Sh. J.P. Sharma, Member (J)
Sh. B.K. Singh, Member (A)

S.M. Saxena,
S/o Late Sh. Gauri Sahai Saxena,
R/o 25, MIG Flats,
Prasad Nagar, New Delhi.

...Applicant

(By Advocate Sh. S.K. Bisaria)

Versus

1. Union of India through
Secretary, Ministry of Finance,
North Block, New Delhi.

2. Under Secretary to the
Government of India,
C.B.D.T. Department of
Revenue, Ministry of Finance,
North Block, New Delhi.

...Respondents

ORDER(ORAL)

Hon'ble Mr. J.P. Sharma:-

The applicant was appointed as Income Tax Officer sometime in 1969 in Grade-II of the service. He was subsequently promoted in 1983 as Assistant Commissioner of Income Tax. He has been served with a memo of chargesheet dated 18.11.91 for an alleged incident of 18.7.88. The applicant in the meantime, before the departmental proceedings come to an end, filed OA-2172/93 for quashing of the chargesheet. That OA was disposed of by the Principal Bench by the order dated 23.12.93 directing that the enquiry officer should complete the departmental enquiry within a period of three months. It was also directed that if the petitioner, i.e., the present applicant does not cooperate in the enquiry it will be open to the enquiry officer to proceed exparte. In the end, it was also stated that the limitation of time fixed of three months shall not be extended unless there are compelling reasons. It appears that the order of the Tribunal was not adhered to as regards the time limit given for concluding the departmental

proceedings, and another OA-875/94 was also filed but that was dismissed, as withdrawn by the order dated 7.8.94, observing that the respondents shall act expeditiously in disposing of the departmental proceedings against the applicant.

2. The present application has been filed on 27.10.94 again assailing the chargesheet dated 18.11.91 and the enquiry report dated 15.4.94. He has prayed for the grant of the reliefs that the chargesheet dated 18.11.91 and the enquiry report dated 15.4.94 be quashed.

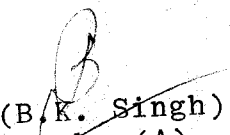
3. We have heard Sh. S.K. Bisaria at length. The contention of the learned counsel for the applicant is that in the earlier decisions arrived at in the Original Applications filed by the petitioner viz. OA-2172/93 and OA-875/94, judicial review regarding assailing of the chargesheet on the ground noted in this application was not considered and as such the applicant is at liberty to file the present application, assailing the aforesaid chargesheet issued on 18.11.91, supplementing his contention by referring to the memo of chargesheet and the Annexures attached to the same, highlighting the fact that each of the Annexures has not been signed by the competent authority. He has also stated that there has been a delay in issuing the chargesheet for an alleged misconduct of 1988 in November, 1991.

4. The learned counsel for the applicant also highlighted the fact that the report of the enquiry officer does not give any reason whatsoever to arrive at a conclusion and, therefore, the enquiry officer has not given any finding on the charges framed in Annexure-I memo of chargesheet.

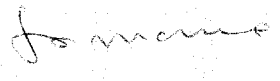
5. We have heard the learned counsel patiently at great length and even put certain queries regarding the principles analogically applicable before the Tribunal on 'res judicata'. The contention of the learned counsel for the applicant on this point has been that the validity of the chargesheet has not yet been conclusively ^{decided} by a competent authority in any of the earlier proceedings so the applicant is at liberty to assail the same. To our mind this perception cannot be entertained. In the present case an interlocutory order cannot be assailed unless the disciplinary proceedings are finally concluded. The view has been expressed and upheld by the Supreme Court in the case of U.O.I. vs. Upendra Singh reported in 1994 (27) ATC 200. That case was also of an Income Tax Officer. In that case the Tribunal has stayed the proceedings of the departmental enquiry on the basis of the chargesheet having been assailed. The Supreme Court has referred to an earlier decision of another Income Tax Officer of Union of India vs. A.N. Saxena reported in 1992 (3) S.C.C. 124 where the Tribunal has granted interim directions that the proceedings of the departmental enquiry be stayed as the matter regarding the validity of the chargesheet is in judicial review. The Supreme Court quashed the order of the Central Administrative Tribunal, Principia Bench, and held that when the validity of the chargesheet cannot be ^{seen} ~~sealed~~ even at the final stage of hearing it is astonishing that the Tribunal has given a stay in a matter where the delinquent is being tried for any misconduct committed during the course of his service. In view of this, assailing of the chargesheet or the report of the enquiry officer before the departmental enquiry is not open to judicial review at all.

6. We are firm in our opinion that no proceedings can be entertained with regard to an inter-locutory proceedings in a pending departmental proceedings.

6. The application, therefore, does not survive. However, we make it clear that if an final order is passed and the applicant is still aggrieved of the same, he shall be at liberty to assail the charge-sheet and the report of the enquiry officer on all the grounds he has taken in the present application or the grounds which may be available to me thereafter. The application is, therefore, dismissed as premature and not maintainable.


(B.K. Singh)
Member(A)

Sanju


(J.P. Sharma)
Member(J)