

Central Administrative Tribunal
Principal Bench

...
OA No. 2002/94

New Delhi, this the 9th day of May, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman (J)
Hon'ble Shri S.P. Biswas, Member (A)

12
Shri Anirudh Rai,
s/o Shri Maniraj Rai,
R/o A-8F, MIG Flats,
Mayapuri, New Delhi.

...Petitioner

(By Shri P.P.Khurana,Advocate)

VERSUS

1. Union of India through
Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.
3. Union Public Service Commission,
through the Secretary,
Dholpur House,
Shahjahan Road,
New Delhi.

...Respondents

(By Shri R.S.Aggarwal, Advocate)

O R D E R
(Dr. Jose P. Verghese, Vice-Chairman (J))

The petitioner in this case joined the Income Tax Department as a direct recruit through Union Public Service Commission as Income Tax Officer (now re-designated as Assistant Commissioner, Income Tax) in the year 1982. After probation he was posted at Calcutta where he remained between July 84 to Feb., 1985. Thereafter he was transferred to Muzzaffarnagar and finally to Hazari Bagh where he remained posted from July, 1986 to June, 1987.

2. The present OA has been filed against the order of the disciplinary authority dated 2.9.1994 by which a penalty of censure was imposed on the applicant after issuing a charge sheet on 30.10.1990, alleging five different charges against the applicant. The charges were:

(3)

" Article I "

That the said Shri Anirudh Rai while functioning as the Income tax Officer, Award Muzaffarpur, during the year 1985, completed assessments in the cases of M/s Ram Niwas Sawarmal for assessment year 1983-84, M/s National Pharma Ayencice for assessment year 1983-84 and M/s. Satya Narain Sawarmal for assessment year 1983-84 in a careless and negligent manner. He knowingly disobeyed the directions of his superior authority in the case of M/s.Ram Niwas Sawarmal. He has, thus, violated Rules 3(1) and 3(1) (iii) of the Central Civil Services (Conduct) Rules, 1964.

Article-II

That the said Shri Anirudh Rai while functioning as income tax officer at various places during the period 1982-87 failed to maintain absolute integrity. He has, therefore, violated Rules 3(1) and 3(1) (iii) of CCS (Conduct) Rules, 1964.

Article III

That the said Shri Anirudh Rai while functioning as Income Tax Officer during the period 1982-86 at various places failed to inform his controlling authority that his wife, Smt. Minu Rai was carrying on dairy business in since April, 1980. He has violated Rule 15 (3) of CCS (Conduct) Rules, 1964.

Article IV

That Shri Anirudh Rai while functioning as in Income Tax Officer at vrious places during the year 1982-86 failed to inform his controlling authority that his wife, Smt. Miu Rai was carrying on a business of earning interests on advances. He has, therefore, violated Rules 15(3) of CCS (Conduct) Rules, 1964 in the alternative, by allowing his wife to accept extra amounts from her relatives on the money advanced to them, Shri Rai has violated Rule 13 of CCS(Conduct) Rules, 1964.

Article V

That Shri Anirudh Rai while functioning as Assistant Commissioner of Income Tax, Assessement Range I, Ranchi on 15.4.1988, abused and slapped a peon, Shri Sikander Singh of Income Tax office, Ranchi. He has, thus, violated Rule 3(1) (iii) of CCS (Conduct Rules, 1964)."

3. The Inquiry Officer who conducted the inquiry has returned a finding that only article III of the charges is proved against the applicant. The disciplinary authority did not agree with the findings and while differing with the finding of the inquiry officer he passed a speaking order and imposed a penalty of censure upon the applicant. The applicant submitted his reply. Alongwith the said reply of the applicant, the file was sent to the Union Public Service Commission who finally advised the respondents to pass the proposed punishment order vide letter of UPSC dated 2.9.1994 and accordingly the impugned order dated 2.9.1994 was passed.

4. The applicant has challenged the imposition of the said penalty of censure vide order dated 2.9.1994 on various grounds. The first ground the petitioner has advanced against the impugned order is that the disciplinary proceedings happen to be protracted for about four long years though in the normal circumstances it should have been finalised within six months and such delay in finalising the disciplinary proceedings has adversely effected the interest and career prospects of the applicant especially because during this period three DPCs had taken place and the petitioner submitted that the respondents have kept the result of all the three DPCs in a sealed cover in pursuance to the extant rules. The

petitioner further submitted that due to these prolonged proceedings, about 252 officers, junior to the petitioner, had selected a march over him due to which he suffered humiliation and ignominy.

(5)

5. The learned counsel for the respondents submitted that even though the proceedings have gone beyond six months, clearly stipulated for the purpose under the rules, just because the proceedings have been delayed, may not be a good ground to quash the disciplinary proceedings and the punishment order against the petitioner. We are inclined to agree with the contention of the counsel appearing on behalf of the respondents for the reason that just because there is some delay, the disciplinary proceedings as well the penalty imposed thereafter does not cease to be in accordance with the rules; all the formalities under the rules have been completed; and no violation of principles of natural justice are shown before us. In the absence of such findings, only because of delay, the proceedings and the impugned order of penalty cannot be faulted.

6. The second ground, the petitioner has advanced against the impugned order, is that advice of the U.P.S.C. is not based on a solid ground based on evidence rather it is based on suspicion. We are unable to quash the disciplinary proceedings as well as the impugned order on this ground also for the reason that the consideration of the UPSC was based on the report of the inquiry officer who found that charge No. 3 is proved and it is the disciplinary authority who differ

with the finding that the remaining charges were not proved, and passed a speaking order. The advice of the UPSC should not be taken in isolation. Reasons given by the Inquiry Officer as well as the disciplinary authority shall also be taken alongwith the UPSC's advice and all the three orders may be seen and read together to see whether the entire advice and findings are perverse or not. By reading the inquiry report and the order of the disciplinary authority as well as the advice of the UPSC, we find that the impugned order and disciplinary proceedings cannot, by any stretch of imagination, be held to be perverse.

(b)

7. Learned counsel for the petitioner further argued that the respondents have attempted to build up a ground to the effect that the applicant's wife filed returns during the amnesty scheme and according to the respondents as per the scheme there was no power vested in the authorities to reopen the assessments. According to the petitioner this is factually incorrect. The income tax returns filed by applicant's wife were accepted as her own income and later these were sought to be re-opened on the directions of the respondent no. 2 herein. Reference in this connection is made to document No. 9 (Page 176) which is one of the documents which seems to have not been supplied to the applicant inspite of the same having been allowed by the inquiry officer (page 69, page 182 and Page 184). On account of the non-supply of documents and in particular documents at serial Nos. 4, 7, 8, 9 and 10 (page 174-176) which were directly related to charge No. III, the applicant was prejudiced. It was argued that ultimately the

charge proved against the applicant is that he violated the spirit of rule read 15(3) of the Conduct Rules, even though the enquiry officer has given a finding that the applicant did inform the department about the business carried on by his wife in September 1986 and further gave a finding that no time limit was prescribed for giving the intimation. The enquiry officer then put the onus on the applicant to prove to the effect that the applicant did not know it till September, 1986 about the existence of the said business. It was urged that this in itself was wrong as the onus was on the prosecution to establish the charge. That besides, the applicant still discharged that burden and it has been accepted by the enquiry officer and the disciplinary authority that the applicant and his wife had no occasion to live together since the time the applicant joined the Income Tax Department. Thereafter the charge has been sought to be proved only on the basis of suspicion and conjecture by stating that there must have been some correspondence between the husband and wife etc., and this is not permissible in law.

8. We are unable to accept the said allegations of the petitioner for the reason that once the inquiry officer has returned a finding with some evidence that the charge no. 3 is proved, this court will not sit in an appeal and say whether the evidence available is sufficient to return a finding that the charge No. 3 is proved. As long as the case of the petitioner is not a case of 'no evidence' we are afraid that we are not in a position to reappreciate the

findings recorded by the inquiry officer as well as the disciplinary authority. Thus this ground of the petitioner also fails.

(8)

9. Finally, the petitioner has also sought a relief of opening the sealed cover wherein his results of different DPCs have been kept which were held during the pendency of this petition. The respondents in their reply stated that the said procedure has been rightly adopted in conformity with the decision of the Hon'ble Supreme Court in K.V. Jankiraman's case reported in AIR 1991 SC P. 2010, and in accordance with the instructions issued by the Deptt. of Personnel & Training on the basis of the said judgement, vide OM dated 14.9.1992. In accordance with the said OM, since the disciplinary proceeding have now been finalised with the penalty of censure, the sealed cover could not be opened under these provisions. The contention of the learned counsel for the petitioner is that in the normal circumstances, the sealed cover would have been opened if a penalty is not imposed and the petitioner would be entitled to promotions, and that would, take place after the completion of disciplinary proceedings only. The learned counsel for the petitioner also contended that since in the normal circumstances the proceedings should have been completed within six months and in the present case it is delayed for about four years, and to deny the promotions, if otherwise due and available to the petitioner in all the three DPCs held during the pendency of this petition, would be unjust. There is some force in the submission of the petitioner. If the disciplinary proceedings are held, in the normal

circumstances, it should have been completed within six months or in accordance with rules within two years..

The petitioner had a right under the rule for consideration of his promotion on an ad hoc basis. But rule is silent to cover a situation where no review has taken place after two years and at the same time the disciplinary proceedings have taken inordinate delay of about four years. Whether the petitioner would be entitled to open the sealed cover kept by DPC of the subsequent years after the expiry of two years of the disciplinary proceedings, is a matter of great concern, and deserves attention.

10 We are of the opinion that the DPCs that have taken place after the expiry of two years of the disciplinary proceedings, and the resultant retention of the result in sealed cover may have to be opened, and in case the petitioner was entitled to promotion in accordance with the rules, the said promotion shall not be denied to the petitioner. We are taking this view on the basis that the petitioner would have got the promotions if the UPSC found him fit after two years of the disciplinary proceedings, had the disciplinary proceedings in the normal circumstances would have completed by six months or by the extended period of two years. At the same time we are unable to issue a direction to the respondents because the complete facts are not available before us as to the actual cause of the delay occurred for continuation of the disciplinary proceedings after two years. We are of the opinion that if the delay has not been occasioned at the instance of the petitioner to prolong the disciplinary proceedings

beyond two years, it would be unjust to deny the promotion to the petitioner if the DPC held after two years of the disciplinary proceedings, has found him fit. The only direction we would like to issue at this stage is that the respondents shall pass an appropriate order within two months from the date of the receipt of a copy of this order as to whether the delay that has occasioned for continuance of the disciplinary proceedings beyond two years, was at the instance of the petitioner or not. In case it is found that the delay was occasioned not at the instance of the petitioner, the respondents shall pass an appropriate order whether in the circumstances, the DPCs proceedings held after two years of the pendency of the disciplinary proceedings, the result kept under sealed cover, is desirable to be opened or not. In case the respondents decides in the circumstances of the case to open the sealed cover kept by the DPC held beyond the period of two years of the pendency of the disciplinary proceedings and the petitioner is found to be fit for promotion, we are of the opinion that the petitioner will be eligible to such promotion as recommended by the DPC, and for all the consequential benefits.

11. With these above observations, this OA is disposed of with no order as to costs.

(S.P.Biswas)
Member (A)

(Dr. Jose P. Verghese)
Vice-Chairman (J)

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