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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI:

O.A. NO. 2035/94

New Delhi, the 21st— October, 1994

Hon'ble Shri J.P. Sharma, Member (J)

Hon'ble Shri S.R. Adiga, Member (A)

Smt. R. Girdhar,
presently posted as
Commissioner of Income Tax,
Appeals XXII,
Bombay, Ayurvedic Pracher,
Santha Building,
N.S. Road, Near Charani Road,
Railway Station,
Bombay-21.

... Applicant

By Advocate: Shri P.P. Rao along with
Shri R.K. Gupta

Vs.

1. Union of India
through the Secretary,
Ministry of Finance,
North Block, New Delhi.
2. The Central Board of Direct Taxes,
through its Chairman,
North Block, New Delhi.
3. The Commissioner for Departmental Inquiries
Shri O.P. Mishra,
Central Vigilance Commission,
Jamnagar House Hutments,
Akbar Road, New Delhi.

.... Respondents

By Advocate:

O R D E R

Hon'ble Shri J.P. Sharma, Member (J)

The applicant in this O.A. has challenged the Memorandum dated 18.1.93 whereby a disciplinary enquiry under Rule 14 of the CCS (CCA) Rules 1965 has been initiated. She has also challenged the order dated 19.5.94 appointing Shri O.P. Mishra, CBI New Delhi as Inquiry Officer.

2. We heard the learned counsel on the point of admission. The contention of the learned counsel is that his case be considered only with respect to the delay in issuing the memo. dated 18.1.93. He has not pressed any other ground of challenge to the aforesaid memo. The order therefore is confined only to that ⁱⁿ respect.

3. The charge against the applicant is that while she was posted as IAC(Assessment) Jalandhar during 1981-82, in the search conducted on 31.12.81 at the premises of J.A. Atwal and Guru Amarjit Singh at Kartarpur near Jalandhar, she was on duty in the Control Room (her office room) in the I.T. office, Jalandhar as incharge of Control Room. She left the control room at 10.00 p.m. on 31.12.81 without ensuring the presence of any substitute or making arrangements for Shri M.G. Dewan, I/C of the strong room, to remain present in the Control Room till the search party is returned. There was thus gross negligence and serious dereliction of duty on her part. Further, on 1.1.82, one of the seized trunks containing cash and jewellery etc. seized from Guru Amarjit Singh was opened in her room to take out the seized cash for being deposited in the bank. Smt. Girdhar witnessed directed the opening of the trunk without calling the independent witnesses and Guru Amarjit Singh to be present at the time of opening of the trunk. She has therefore committed acts of omission and commission and displayed lack of devotion to duty and conduct

unbecoming of Government servant and thereby contravened Rule 3(1)(ii) and 3(iii) of the CCS (Conduct) Rules, 1964.

4. From a perusal of list of documents supplied to the applicant alongwith memo. of chargesheet there is a mention of the statement recorded by the Inspector, CBI, Chandigarh on 12.10.88. The statement of Shri D.P. Bahl has also been recorded by the CBI. There is other document relating to the period 1984. Shri Ranbir Singh, Deputy S.P., CBI, Chandigarh is also a witness in the departmental enquiry. A perusal of the above would show that though the chargesheet was issued in 1993 in a matter like the present nature a decision has to be arrived at the highest level. More delay in the matter therefore cannot curtail the right of the authorities to issue a chargesheet for a misconduct if some of the witnesses are not available at the time of enquiry. In that case the applicant is to be benefited rather the administration. The applicant has submitted a detailed reply to the aforesaid memo. of chargesheet and after considering the same, the President has ordered appointment of an Inquiry Officer.

5. The scope of judicial review ^{of} ~~to~~ interlocutory order in a proceedings has been considered by the Hon'ble Supreme Court in the case of Union of India & others Vs. Upendra Singh reported in (1994) 27 ATC 200. In that case a chargesheet

was issued to Shri Upendra Singh, Deputy Commissioner of Income Tax accompanied by statement of imputations of misconduct in support of article of charges in February, 1991. While the misconduct pertains to certain survey of the financial year 1986-87 the Principal Bench of Central Administrative Tribunal while admitting the O.A. granted an interim direction restraining the respondents from proceedings with disciplinary action against Shri Upendra Singh relying on the decision of Hon'ble Supreme Court in the case of V.D. Trivedi V. Union of India reported in (1993) 2 SCC 55. The Hon'ble Supreme Court on appeal filed by the Union of India against the aforesaid order considered the observations made by the Court in Union of India V. A. No Saxena reported in (1992) 2 SCC 124 and referred to para 6 at page 127 of the reports which is quoted below.

"In the first place, we cannot but confess our astonishment at the impugned order passed by the tribunal. In a case like this the Tribunal, we feel, should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The imputations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. It is surprising that without even a counter being filed, at an interim stage, the Tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary

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proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the Tribunal appears to have done, it would be extremely difficult to bring any wrongdoer to book. We have, therefore, no hesitation in setting aside the impugned order of the Tribunal and we direct that the disciplinary proceedings against the respondent in terms of the chargesheet dated 13.3.89 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible with utmost zeal."

6. The Hon'ble Supreme Court further observed that in the case of charges framed in a disciplinary enquiry the Tribunal or the Court can interfere only if on the charges framed no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. 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 the Court. The Hon'ble Supreme Court^{has} further quoted below para 8 at page 317 of H.B. Gandhi, Excise and Taxation Officer-

cum-Assessing Authority, Karnal V. Gopi Nath & Sons reported in 1992 Supp (2) SCC 312. That said passage is quoted below:

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend 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 judgement not only on the correctness of the decision making process but also on the correctness of the decision itself."

The Hon'ble Supreme Court has also quoted para 28 at page 67 of the case of Union of India Vs. K.K. Dhawan reported in (1993) 2 SCC 56 and quoted the following -

Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a government servant;

- iv) if he had negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- v) if he had acted in order to unduly favour a party;

7. In view of the above law we find that the present application is not at all maintainable at this stage. Each case will depend on the facts material to that case. The reliance by the learned counsel for the applicant on the case of V.D. Trivedi Vs. UOI (supra) cannot benefit the applicant and the same has been referred to in the above case of Upendra Singh. The learned counsel has referred to certain other decisions of C.A.T. but in view of the latest law laid down by the Hon'ble Supreme Court in the case of Upendra Singh it is not necessary to refer to those cases.

8. While concluding the arguments, the learned counsel has also prayed that in case no interim direction is issued he may be allowed to withdraw the application. The learned counsel only highlighted the fact that there has been a delay in issuing the chargesheet but we find that there is no delay in this case.

9. The present application is therefore not maintainable at this stage and since the applicant's counsel has made a request to withdraw the application, the application is allowed to be withdrawn and dismissed as such with no orders as to cost.

S.R. Adige
(S.R. ADIGE)
Member (A)

J.P. Sharma
(J.P. SHARMA)
Member (C)