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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI
.....

Regn.No. OA-2096/88

Date of Decision 14.12.88

Shri S.L.Tahiliani

.... Applicant.

Versus

Union of India & Ors.

.... Respondents.

For the applicant

.... Shri Vijay Choudhary,
Advocate.

For the respondents

.... None.

CORAM: Hon'ble Shri P.K.Kartha, Vice Chairman (Judicial).
Hon'ble Shri D.S.Misra, Administrative Member.

1. Whether Reporters of Local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(Judgement of the Bench delivered by Hon'ble
Shri P.K.Kartha, Vice Chairman (Judicial))
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The applicant who is presently employed in the Directorate of Education, Delhi Administration, Delhi as Assistant/Head Clerk Grade II, filed this application under Section 19 of the Administrative Tribunals Act, 1985, against the Union of India (Respondent No.1), the Lt. Governor, Delhi (Respondent No.2), the Chief Secretary, Delhi Administration (Respondent No.3), the Commissioner of Sales Tax, Delhi Administration (Respondent No.4) and Shri V.K.Malhotra, the Inquiry Officer, Commissioner of Inquiry, Central Vigilance Commission, New Delhi (Respondent No.5), praying that the impugned order dated 7.9.1988 passed by respondent No.3 whereby he was reduced to the lower rank of Grade II of the Subordinate Service Cadre for a period of three years be quashed and that the respondents be directed to restore the applicant to the position of Assistant Sales Tax Officer which he was holding before the passing of the impugned order.

2. The facts of the case in brief are that the applicant was appointed as Officer Grade I by respondent No.3. In
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exercise of the powers conferred by Section 9(2) of the Delhi Sales Tax Act, 1975, the respondent No.2 appointed the applicant as Assistant Sales Tax Officer and he continued in that post till the impugned order was passed. The duties of the applicant as Assistant Sales Tax Officer included issue of Sales Tax Declaration Forms (S.T.1 forms) to the registered dealers after complying with the provisions of the Delhi Sales Tax Act and the rules made thereunder. He issued about 70 sales tax declaration forms to M/s.Kamal Electronics from 28.1.1984 to 11.7.84. On 1.8.1984, the Enforcement Branch of respondent No.4 made an inquiry against the functioning of M/s. Kamal Electronics and it was allegedly discovered that the said firm was not functioning at the given and the registered address. Consequently, the respondent No.3 on 23.2.87 issued a memorandum under Rule 14 of the CCS(CCA) Rules, 1965 proposing to hold an inquiry into the articles of charges annexed to the said memorandum. The statement of article of charge framed against the applicant reads as follows: -

"That the said Shri Shanker Lal Tehalyani while functioning as Assistant Sales Tax Officer in Ward No.18 in the Sales Tax Department issued 70 ST-1 forms to M/s. Kamal Electronics, 62-A, Bapu Park, Kotla Mubarakpur, New Delhi without taking any additional surety from this dealer as suggested by the Sales Tax Officer, Ward No.50. Subsequent enquiries revealed that M/s. Kamal Electronics was a bogus dealer. Shri Shanker Lal thus issued ST-1 forms to a bogus dealer without exercising any care and precaution and thus failed to maintain devotion to duty, absolute integrity and acted in a manner which is unbecoming of a Government servant, thereby contravened the provisions of Rule 3 of the CCS(Conduct) Rules, 1964."
(Vide Annexure 'C' page 19 of the paper book)

After holding an inquiry in accordance with the provisions of the CCS(CCA) Rules, 1965, the impugned order dated 7.9.83 was passed by the respondent No.3.

3. The applicant has stated in para 6.5 of the application that he is due to retire on 30th November, 1980. The impugned order purports to reduce him to the lower rank of Grade II

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of the Subordinate Service Cadre for a period of three years with the condition that thereafter he shall be restored to the same position as he held before the imposition of the penalty.

4. The main ground of attack in the present application is that as an Assistant Sales Tax Officer, the applicant was exercising quasi-judicial functions and therefore, disciplinary proceedings under the CCS(CCA) Rules, 1965 cannot be initiated against him for an act done under the provisions of Delhi Sales Tax Act. In this context, he has relied upon the provision of Section 67 of the Delhi Sales Tax Act which reads as follows: -

"67. Bar of suits in Civil Courts - No suit shall be brought in any civil court to set aside or modify any assessment made or any order passed under this Act or the rules made thereunder and no prosecution, suit or other proceedings shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act or the rules made thereunder."

He has contended that there are hierarchy tribunals created under Article 323-B of the Constitution providing for appeal and revision under the Delhi Sales Tax Act, 1975.

5. The applicant was listed for admission on 12.12.1988 when we heard the learned counsel for the applicant at length on the question of admissibility of the application. The learned counsel for the applicant contended that the Chief Secretary, Delhi Administration, Delhi (Respondent No.3) is not competent to initiate departmental proceedings against the applicant as he had been appointed as an Assistant Sales Tax Officer by the Lt. Governor under Section 9(2) of the Delhi Sales Tax Act, 1975.

6. The aforesaid contention is clearly untenable. In para 6.1 of the application, the applicant has admitted that he was appointed as an Officer Grade I of the Delhi Administration by respondent No.3. Section 9(2) of the

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Delhi Sales Tax Act provides inter alia that the Administrator may appoint as many additional Commissioner of Sales Tax, Sales Tax Officer and such other persons with such designation as he thinks necessary to assist the Commissioner of Sales Tax in the execution of his functions. The mere fact that the Lt. Governor has issued an order appointing the applicant as Assistant Sales Tax Officer does not mean that the respondent No.3 is not competent to initiate departmental proceedings against him. Though the applicant had been working as Assistant Sales Tax Officer, he continued to be an officer Grade I of the Delhi Administration during that period.

7. The contention of the applicant that the Tribunals created under the Delhi Sales Tax Act, are tribunals created under Article 323-B of the Constitution is also untenable. For creating Tribunals relatable to Article 323-B of the Constitution, there should be a separate parliamentary legislation as in the case of Central Administrative Tribunals Act, 1985. There is no indication in the Delhi Sales Tax Act, 1975 that the Appellate Tribunals provided for therein have been created pursuant to the provisions of Article 323-B of the Constitution.

8. The arguments based on Section 67 of the Delhi Sales Tax Act, 1975 is also equally untenable. In the leading case of S. Govinda Menon Vs. Union of India and Ors., AIR 1967 SC 1724, the Supreme Court has held that it is open to the Government to take disciplinary proceedings against a Government servant in respect of his acts or omissions even though he may be exercising quasi-judicial functions. Reference may ^{also} be made to the decision of this Tribunal in OA-452/88 and OA-432/88 (Shri V.D. Trivedi Vs. Union of India and Ors.) decided on 21.10.1988.

9. In the present case, it is seen that after the impugned order dated 7.9.1988 was passed by the Disciplinary

Authority, the applicant did not prefer an appeal to the Appellate Authority. He did not exhaust the remedies available to him under the relevant service rules. On that ground also the application is pre-mature and is not maintainable at this stage.

10. In view of the above, the application is rejected at the admission stage as being not maintainable. The application is also pre-mature as admittedly the applicant did not exhaust the remedies available to him under the relevant service rules. The present application is, therefore, rejected in limine. We make it clear that the applicant will be at liberty to approach this Tribunal with a fresh application after exhausting the remedies available to him under the relevant service rules if he is so advised.

[Signature]
14.12.88

(D.S. Misra)
Administrative Member

[Signature]
14/12/88

(P.K. Kartha)
Vice Chairman (Judicial)