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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**NEW DELHI**

O.A. No. 1507/1990  
T.A. No.

199

DATE OF DECISION 7.12.90

Shri Kanti Lal \_\_\_\_\_ Petitioner  
Shri D.R.Gupta \_\_\_\_\_ Advocate for the Petitioner(s)  
The Secretary, Central Board of Direct Taxes, New Delhi and another. \_\_\_\_\_ Respondent  
Shri P.H.Ramchandani \_\_\_\_\_ Advocate for the Respondent(s)

## CORAM

The Hon'ble Mr. S.P.MUKERJI, VICE-CHAIRMAN (A)

The Hon'ble Mr. T.S.OBEROI, MEMBER (J)

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *no*
4. Whether it needs to be circulated to other Benches of the Tribunal? *no*

## JUDGEMENT

(DELIVERED BY HON'BLE MR. S.P.MUKERJI, VICE-CHAIRMAN (A)).

In this application dated 24th July, 1990, the applicant who has been working as an Income Tax Officer (Group-B) has prayed that the order of suspension dated 6th January, 1989 should be revoked and he should be taken back on duty with all the emoluments due to him. The brief facts of the case are as follows :-

2. The applicant has been working as I.T.O. during 1982-85 and 1987-88 in Delhi. Certain lapses and irregularities of serious nature were investigated <sup>into</sup> against him and he was suspended on 6.1.1989. He was charge sheeted on 23.5.1989 to which he replied on 1.6.1989. An Inquiry Officer was appointed.

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on 3.1.1990 and the inquiry proceedings commenced on 12.4.1990. However, the inquiry proceedings got struck as the Presenting Officer could not make all the documents enumerated with the charge sheet, available to the applicant. The applicant challenges the continued suspension on ground of inordinate delay in completion of the inquiry not to speak of disciplinary proceedings and also on the ground that the disciplinary proceedings were initiated in 1989 in relation to allegations which pertained to very old period of 1982-85. He has also argued that the charges are based on certain decisions or action taken by him in quasi-judicial capacity and for procedural lapses of technical nature which cannot warrant a major penalty. He has adverted to the instructions of the Government of India by which period of suspension should not normally exceed three months and the disciplinary proceedings should not exceed six months. The justification of suspending an officer who is likely to tamper with evidence and documents or influence witnesses cannot be attracted in his case. He has also referred to the ruling of the Supreme Court in O.P.Gupta Vs. Union of India (AIR 1987 SC 2257) in which it was laid down that unreasonable delay in <sup>quoting</sup> concluding departmental inquiry against an officer who is under suspension <sup>amounts to being</sup> arbitrary. In another case (OA 2260/88) decided by the Tribunal on 10.11.1989, prolonged suspension was set aside and the applicant reinstated. The respondents in their counter-affidavit have stated that the allegations against the applicant are of serious nature involving huge losses of revenue on account of the acts of ~~the~~ omission and commission on the part of the applicant. It was felt that since the charges involve moral turpitude, negligence and dereliction of duty and lack of integrity, the suspension was fully warranted. The applicant has been allowed subsistence allowance as prescribed. They have denied that the period of suspension has been unnecessarily

prolonged. The records relied upon by the disciplinary authority being voluminous, inspection of such records by the Presenting Officer was taking time. The applicant's appeal for revocation of suspension has been rejected by the President. They have distinguished this case from the two cases referred to by the applicant. In the Supreme Court case, the period of suspension without inquiry was nearly eleven years and in the case decided by the Tribunal, the charge-sheet was not filed for three years in the Criminal <sup>Code</sup> ~~Code~~. In the rejoinder the applicant has stated that it will be difficult for him to meet the charges relating to the year 1982 and the disciplinary authority took almost more than five years to suspend him for the alleged lapses of 1982-85. He has also argued that contrary to the rules, the disciplinary authority has not reviewed the question of his suspension after every six months.

3. We have heard the arguments of the learned Counsel for both the parties and gone through the documents carefully. The charges framed against the applicant are as follows :-

"ARTICLE-I

Shri Kanti Lal while functioning as I.T.O. Distt.IV(8) Delhi during the period 1984 to 1985, issued exemption certificates u/s 197(1a) of the Income-tax Act to 32 tax payers exempting their winnings from lotteries from tax or directing the concerned authorities to deduct tax at reduced rates, although none of these thirty two tax payers were

2

"assessees or assessable within the jurisdiction of Shri Kanti Lal. By his above acts he failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant, thereby contravening provisions of Rules 3(1) (i), Rule 3(1) (ii) and Rule 3(1) (iii) of the C.C.S. (Conduct) Rules, 1964.

“ARTICLE-II

Shri Kanti Lal while functioning as I.T.O. Distt.IV(8), Delhi during the period July, 1982 to September, 1983 and again during the period October, 1984 to November, 1985 received returns of Income in cases of 18 (eighteen) new assesseees in an irregular manner though none of these assesseees fell within his assigned jurisdiction. Shri Kanti Lal completed forty three (43) assessments in cases of these 18 tax payers by assuming jurisdiction over these cases which otherwise fell beyond his jurisdiction. By his above acts Shri Kanti Lal failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of Government servant thereby contravening provisions of Rules 3(1) (i), Rule 3(1) (ii) and Rule 3(1) (iii) of the C.C.S. (Conduct ) Rule, 1964.

“ARTICLE-III

Shri Kanti Lal while functioning as I.T.O. Distt. IV(8) Delhi during the period July, 1982 to September, 1983 and again during the period October, 1984 to November, 1985 received returns in the cases of tax payers directly and in an irregular manner after bye-passing the prescribed procedure for filling of the returns at the Centralised Receipt Counter. The receipt numbers on these returns appear to be fictitious as the particulars

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“Of these returns do not tally with the particulars appearing at the corresponding numbers in the relevant central Receipt Registers. The action of Shri Kanti Lal in receiving these returns with fictitious receipt numbers in a surreptitious manner suggest collusion with the tax payers concerned. By his above acts Shri Kanti Lal failed to maintain absolute integrity and devotion to duty and exhibited conduct unbecoming of a Government Servant thereby contravening provisions of Rule 3(1) (i), Rule 3(1) (ii) and Rule 3(1) (iii) of the C.C.S.(Conduct) Rules, 1964.

“ ARTICLE-IV

Shri Kanti Lal while functioning as I.T.O. Distt.IV(8), Delhi during the period July, 1982 to September, 1983 and again during the period October, 1984 to November, 1985 completed assessments in 14 (fourteen) cases under the provisions of Section 143(3) of the Income-tax Act after calling the tax payers to his office, though the instructions of the Central Board of Direct Taxes contained in Instructions No.1566, 1617 and 1645 required that the assessments in these 14 (fourteen) cases were to be completed under the provisions of section 143(1) of the Income-tax Act i.e. in a summary manner without calling the tax payers to the office. By his above acts, Shri Kanti Lal apparently failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant. He thereby contravened the provisions of Rule 3(1) (i), 3(1) (ii) and 3(1) (iii) of the C.C.S.(Conduct) Rules, 1964.

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ARTICLE-V

Shri Kanti Lal while functioning as Income-tax Officer Distt. IV(8), Delhi during the periods July, 1982 to September, 1983 and again October, 1984 to November, 1985 initiated assessment proceedings in certain cases even before formal receipt of returns in his Ward and fixed hearing after issuing notices across the table and not in accordance with the prescribed procedure, kept no proper record of hearings and completed assessments in these cases in unseemly haste. While completing the assessments, the claim of assesseees even in cases taken up for scrutiny were accepted without any cross-checking or verification. The manner in which these cases were dealt with, had the effect of enabling the assesseees concerned to get the benefit of capital accretion or capital build up in their accounts after payment of nominal or no tax at all. By the above acts Shri Kanti Lal failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant thereby contravening the provisions of Rule 3(1) (i), Rules 3(1) (ii) and Rules 3(1) (iii) of the C.C.S. (Conduct) Rules, 1964.

ARTICLE-VI

Shri Kanti Lal while functioning as I.T.O. (Judl.) IV, Delhi during the period 1987 to 1988 failed to communicate the orders of Commissioner of Income-tax authorising filing of appeals against adverse decisions of the first appellate authorities to the concerned Income-tax Officers in three cases. As a consequence appeals could not be filed in these three cases due to expiry of the limitation period available under the Law.

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5. The applicant was suspended on 6.1.1989 and within less than five months he was served with the charge-sheet. This cannot be stated to be a case of culpable delay vitiating the suspension and the charge-sheet. Keeping in view the voluminous nature of the documents involved, the service of the charge-sheet after the suspension has been reasonably within time. It is true that after the service of charge-sheet even though the applicant replied promptly on 1.6.1989, the appointment of the Inquiry Officer was delayed till 8.1.1990. The respondents cannot be commended for their 'efficiency' in this respect. However, since no malafides have been alleged against the respondents, the delay in the appointment of Inquiry Officer cannot per se vitiate the disciplinary proceedings. We are also disturbed by the fact that even though the Inquiry proceedings commenced on 12.4.1990, not much progress has been made in completing the inquiry. However, considering the fact that the questions of integrity and dereliction of duty are involved in the charges, reinstatement of the applicant at this stage will be embarrassing both for the department and also to the persons working above or under the applicant. Even if the applicant is not likely to tamper with documents and evidence, the public image of and the public confidence in the department are bound to suffer if the applicant is found to occupy a position of authority at this stage before he has been cleared of the charges against him. The nature of the charges against him distinguishes his case from that of Shri J.K. Varshneya Vs. Union of India - 1989 (1) SLJ 71 cited by the learned Counsel for the applicant. The facts of this case, the documentary nature of the evidence and the nature of the charges further place this

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"By his above acts, Shri Kanti Lal failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant thereby contravening provisions of Rule 3(1) (i), Rule 3(1) (ii) and Rule 3(1) (iii) of the C.C.S. (Conduct) Rules, 1964."

4. A bare reading of the charges gives an impression that they are of serious nature and involve questions of integrity and moral turpitude. The acts of omission and commission alleged in the charges are not entirely of such quasi-judicial nature as would place the applicant above the pale of disciplinary action. The question of quasi-judicial decisions transcending moral turpitude arises where only questions of interpretations of statutes, rules and instructions are involved. The charges levelled against the applicant in this case involve transgression of jurisdiction and procedure which cannot be deemed to be of innocuous nature. The charges also involve substantial loss of revenues to the government. Investigation into the matters involved in the charges is time consuming and the applicant cannot challenge the investigations merely because the oldest case was nine years old and the latest was two to one year old. We are conscious of the various rulings of the courts in which framing of charges on stale matters has been frowned upon on the ground that the Charged Officer cannot be presumed to have photographic memory to defend himself against the accusations relating to old cases and in that respect he would not be having reasonable opportunity in his defence. Such an argument cannot be invoked in this case because the question of memory does not arise <sup>substantially</sup> as all the charges are based on documentary evidence.

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case apart from the cases cited by the learned Counsel for the applicant, namely 1987 (2) ATC 828; ATR 1986 (2) CAT 97; ATR 1987 (1) CAT 640; 1987 (4) ATC 979 and 1989 (9) ATC 500. These cases involve serving of charge-sheet after inordinate delay <sup>and</sup> prolonged period of suspension when disciplinary proceedings were dragging on unreasonably.

6. We cannot, however, allow the protraction of disciplinary proceedings merely on the ground of bulky documentary evidence especially when the charge-sheet has been served more than one and a half years ago. The permissible degree of delay no doubt has to be assessed in the circumstances and complexities of each case, but each case must have a limit beyond which the delay cannot be judicially countenanced and beyond which delay in completing disciplinary proceedings while the Charged Official is under suspension, would amount to malice in law. In the above circumstances we allow this application to the extent of directing the respondents to complete the disciplinary proceedings as far as possible within a period of three months, in accordance with law, from the date of communication of the Order with the condition that if the order of the disciplinary authority is not passed within that period, the respondents shall revoke the order of suspension dated 6th January, 1989 and reinstate the applicant with effect from the date of expiry of the <sup>said</sup> period of three months ~~and~~ with the disciplinary proceedings still continuing. There will be

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no order as to cost.

*T. S. Oberoi*  
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(T.S.OBEROI)  
MEMBER (J)

*S.P. Mukerji*  
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(S.P.MUKERJI)  
VICE-CHAIRMAN (A)