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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 2220/90. DATE OF DECISION: 22-5-1992.

P.K. Biswas	Applicant.
	V/s.	
Union of India	Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

Shri Raj Panjwani, counsel for the applicant.
Shri P.H. Ramchandani, counsel for the respondents.

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1. Whether Reporters of local papers may be allowed to see the judgment? *Yes.*
2. To be referred to the Reporter or not? *Yes.*
3. Whether their Lordships wish to see the fair copy of the judgment? *No.*
4. To be circulated to all Benches of the Tribunal? *No.*

J. P. Sharma
(J.P. SHARMA)
MEMBER(J)

P. C. Jain
(P.C. JAIN)
MEMBER(A)

(12)

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

Shri Raj Panjwani, counsel for the applicant.
Shri P.H. Ramchandani, Sr. counsel for the respondents.

JUDGMENT

(delivered by Hon'ble Mr. P.C. Jain, Member)

By this application under Section 19 of the Administrative Tribunals Act, 1985, the applicant has assailed the Memorandum dated the 4th July, 1980 issued by the Commissioner of Income-tax, Orissa, Bhubaneswar, for initiating disciplinary proceedings under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and has prayed that the charge-sheet dated 4-7-80 as also the enquiry against him be quashed. The respondents have contested the O.A. by filing a reply, to which a rejoinder has also been filed by the applicant. We have carefully perused the material on record and also heard the learned counsel for the parties.

2. The applicant was working as Income-tax Officer, Group B at Balasore and it is in connection with his functioning as such the impugned Memorandum was issued to him and the inquiry was started. In view of the controversy in this case, it is necessary to reproduce below all the Articles of Charge levelled against the applicant and as given in Annexure-I to the impugned Memorandum:

Ct.

"ARTICLE OF CHARGE - 1

Sri P.K. Biswas, Income-tax Officer, Group B while working as Income-tax Officer, Balasore was transferred and posted as Income-tax Officer, Ward-E, Cuttack on 9.4.80 on compelling administrative grounds. Sri Biswas did not hand over charge to his successor namely, Sri K.C. Sarangi inspite of repeated directions and remained absent from duties without valid application or sanction of leave. Sri Biswas disobeyed the orders of the superior authorities and flouted all administrative propriety. His conduct was unbecoming of a Government servant as his absence from duty was unauthorised and he flouted all directions of his superior authorities in the matter of handing over charge at Balasore and joining at Cuttack. His conduct could not be satisfactorily explained and thereby he has failed to maintain devotion to duty and his conduct is unbecoming of a Government servant.

"ARTICLE OF CHARGE - 2

While working as Income-tax Officer, Balasore Sri P.K. Biswas committed grave irregularities in the completion of assessments and other proceedings, furnishing of estimated figures of pendency and disposal and reporting of inaccurate particulars, fabricating and interpolating entries in the assessment records, removal of documents, papers and tampering with the official records, conducting motivated enquiries at personal level without bringing materials on record which resulted in loss of revenue to the Government and hereby his conduct was unbecoming of a Government servant and he has failed to maintain absolute integrity and devotion to duty.

"ARTICLE OF CHARGE NO.3

Sri P.K. Biswas while working as Income-tax Officer, Balasore had shown undue favour to M/s Agarwala Brothers, Balasore (337-A) in respect of assessment for the assessment year 1976-77 whereby the firm in question paid less tax and derived pecuniary advantage, only because Sri Biswas, instead of assessing the firm on a total income of Rs.47,966/- as determined by him and entered in the order sheet, had interpolated the figure in the assessment order and I.T.N.S.150, Demand Notice by determining the income at Rs.12,400/- only. Sri Biswas thus failed to maintain absolute integrity and devotion to duty.

" ARTICLE OF CHARGE NO.4 "

Sri Biswas while working as Income-tax Officer, Balasore also committed grave irregularities in the matter of issue of refunds to the assessees and was motivated in issuing refunds in some cases and holding back refunds due to other assessees. In the case of Sri Mahadeo Prasad Khandalwal, Surajmal Khandalwal, Sri Govindram, Smt. Dhuni Devi the refunds were deliberately withheld by the Income-tax Officer, Sri Biswas, to these assessees for about 5 months after completion of the set-aside assessment which is contrary to all instructions. Thus, his action was unbecoming of a Government servant and thereby he has failed to maintain absolute integrity as required under the Central Civil Services (Conduct) Rules.

" ARTICLE OF CHARGE NO.5 "

Sri Biswas while working as Income-tax Officer, Balasore also conducted motivated enquiries at personal level without proper information and without recording the sources of his information in any official record. In the case of Smt. Syam Kurma, W/O. late Syamji Ranchodji, Sri Biswas had written a complaint addressed to the Income-tax Officer, Balasore in his own handwriting against the assessee in a pseudonymous/anonymous name and then started proceedings under the Income-tax Act on the basis of his own complaint. This action of the Income-tax Officer in writing pseudonymous/anonymous petition directed against the public and addressed to himself and then initiating Income-tax proceedings against them is a grave irregularity and is not expected from a responsible Government servant as he is required to discharge his official duties in an impartial and honest manner and he thereby failed to maintain absolute integrity and devotion to duty.

" ARTICLE OF CHARGE NO.6 "

Sri Biswas while working as Income-tax Officer, Balasore colluded with an unauthorised contactman, namely, Sri N. Ghosal in the matter of conducting enquiries against tax-payers, completion of high pitched assessments on them and thereby passed unauthorised communication of information to him (Sri Ghosal) in contravention of Rule 11 of the Central

Civil Services (Conduct) Rules which amounts to grave misconduct under the said Rules and at the same time this conduct is unbecoming of a Government servant."

3. Before going into the history of these proceedings, we take up first the grounds which the applicant has taken in this O.A. The main grounds are two. Firstly, it is stated that the Constitution gives the applicant a fundamental right for speedy disposal of the inquiry against him and the inquiry should be quashed as it violates Article 21 of the Constitution. The second main ground is that the applicant is an Income-tax Officer, who has been performing judicial functions and that no disciplinary proceedings can be initiated against him for what he has done in the exercise of his judicial functions. Such proceedings are stated to be barred by the provisions of Section 293 of the Income Tax Act. Accordingly, it is submitted by the applicant that the charge-sheet is without jurisdiction and is null and void. In another ground, it is stated that the charge-sheet is coming in the way of his promotion as well as in crossing the Efficiency Bar. It is also stated that there has been miscarriage of justice in the present case and that the entire charge-sheet is malafide, malicious and it has been framed because of ulterior motive.

4. No particulars of malafide or ulterior motive have been given in the pleadings. No person against whom malafides and ulterior motives might have been alleged has been made a party by name in these proceedings. As such, we see no substance in this contention.

5. The contention about violation of Article 21 of the Constitution is based on the reasoning that the protection of life enshrined in Article 21 of the Constitution includes livelihood with human dignity and that the applicant cannot be deprived of the same by following a procedure which is not just, fair or reasonable.

In this connection, observations of the Hon'ble Supreme Court in the cases of (i) Bandhua Mukti Morcha Vs. Union of India (1984) 3 SCC 161; (ii) (1985) 3 SCC 545; and (iii) Maneka Gandhi Vs. Union of India (1978 (2) SCR 621) have also been cited. Article 21 of the Constitution is reproduced as below: -

"21. Protection of life and personal liberty.— No person shall be deprived of his life or personal liberty except according to procedure established by law."

Initiating the disciplinary proceedings against a Government servant in accordance with C.C.S. (C.C.&A.) Rules, 1965 cannot, by any stretch of imagination or reasoning, be said as depriving him either of his life or his livelihood. In this case, even though the Memorandum of charge-sheet was issued in 1980, the applicant was not placed even under suspension pending inquiry into the charges contained in the aforesaid charge-sheet. He was, however, placed under suspension in 1986 in connection with another Memorandum of charges issued to him, which is the subject-matter of a separate O.A. Similarly, the suspension ordered on 11.12.1986 is also the subject-matter in a separate O.A. During the course of our hearing, though the learned counsel for the applicant was not definite about the amount of subsistence allowance which the applicant was drawing at present, yet he did submit that it would be around 90% or more of his pay. Learned counsel for the respondents was also not sure about the exact amount, but he also submitted that it may be as high as 95% of the pay of the applicant. Further, even during suspension, a Government servant continues to be entitled to occupy residential accommodation which might have been allotted to him before his suspension or to the house rent allowance in lieu thereof in accordance with the rules, if no Government accommodation is allotted. He also continues to be entitled to avail

all the medical facilities. Similarly, Children Education Allowance, if otherwise admissible, also continues to be paid. In these circumstances, it is not at all possible to take a view that the applicant has either been deprived of his livelihood as yet or he has suffered any unreasonable deprivation. We have, therefore, no hesitation in taking the view that the impugned Memorandum of charges cannot be assailed by the applicant on the alleged grounds of violation of Article 21 of the Constitution.

6. We now deal with the main contention of the applicant to the effect that the impugned Memorandum of charge-sheet is null and void as the same is in violation of Section 293 of the Income Tax Act, 1961. Section 293 of the Act *ibid* is as below: -

"No suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act, and no prosecution, suit or other proceeding 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."

As the O.A. filed in the Central Administrative Tribunal is not a suit filed in any civil court and that too to set aside or modify any proceeding taken or order made under the Income Tax Act, the challenge of the applicant to the proceedings before us is obviously based on the second part of the provision of Section 293, according to which, no prosecution, suit or other proceeding 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. We are unable to accept the contention of the applicant in this regard. The impugned Memorandum of charge-sheet has been issued to the applicant in accordance with the provisions of C.C.S. (C.C.&A.) Rules, 1965. It has not been disputed that these rules have statutory force. If these rules are notified under Proviso to Article 309 of the Constitution, and the power vested in

the President under the aforesaid Proviso is a plenary power. The rule-making power under Article 309 having been conferred by the Constitution itself, differs from ordinary rules made under powers conferred by a statute. No specific provision of the C.C.S. (C.C.&A.) Rules has been assailed in the O.A. before us. Even the provisions of the Administrative Tribunals Act, 1985 have under Section 33 thereof overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than that Act. In fact, the applicant himself has filed this O.A. under the provisions of this Act. Even otherwise, *prima facie*, the provisions of Section 293 of the Income Tax Act provide a protection to the Government and its officers against a civil suit or prosecution or other proceedings initiated by a third party; it does not appear to provide or intend to provide any protection to the Government or its officers in respect of action against each other. That is exactly how the applicant has filed this O.A. against the Government. This issue also came up before the Supreme Court in the case of UNION OF INDIA AND OTHERS Vs. A.N. SAXENA (Civil Appeal Nos. 50-51 of 1992 against the judgment and order dated 27.6.1991 of the Central Administrative Tribunal, Delhi, in O.A. No.1307 of 1991. The judgment in the aforesaid case was delivered by the Supreme Court on 27th March, 1992. In that case, the Supreme Court held as below: -

" It was urged before us by learned Counsel for the respondent that as the respondent was performing judicial or quasi-judicial functions in making the assessment orders in question even if his actions were wrong they could be corrected in an appeal or in revision and no disciplinary

proceedings could be taken regarding such actions.

" In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

We have already reproduced above all the six Articles of Charge levelled against the applicant. It will be seen that Articles of Charge No.1 and 2 have absolutely no connection, directly or indirectly, with the alleged performance of judicial or quasi-judicial functions by the applicant in the discharge of his duties. Article of Charge No.3, though pertains to performance of judicial functions, yet it refers to alleged interpolation in the figure of assessment order and such an interpolation cannot

be said to be a part of the judicial functions of the applicant. Further, there is a specific allegation of showing undue favour to an assessee in respect of assessment for the Assessment Year 1976-77. From Article of Charge No.4, it is seen that the allegation is about committing grave irregularities in the matter of issue of refunds to the assessees and motivation in issuing refunds in some cases and holding back refunds due to other assessees. The charge levelled in Article of Charge No.5 cannot be deemed to be a part of any judicial function. Similar is the position about Article of Charge No.6. In this view of the matter and in view of the judgment of the Hon'ble Supreme Court in Civil Appeal Nos. 50-51 of 1992, cited above, we are unable to hold that Section 293 of the Income Tax Act provides any protection to the applicant against disciplinary proceedings initiated against him in respect of the charges of the type levelled against him.

7. Before parting with this case, we may touch upon the history of the disciplinary inquiry being held against the applicant on the Memorandum of charge-sheet dated 4-7-80. The applicant filed a writ petition (O.J.C. No.1719 of 1981) in the Orissa High Court on 12.8.1981 on the ground that no Inquiring Officer should have been appointed before submission and consideration of his statement of defence. An interim order passed on 13.8.1981 by the High Court of Orissa stayed the inquiry proceedings and the preliminary hearing until further orders. On 22.10.1981, the High Court of Orissa disposed of the petition by issuing a direction that (1) all the documents referred to in Annexure II of the charge-sheet would be shown to Shri Biswas and he will be allowed to take his notes; and (2) after such inspection was granted, the statement of defence will be filed within

four weeks therefrom. The disciplinary authority, if satisfied with the statement of defence might recall the orders for continuance of the proceedings and otherwise the Inquiry Officer will proceed according to law. After collecting all the relevant documents, the applicant is said to have been asked to inspect the same on any working day in the office of the Commissioner of Income-tax, Bhubaneswar. As the applicant failed to take inspection, another letter is said to have been sent to him on 15.10.82 to do the inspection on 30.10.82. The applicant is said to have inspected the documents on two occasions in October 1982 and January 1983, but it is alleged that he did not make any further attempt to complete the inspection. He was transferred on 1.7.1983 from Orissa charge to West Bengal charge and by communication dated 14.12.1983, he is said to have been requested to complete inspection by 15.1.1984. By letter dated 5.11.1985, i.e., nearly after a period of two years, the applicant requested for making the documents available to him during the period from 2.12.85 to 31.12.85. He was informed by letter dated 22.11.1985 to inspect the documents between 2.12.85 to 31.12.1985, but the same was returned undelivered on 9.12.85 with the postal remark 'not known'. Another letter was sent for inspection to the applicant on 11.12.85. He started inspection of files on 3.2.1986. It is stated by the respondents that on 6.2.86, it was noticed that the applicant had stolen certain papers from the files during his inspection and that an F. I. R. was lodged with the local Police Station. He was arrested by the police on 6.2.1986 and released on bail on 7.2.86 at night. The applicant submitted a written statement to the charge-sheet but only in reply to Charges 1 and 2 on the plea that he was not allowed to complete inspection of listed documents. Another disciplinary proceedings for major penalty was started against him on 15.9.1986 in regard to the alleged misconduct in tampering with and removing official papers at the time

of inspection of documents. This second charge-sheet is the subject matter of a separate O.A. On 19.6.1987, Shri A.R. Malhotra, Commissioner for Departmental Inquiries, was appointed as Inquiring Officer in place of Shri Balwant Singh and hearing was fixed by him for 7.7.1987, but the applicant did not attend the same. Vide his letter dated 3.7.1987, the applicant requested the Chief Commissioner and Commissioner of Income-tax, West Bengal I, for directing the Inquiry Officer not to proceed with the inquiry as full inspection of documents had not been done and he had not submitted the statement of defence. 18.2.1988 was again fixed for hearing, but the applicant did not attend the same. On 11.7.1988, a criminal misc. case No.20/88 was filed by the applicant in the High Court of Orissa alleging contempt of court. This was disposed of by the High Court by its order dated 31.8.1988 with the direction that the petitioner should be granted Xerox copies of the documents which he desires to have and if a list of such documents is submitted by him within a week from that date, copies thereof shall be supplied to him within two weeks thereafter. The applicant furnished a list of 131 documents on 22.9.1988. On an application filed by the Department on 1.10.1988 for clarification of order dated 31.8.88, the High Court of Orissa by its order dated 3.2.1989 directed that the Department should supply the xerox copies of only those documents which find place in the list furnished to the applicant along with the charge memo. Xerox copies of 67 documents out of 78 listed in Annexure III to the charge memo were supplied to and received by the applicant on 25.5.89, 28/29.6.89, 24/25.7.89 and 14.8.89. It is stated that the remaining documents could not be supplied being very old and untraceable and a few were destroyed /removed by the applicant during inspection. On 28.7.1989, Shri P.K. Mishra, Deputy Commissioner of Income-tax (Audit), Bhubaneswar, was appointed as Inquiry Officer in place of Shri A.R.

Malhotra for this charge-sheet. The applicant again filed an application in the High Court of Orissa on 6.11.1989 for modification of High Court's order dated 3.2.89 praying that Xerox copies of the documents in his letter dated 14.7.80 should be supplied to him. This was disposed of by the High Court by observing that the list of documents given by the petitioner was not exact and definite and, therefore, he was directed to file a fresh application indicating the documents copies whereof were required and of which inspection was sought, and if such an application was made by the petitioner to the Department within two weeks, the opposite party shall take a decision in regard to each item by the end of April, 1991. On 28.3.1991, the applicant asked for copies of 54 documents for inspection and in his applications dated 2.4.1991 and 3.4.1991, he asked for supply of some additional documents totalling 61. On 13.11.1991, the applicant was informed to take inspection of 28 documents, which had been traced out. However, on 18.11.1991, the applicant requested the Chief Commissioner of Income-tax, Calcutta to stay the inspection of records until the judgment in respect of the charge-sheet dated 4.7.80 is given by the Central Administrative Tribunal, Principal Bench, New Delhi.

8. The above history of the case, in brief, would show that even on a simple matter of inspection of documents, the applicant had approached the High Court a number of times. It cannot, therefore, be said that he is not at all responsible for the abnormal delay in these proceedings. In this view of the matter, the contention of the applicant/ that there has been miscarriage of justice in this case is not sustainable. We would like to express a hope and impress upon both parties to do every thing possible within their control to see that the inquiry on the charge-sheet which is the subject matter of this O.A. is not unduly and

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unreasonably delayed further.

9. In the light of the foregoing discussion, we see no merit in this O.A. and the same is accordingly dismissed, leaving the parties to bear their own costs.

J. P. Shanna
(P.C. JAN)
MEMBER (A)

C. C. 2215192
(P.C. JAN)
~~MEMBER (A)~~
MEMBER (A)