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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA-2439/90

Date of decision: 1.4.1992

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Shri M.R. Chopra Applicant

Versus

Lt. Governor,
Union Territory of
Delhi & Another Respondents

For the Applicant Shri A.K. Behra, Advocate

For the Respondents Ms. Kum Kum Jain, Advocate

CORAM:

The Hon'ble Mr. P.K. Kartha, Vice Chairman(J)

The Hon'ble Mr. B.N. Dhoundiyal, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgment? *Yes*
2. To be referred to the Reporters or not? *M*

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha,
Vice Chairman(J))

The applicant, who is an officer belonging to DANIC Service, at the time of filing of this application, was holding the post of Administrative Officer in the Directorate of Health Services, Delhi Administration. He has prayed for quashing the penalty order dated 30.10.1990 whereby the Lt. Governor, Delhi has imposed on him the penalty of reduction to two stages lower in


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time-scale of pay/grade/post/service as provided under Rule 11 (vi) of C.C.S.(CCA) Rules, 1965. He has also prayed for granting him all consequential benefits.

2. On 23.11.1990, when the application was admitted, an interim order was passed directing that the operation of the impugned order dated 30.10.1990 be stayed.

3. The facts of the case are similar to those in OA-2429/90 which is being disposed of separately by order dated 1.4.1992.

4. By Memorandum dated 5.8.1988, the respondents initiated an inquiry against the applicant under Rule 14 of the C.C.S.(CCA) Rules, 1965. The allegation against him was that while functioning as Sales Tax Officer in the Central Registration Cell during the period from 13.8.1984 to 6.4.1986, he committed misconduct in the matter of grant of registration to M/s New Sargam Enterprises, Main Road, Ghonda, Delhi vide his order dated 28.6.1985. The Inquiry Officer submitted his report dated 21.6.1990 to the disciplinary authority holding the charge to be partly proved. Thereafter, the impugned order dated 30.10.1990, imposing on him the penalty, was passed. 

5. The applicant has contended that he was exercising quasi-judicial functions and that it could not have formed the subject matter of disciplinary proceedings against him.

6. The respondents have contended in their counter-affidavit that the applicant has not exhausted the remedies available to him before filing the application, and that the penalty was imposed on him after holding an inquiry in accordance with the provisions of the C.C.S. (CCA) Rules, 1965.

7. We have carefully gone through the records of the case and have considered the rival contentions. The plea of non-exhaustion of remedies before filing the application is not tenable. The impugned order was passed by the Lt. Governor against which the remedy of appeal is not available. The subject matter of the enquiry pertains to actions taken by him in the exercise of quasi-judicial functions. The legal position in this regard is well settled. The learned counsel for the applicant has taken us through the relevant provisions of the Delhi Sales Tax Act, 1975 under which the applicant has exercised quasi-judicial powers. ~~Assistant~~ Sales Tax Officer assists the Commissioner of Sales Tax in the

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performance of his duties. The Commissioner is vested with the power of review in respect of orders prejudicial to the revenue. He may also exercise the power of revision in certain cases. The Act provides for rectification of mistakes in certain cases. Section 67 of the Act provides that "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 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 or the rules made thereunder". Section 42 of the Act provides that the Commissioner or any person appointed to assist him under the Act shall, for the purpose of the Act, have the same power as are vested in a Court under the Code of Civil Procedure, 1908 when trying a suit, in respect of the following matters, namely, (a) enforcing the attendance of any person and examining him on oath or affirmation; (b) compelling the production of accounts and documents; and (c) issuing commissions for the examination of witnesses, "and any proceeding under this Act before the Commissioner or any person appointed under Sub-Section (2) of Section 9 to assist him, shall be deemed to be a judicial proceeding within the meaning

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of Sections 193 and 228 and for the purposes of Section 196 of the Indian Penal Code."

8. Courts have held that initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions, is not legally in order. In C.S. Kesavan Vs. State of Kerala and Others, 1989 (72) Sales Tax Cases, 432, the Kerala High Court has observed that officers entrusted with quasi-judicial powers to decide issues arising between citizens and the Government, should have the freedom to take independent decisions in accordance with law without threat of disciplinary action if their decisions go against the interest of the Govt. An order passed by such an officer against the interest of the Government, may be challenged by the Government before the appellate or the revisional authority. The officer passing such an order, cannot be subjected to disciplinary proceedings. The Kerala High Court had before it the case of a Deputy Commissioner (Appeals) under the Kerala Agricultural Income Tax and Sales Tax Act, who had passed certain orders in revision resulting in loss of revenue to the Government.

9. To the same effect is the judgement of the Madras High Court in Abdul Azeez Vs. State of Tamil Nadu & Another, 1991 (80) Sales Tax Cases, 53. In that case,

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S. Mohan, Officiating C.J., as he then was, observed as follows:-

"Here is a case where the appellant was exercising judicial functions conferred on him under the Tamil Nadu General Sales Tax Act. As we have observed earlier, any order of assessment is subject to appeal and further appeal and also revision. In other words, a hierarchy of authorities is constituted for correction if the original order of assessment is wrong, even if palpably wrong. So long as the doctrine of judicial immunity remains, it could at best be stated that he cannot be safely entrusted with the discharge of judicial functions. To say that merely because he passed a wrong order - this is on the assumption that he passed a wrong order or an inappropriate order - the appellant could be exposed to disciplinary proceedings, is something which we find difficult to comprehend. Such disciplinary proceedings would mean a negation of judicial immunity and independence because it is not that every order of the original authority is upheld by the appellate authority invariably. It may be reversed or it may be set aside. But on that score, to call upon a judicial functionary which the appellant undoubtedly is, to explain for his lapses, which according to him, have been caused by inadvertence or error of judgement, which is not disputed by the respondent, is something which will be difficult to support. Of course, if he had passed a bad order or an order even opposed to elementary principles of law, that is a matter for censure. We would go to the extent of saying that that could be entered in the confidential file, so as to deprive him of increment, promotion, etc. However, by no stretch of imagination, according to us, he could be exposed to the peril of disciplinary proceedings. That precisely is the situation here."

10. In V.D. Trivedi Vs. Union of India, 1990 (2) SCALE 1161, the Supreme Court has expressed the view that "The action by the appellant was quasi-judicial and should not have formed the basis of the disciplinary action."

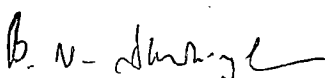
11. In the light of the foregoing discussion, the application is allowed. We set aside and quash the

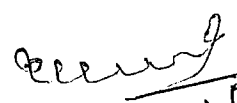
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impugned order dated 5.8.1988, whereby the disciplinary proceedings were initiated against the applicant and order dated 30.10.1990, whereby the penalty of reduction to two stages lower in time-scale of pay/grade/post/service was imposed on the applicant.

12. The application is disposed of accordingly. There will be no order as to costs.


(B.N. Dhoundiyal)
Administrative Member


(P.K. Kartha) 14/82
Vice-Chairman(Judl.)