

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2600/90
T.A. No.

199

DATE OF DECISION 12.4.1991.

Shri Arun Kumar Basu	Petitioner
Shri P.P. Khurana	Advocate for the Petitioner(s) Applicant
Versus Union of India & Another	Respondent
Shri R. S. Aggarwal	Advocate for the Respondent(s)

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

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

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 of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Administrative Member)

The grievance of the applicant relates to the impugned order dated 16.5.1990, whereby he has been placed under suspension.

2. The applicant is a member of the Indian Revenue Service. On 9.9.1980, when he was posted as A.D.I. (Investigation) at Calcutta, the Intelligence Wing of the Income Tax Department from Delhi conducted a raid of the business and residential premises of one, Shri Jagdish Prasad Goel, partner of M/s Goel Industries located at Calcutta. The applicant was sent as the authorised officer to one of the search spots.

2. During the search, besides other valuables, cash amounting to Rs.5.09 lakh was also seized. In this regard, a statement of the assessee was also recorded, wherein he stated that out of the cash found, an amount of Rs.4.5 lakh belonged to one, Shri Bishan Dayal Goel, Proprietor of Steel Trading Company, Calcutta. When the statement of Shri Bishan Dayal Goel was recorded, he denied having given the amount of Rs.4.5 lakh or any other sum to Shri J.P. Goel.

3. After the seizure, an appraisal report was required to be submitted by the applicant in respect of the search operation at Calcutta. He did so in November, 1980.

4. Certain books of accounts had been seized during the search seizure operation. The documents consisted of one rough Cash Book marked 'MCK-12'. According to the applicant, all these books of accounts were deposited in the strong room on the date of the search itself. The Strong Room was headed by an officer of the rank of A.D.I. with whom the key of the same always remains..

5. All the books of accounts are required to be handed over to the I.T.O. having jurisdiction in the matter of assesment of the assessee in question within a period of 15 days from the date of seizure. Accordingly, the I.T.O.

Q gave an endorsement on 17.9.1980 in the Strong Room Register

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in token of having received the seized booke within the period fixed in the statute.

6. In regard to the seized gold and cash found in the premises, the proceedings were held by the concerned I.T.O. for the purpose of ascertaining the source of seized assets and in the event of the assets being not accounted for, to pass an appropriate order retaining the seized assets. During the course of the hearing, the assessee in question did not make any reference to the rough Cash Book, namely, 'MCK-12'. This order was passed by the concerned I.T.O. on 5.12.1990.

7. Aggrieved by the order of the I.T.O., the assessee filed an appeal before the Commissioner of Income Tax, wherein also he made no reference to the seized Cash Book 'MCK-12'. The assessee for the first time during the course of the hearing on the appeal, made a reference to the rough Cash Book 'MCK-12' and made the submission that the amount of Rs.4.5 lakh represented borrowings from 5 persons, in contradiction to his earlier statement recorded at the time of search and seizure on 9.9.1980. The appeal of the assessee was dismissed by the Commissioner of Income Tax on 7.1.1982.

8. The matter in regard to the interpolation of the documents was, thereafter considered by the respondents.

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The applicant was also issued a memo. dated 22.1.1982 on the subject. The applicant has stated that after a thorough inquiry, he was given a clean chit. However, the respondents issued a memorandum to him on 3.10.1989 after expiry of almost of 9 years from the date of the inception, calling upon him to explain his conduct with regard to the interpolation of documents marked 'MCK-12'. He desired for inspection of the relevant documents. He submitted an interim reply pending the receipt of documents sought by him.

9. On 23.7.1990, the respondents issued to him a memorandum proposing to hold an inquiry against him under Rule 14 of the C.C.S. (Conduct) Rules, 1965. The article of charge framed against him is as under:-

"That the said Shri A.K. Basu while functioning as Assistant Director of Inspection (Int.), Calcutta committed grave misconduct in as much as he allowed interpolation in connivance with the assessee in a book of account marked MCK-12, which was seized during the course of search on 9.9.80 from the premises of one Shri Jagdish Prasad Goel. This was done with a view to unduly favouring the assessee concerned. Thereby Shri A.K. Basu violated the provisions of rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

10. The applicant has given his reply denying the charges. He has stated that there is an unconscionable delay of almost ten years from the date of the incident, and the initiation of the disciplinary proceedings against him. The applicant had been transferred from Calcutta

and he continues to remain posted away from Calcutta till his suspension in May, 1990. He has stated that it is impossible for him to influence the course of investigation in any manner. In this view of the matter, he has contended that his continued suspension is unjustified. He has further stated that the investigation in the case is complete and that there can be no apprehension that the applicant could influence the witnesses or tamper with the records if he were to be reinstated in service.

11. The respondents have stated in their counter-affidavit that even though the charge-sheet has been issued, the grounds for the continued suspension of the applicant subsist.

12. We have gone through the records of the case carefully and have considered the rival contentions. The learned counsel for the applicant has relied upon
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numerous rulings and we have duly considered them. In our view, as the investigation is now complete, there could be no apprehension that the applicant would influence witnesses or tamper with the records if he were to be reinstated in service. Revocation of suspension and reinstatement of the applicant may not,

* Cases cited by the learned counsel for the applicant:

1990 (13) A.T.C. 853; 1987 (3) S.L.J., CAT 599; and judgement of the New Bombay Bench dated 5.10.1989 in OA-15/88 - Arun Tatola Vs. Chief Commissioner of Income Tax.

in any manner, prejudice the investigations which, admittedly, have come to an end. In O.P. Gupta Vs. Union of India, A.I.R., 1987 S.C. 2257 at 2264, the Supreme Court has observed as follows:-

"There is no doubt that an order of suspension, unless the departmental enquiry is concluded within a reasonable period, affects a Government servant injuriously. The very expression 'subsistence allowance' has an untenable penal significance. It was further observed that it is a clear principle of natural justice that the delinquent officer, when placed under suspension, is entitled to represent, that the departmental proceedings should be concluded with reasonable diligence and within a reasonable period of time. If such a principle were not to be recognised, it would imply that the executive is being vested with a totally arbitrary and unfettered power of placing its officers under disability and distrust for an indefinite duration."

13. In the conspectus of the facts and circumstances of the case, we allow the present application and set aside and quash the impugned order dated 16.5.1990.

The applicant shall be reinstated in service immediately. However, we make it clear that the respondents will be at liberty to post the applicant to any assignment and at any place of duty, according to the administrative exigencies of service. We ^{further} direct the respondents to conclude the disciplinary proceedings initiated against the applicant as expeditiously as possible, but in no event, later than six months from the date of communication of this order. We also direct the applicant to cooperate fully in the conduct of the inquiry. The application is disposed of accordingly.

There will be no order as to costs.

D.K. Chakravorty 12/4/91
(D.K. Chakravorty)
Administrative Member

P.K. Kartha 12/4/91
(P.K. Kartha)
Vice-Chairman(Judl.)