

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2601/90
T.A. No.

199

DATE OF DECISION 28.1.1992

Shri Arum Kumar Basu	Retitioner Applicant
Shri P.P. Khurana	Advocate for the Retitioner(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. B.N. Dhoundiyal, 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 the Hon'ble
Mr. P.K. Kartha, Vice-Chairman)

The applicant, who is working as Deputy Commissioner of Income Tax, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for quashing the charge memo dated 23.7.1990 issued to him under Rule 14 of the C.C.S. (CCA) Rules, 1965.

2. On 12.12.1990, the Tribunal passed an interim order directing the respondents not to proceed with the disciplinary proceedings against the applicant pursuant to the chargesheet dated 23.7.1990.

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3. The applicant joined the Income Tax Department as Officer, Class I in 1974. He was promoted as Assistant Commissioner of Income Tax in 1983 and as Deputy Commissioner of Income Tax in 1986.

4. While the applicant was posted as Assistant Director of Inspection at Calcutta, he was sent on 9.9.1980 as authorised officer to conduct a raid on the business and residential premises of one, Jagdish Prasad Goel (Assessee), who was the partner of M/s Goel Industries. The gravamen of the charge pertains to his role in the said raid and certain interpolations in the book of account marked MCK-12 seized from the office premises of the said assessee on 9.9.1980 during the course of search.

5. The articles of charge framed against the applicant are as follows:-

"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."

6. The list of documents by which the articles of charge framed against the applicant are proposed to be sustained includes the following:-

"3. Book of account marked MCK-12 seized from the premises of M/s Shree Bishan Das Iron Works & M/s Goel Industries of 89, Burtolla Street, 1st Floor, Calcutta on 9.9.80.

Or

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4. Complete file of C.I.T., WB-XI, Calcutta in regard to proceedings u/s 132 (12) (including 132 (11) application) in the case of Shri Jagdish Prasad Goel."

7. The applicant has challenged the validity of the departmental enquiry initiated against him on several grounds. He has contended that the action of the respondents is vitiated by inordinate delay, that according to the respondents own showing, the alleged misconduct could be the handiwork of either the applicant or of any of the several persons who handled the books during the relevant period, that they had earlier issued a show-cause memo. to Shri S.K. Bose, the concerned I.T.O., that the charge memo. has been issued only against the applicant, that Shri Basu retired on superannuation on 31.12.1989, that the respondents denied inspection of the relevant documents to him and that a perusal of the chargesheet would demonstrate the following:-

- (a) that there is no allegation of corruption or personal gain against the applicant;
- (b) that there is no allegation against the applicant that he acted in any disregard of the provisions of the Act;
- (c) that there is no allegation against the applicant that in the discharge of his duties, he omitted to observe the prescribed statutory condition stipulated in the Act.

8. The case of the applicant is that all the books of account, including the rough cash book marked MCK-12 were deposited in the strong room on the date of search itself, viz., 9.9.1980 and that the strong room was headed by an officer of the rank of Assistant Director of Inspection who was assisted in his work by an Inspector of Income Tax. According to the Income Tax Act, 1961, all the books of account are required to be handed over to the Income Tax Officer having jurisdiction over the raided party within a period of 15 days from the date of seizure (vide Section 132 (8), 132 (9) and 132 (9A)). The concerned I.T.O. had also recorded the following endorsement in the strong room register:-

"Received seized books of account in respect of
M/s Geel Industries as per Annexure Y (two gunny
bags).

Sd/-
I.T.O. 8 Ward Dist.I(1)
Calcutta."

"Received two Gunny bags containing seized books
of account taken back by me as per Annexure A.

Sd/-
ITO I (Addl.) F
Ward I (1) Calcutta".

9. The applicant has stated that in 1982, the matter relating to the interpolation of documents was enquired into thoroughly by the respondents and that he was given

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a clean chit. It was thereafter that he was appointed as Under Secretary (Tax Planning & Legislation) C.B.D.T. in 1982, as Assistant Commissioner of Income Tax in 1983, as Deputy Director (Training) in National Academy of Direct Taxes, Nagpur in 1984, as Deputy Commissioner of Income Tax in 1986, as Senior authorised representative before ITAT, Pune in 1988 and as Deputy Director (Audit) in 1989. A memorandum dated 3.10.1989 was served on him after the expiry of about 9 years to explain his conduct with regard to interpolation of document marked MCK-12. He asked for inspection of the folder maintained by the C.I.T. Office relating to the incident before giving his reply. The respondents directed him to furnish his comments on or before 31.10.1989, stating that in case it was "considered necessary to obtain your further comments based on 132 (12) folder maintained in the CIT's office, then the same will be supplied to you".

10. On 16.5.1990, the applicant was placed under suspension and the impugned memorandum was served on him on 23.7.1990.

11. The applicant has stated that one of the listed documents, namely, "complete file of the CIT WBXI in respect of proceeding under Section 132 (12)" was not available for inspection. The respondents have stated

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in their counter-affidavit that efforts are being made to trace out the said document and it would be made available to him as soon as it was located. The same has not yet been made available to him.

12. The respondents have contended in their counter-affidavit that the applicant was responsible for the interpolations and that the impugned memorandum was issued as soon as a prima facie case was established against him.

13. We have gone through the records of the case carefully and have heard the learned counsel for both the parties. In our opinion, the applicant is entitled to succeed on the short ground of inordinate delay in the initiation of departmental enquiry against him. There is no satisfactory explanation for the inordinate delay in issuing the charge memo. and it will be unfair to permit the departmental enquiry to be proceeded with at this stage. We are fortified in this conclusion by the decision of the Supreme Court in State of Madhya Pradesh Vs. Bani Singh, AIR 1990 SC 1308.

14. The alleged lapses or misconduct of the applicant were known to the respondents as early as in 1982. Despite this, he was given more than one promotion. In Audhraj Singh Vs. State of M.P., AIR 1967 MP-284, it has been held that "if the lapse or misconduct is one which is known to the authority before the person is promoted and not one which

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comes to light subsequent to the promotion, and if the authority concerned knowing of this lapse or misconduct promotes the civil servant without any reservation, then it must be taken that the lapse or misconduct has been condoned".

15. Another aspect of the matter is that a material document cited in the list annexed to the charge-sheet, mentioned above, was not made available to the applicant as it has been misplaced. In Dr. A.K. Datta Vs. Union of India and Others, 1978 (2) SLR 17, the Calcutta High Court has held that denial of the inspection of such a document cited in the charge-sheet amounted to violation of the principles of natural justice.

16. In the light of the foregoing discussion, we set aside and quash the impugned Memorandum dated 23.7.1990. The interim order passed on 12.12.1990 is hereby made absolute. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. Dhoundiyal)
Administrative Member

P.K. Kartha
28/11/92
(P.K. Kartha)
Vice-Chairman(Judl.)