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Central Administrative Tribunal
Principal Bench, New Delhi

O.A.No.2665/90

New Delhi this the 18th Day of April, 1995.

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

J.K. Gupta,
S/o Late Shri Labhu Ram,
Commissioner of Income Tax,
Ministry of Finance,
New Delhi ...Applicant

(By Advocate : Shri S.C. Gupta)

VERSUS

UNION OF INDIA, THROUGH

The Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi. ...Respondents

(By Advocate :

JUDGEMENT (Oral)

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

The applicant while serving as Commissioner of Income Tax filed this Application under Section 19 of the Administrative Tribunals Act, 1985 on 11.12.1990. Aggrieved by an Order issued by the Ministry of Finance, Department of Revenue, New Delhi dated 01.2.1990; that order in nutshell censured the conduct of the applicant of the period when he was working as Deputy Director of Income-tax (Investigation), Bombay in the year 1983. It is also stated in that order that there was case in which he approved Search and Seizure action of M/s Sun & Deep Jewellers, Bombay on the basis of a proposal put up to him by Assistant Director of Income-tax department-III(1) Shri D.V. Pasi on 21.01.1983. The firm made certain representations before Assistant Director and the Asstt. Director prepared an Appraisal Report which was approved

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by the applicant and forwarded to the Commissioner of Income Tax (Investigation) Bombay on 25.03.83. Certain shortcomings were found on that appraisal report and also on the forwarding note of the applicant on which the applicant was asked to submit his explanation by Memo dated 30.12.1988. After considering his explanation, it was observed that the applicant has not ensured that certain particulars were not mentioned in the appraisal report particularly regarding the confessional statement of the partner of the assesee firm Bombay that gold ornaments weighing 3.5 Kgs seized during the search was unaccounted. It was, therefore, considered that the applicant has failed in the Supervisory duty so he was given a warning to be more careful in future. A copy of the Memo was placed in the ACR of the applicant.

The applicant has prayed that impugned Memo dated 1.2.1990 (Annexure A-1) be quashed.

On notice the respondents contested this application by filing a reply. In the reply the contents of the impugned order has only been detailed at a considerable length. It is further stated that no statutory procedure is prescribed for issuing a recordable warning as it is not a penalty in CCS (CCA) Rules. On the above basis, the respondents in their Counter-affidavit have rebutted the various averments made in the Original Application and also the grounds for allowing the Original Application.

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The applicant has filed the rejoinder reiterating facts already stated in the Original Application.

We have heard the Senior Counsel Shri S.C. Gupta and he has placed before us certain documents after supplying the copy of the same to the Ld. counsel for the respondents and arguing that the Assistant Director Shri DV Pasi who prepared the appraisal report of the said firm was proceeded departmentally for certain lapses which have been mentioned in the impugned order. The charges were grounded on the basis of four lapses and chargesheet was issued under Rule 14 of the CCS (CCA) Rules 1965. The Enquiry Officer has submitted the report again in that departmental enquiry but after the present application has already been filed by the applicant. The Enquiry Officer, Commissioner for Departmental enquiry of the Central Vigilance Commission, completely exonerated said Shri Pasi holding article of charge against said Shri Pasi as not proved. It appears that the said report of the Enquiry Officer was accepted by the President vide its order dated 5.8.83 under Rule 15 of CCS (CCA) Rules, 1965 accepting into the findings arrived at by the Enquiry Officer. Here it may be recalled that resort to issue of chargesheet against said Shri Pasi was taken much after the impugned recordable censure was given to the applicant by the impugned Order in February, 1990. On the basis of this Ld. Senior Counsel argued that when the persons who initiated certain enquiry liable for certain lapses in the search and seizure of articles of Jewellery firm has been exonerated then the authority supervising the working of that person cannot be told to have faulted with as it will be arbitrary, unjust, unfair

and unreasonable. This ground itself goes to show that the impugned order cannot stand. We have asked repeatedly the learned counsel appearing for the respondents Shri Aggarwal to point out as to how the applicant can be given the warning of censure recordable in ACR in spite of the fact that subsequently of certain alleged misconduct against the Subordinate Officer, Assistant Director Shri Pasi, disciplinary authority and the competent authority found that he has committed no lapses in making appraisal report of the Jeweller firm. The learned counsel could not show any such point which could detract our attention from the view we are taking in this case.

We have also gone through the legal position on the subject. Under Rule 11 of the CCS (CCA) rule 1965 censure is a mode of punishment which can only be inflicted when the procedure prescribed in holding a departmental enquiry is sufficiently complied with and the person who is alleged to be charged with certain misconduct has been given sufficient, reasonable and adequate opportunity of placing his defence to rebutt the allegations levelled against him under Article of charge. Since this was a warning, and it was placed in the ACR of the applicant, which is recordable, it amounts to censure as penalty under Rule 11 of CCS (CCA) rules, 1965. Though the applicant was asked to explain certain facts and he also submitted an explanation but the case would have been different as there has been warning for him of certain deficiencies that it is recordable warning and it is likely to effect the future prospects of the employee and as such any order passed without resorting to the

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procedure prescribed in the CCS (CCA) Rules, 1965 cannot be sustained. During the course of the hearing we have also been shown a Circular issued by the Department of Personnel dated 10.02.1979 a copy of the same has also been furnished to the counsel for the respondents. The case of the applicant is also supported by the aforesaid O.M. to the effect that the recordable warning can only be issued after holding the Departmental Enquiry as it amounts to punishment. A reference has also been made in a reported case of Delhi High Court.

In view of the facts we are doubly sure that the impugned order imposing the warning recorded in the ACR of the applicant is not sustainable factually on the legal aspect of the matter.

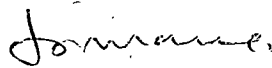
We have also gone through the recent decision in the case of State of U.P. Vs Vijay Kumar Tripathi & Anr. reported in JT 1995 (1) S.C.403, which is under UP Civil Service (Classification, Control & Appeal) Rules, 1930: In that case penalty of Censure was imposed while requirement of rule 55 (b) was that when such a penalty is imposed i.e. either of Censure or stoppage of Efficiency Bar then it shall not be necessary to call for his explanation or frame formal charge against the said employee. The petitioner went in appeal to the Allahabad High Court and the Allahabad High Court has opined in the order that awarding censure without affording an opportunity to the effected employee is violation of principles of natural justice. The case of State of U.P. Vs Rajendra Kumar Srivastava has also been referred to by the Allahabad High Court reported in 1989 SCD 137 (Para 4).

Aggrieved by this Order the State of UP filed an appeal, the Hon'ble Supreme Court has dismissed the appeal holding that prior opportunity to show-cause was not given to the respondent against the proposed imposition of penalty of censure and the order of the High Court was upheld.

In view of the above facts after hearing the learned counsel for the respondents we find that the impugned order of recordable warning cannot be sustained. The application is, therefore, allowed. The impugned order is quashed and it shall not be taken into account in the service prospects of the applicant and shall not form part of the Annual Confidential Roll of the applicant and the same shall be taken out from the ACR of the applicant within a period of three months from the date of the receipt of this order. Cost on parties.


(B.K. Singh)

Member (A)



(J.P. Sharma)

Member (J)

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