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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 1308/1991

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

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

Hon'ble Shri R.K. Ahooja, Member (A)

Shri M.K.Sarkar,
Son of Late Shri R.D. Sarkar,
R/o 164A/4/2, Lake Gardens,
CALCUTTA-700 045. Applicant

(By Advocate: Shri P.P. Khurana)

Vs

1. Union of India,
through the Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

2. Central Board of Direct Taxes,
through its Chairman,
North Block,
New Delhi.

Respondents

O R D E R

Hon'ble Shri A.V. Haridasan, Vice Chairman (J)

The penalty of dismissal from service was awarded to the applicant, Shri M.K. Sarkar, presently working as Sr. Departmental Representative in the Income Tax Appellate Tribunal, Calcutta Bench, in October 1986 as a result of the disciplinary proceedings initiated against him under Rule 14 of the CCS (C.C.A.) Rules, 1965. Although there were three Articles of Charge viz., 1) that while the applicant was functioning as Income Tax Officer/Assistant Commissioner of Income Tax at Calcutta, Bombay and other places during the period 16.8.1966 to 11.10.1977 acquired assets disproportionate to his known source of income; 2) that he failed to report to the prescribed

departmental authority of certain transactions regarding purchases of two racing horses; and 3) the applicant failed to report to the prescribed departmental authority the transactions of purchase of one Television set valued at Rs. 5,800/-. The Enquiry Officer held that Article of Charges 1) and 2) were established while it was held that the Article 3) was not established. His appeal to the Review Authority being dismissed. The applicant challenged the decision before this Tribunal in O.A. No. 1049/1986. This Tribunal vide its judgement dated 11.1.1989 held that the Charge No. 1) was not substaintiated and that only Charge No. 2) was established. Consequently the penalty of dismissal from service was set aside and the application was disposed of with the following direction:

> "Having regard to the trivality and technical nature of the violation of Rule 16(3) of the C.C.S. (Conduct) Rules, 1964 by the applicant, we are of the opinion that in the interest of justice, the penalty of dismissal from service imposed by the disciplinary authority and upheld by the Reviewing Authority should be modified to the minor penalty of censure. Accordingly, the respondents may make an entry of the imposition of penalty of censure in the character roll of the applicant. The applicant should be reinstated from the date of his dismissal and he would also be entitled to all consequential benefits. In the circumstances of the case, there will be no order as to costs. The respondents shall comply with the above directions within three months from the date of communication of this Order". (Emphasis added).

2. The respondents sought extention of time for implementation of the direction contained in the judgement by filling M.P. No. 893/1989. Two months time was given. They sought further extention of time in MP No. 1450/1989 and was allowed time till 15.8.1989. The applicant was reinstated in service vide order dated 5.6.1989 and was given the consequential benefits. Thereafter vide order dated 5.1.1990 the first respondent imposed the penalty of censure on the applicant and ordered that the above penalty would be deemed to have taken effect on 29.10.1986 and a copy of that order was being placed in the ACR folder of the applicant. Aggrieved by this the applicant has filed this application under Section 19 of the Administrative Tribunal Act praying that the impugned order dated 11.1.1989 may be set aside and for a direction to respondents to delete the same from the ACR folder of the applicant for the year 1986-87. The applicant has alleged in the application that as the lease of the horses did not attract the provisions of Rule 18(3) of the CCC (Conduct) Rules, 1964 the imposition of penalty of censure was not justified, that in any event after the expiry of the time for implementation of the direction in the judgement vide order in MP No. 1452/1989, it was not permissible for the respondents to impose any penalty., that If the respondents wanted to award a penalty of censure in terms of the judgement No. 1049/1986, they should have imposed the same before 15.8.1989, that in view of the judgement of the dictum contained in the judgement of the Hon'ble Supreme Court Parmanand AIR 1989 SC 1185., the Tribunal could not direct

what penalty should be imposed that therefore the respondents could not validly take refuge under the direction contained in the judgement for imposition of the penalty of censure, that in any case as there was no ACR written for the year 1986-87, the order of penalty of censure could not have been validly placed in the ACR folder of that year that as the misconduct for which the penalty of censure was awarded related to the year 1976 the order of imposition of penalty should not have been placed in the ACR folder of 1986-87 and that the action of the first respondent imposing the penalty of censure and ordering that the order of imposition of penalty should be kept in the ACR folder of the applicant for the year 1986-87 is illegal, rational and perverse. The respondents resist the application and a detailed reply statement was filed.

3. We have heard Shri P.P. Khurana, the learned counsel of the applicant and Shri R.S. Aggarwal, learned counsel of the respondent and have perused the pleadings and the documents on record.

4. The arguments advanced by the learned counsel of the applicant that the penalty of censure was not justified for the reason that the lease of the horse did not attract the provisions of Rule 18(3) of the CCS (Conduct) Rules 1964 has only to be mentioned and rejected because in view of the order in O.A. No. 1049/1986 the finding that the applicant was guilty of Charge No. 2) has become final and as the Tribunal has directed that the penalty of dismissal from service imposed on the applicant

should be modified to that of censure. The only question that arises for consideration is whether after 15.8.1989, the extended date as per order in M.P. No. 1452/1989 for implementation of the direction contained in the judgement, the first respondent could have validly made an order imposing the penalty of censure and directed that the order would be placed in the ACR dossier of the applicant. The learned counsel of the applicant with considerable vehemence argued that the imposition of penalty of censure and placing the order in the ACR folder of the applicant was one of the directions contained in the judgement that after the period during which the direction should have been implemented, the first respondent had no jurisdiction to either impose a penalty of censure or to place the order in the ACR dossier of the applicant. For a proper understanding as to whether imposition of penalty of censure and placing the order in the ACR folder of the applicant is one of the directions which should be implemented within the time stipulated in the final order in the O.A. No. 1049/1986, we have to read the operative part of the judgement in O.A. No. 1049/1986 which we have extracted at para 1, page 2 above. The Tribunal held that in the interest of justice the penalty of dismissal from service imposed by the disciplinary authority and confirmed by the Reviewing Authority should be modified to the minor penalty of censure. The Tribunal then stated that accordingly the respondents might make an entry of the imposition of penalty of censure in the Character Roll of the applicant. In view of the above decision, the disciplinary authority had no discretion to award any penalty other than that of

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censure. In fact the Tribunal itself has modified the penalty of dismissal from service to one of censure and allowed the respondents to make an entry of the imposition of the penalty of censure in the Character Roll of the applicant. This means that the penalty of dismissal from service stood modified to one of censure by the order of the Tribunal itself. The binding directions in the judgement which had to be implemented by the respondents were for reinstatement of the applicant from the date of his dismissal and granting him all consequential benefits. These directions have been even according to the applicant implemented by the respondents within the extended time. The delay in communicating the imposing of the order of censure to which in fact was the modified penalty in terms of the order of the Tribunal does not according to us vitiate the order or make it a nullity. If the Tribunal had quashed the order of dismissal from service and had only given liberty to the respondents to impose any one of the minor penalities and have stipulated a time limit for imposition of such a penalty, if the respondents so desired as argued by the learned counsel of the respondens, the respondents could not have validity imposing the penalty after the expiry of the stipulated time or the extended time. A reading of the order of the Tribunal in O.A. No. 1049/1986 clearly establishes that the penalty of dismissal stood modified to that of censure. Therefore, we are of the considered view that the order of the Respondents dated 5.1.1990 communicating to the applicant the imposition of penalty of censure and that the same would be placed in the ACR folder of the applicant for the year 1986-87 is perfectly justified and valid.

5. The last limb of the argument of the learned counsel of the applicant is that even assuming that it is permissible to impose a penalty of censure after the extended period in terms of the order of the Tribunal, the misconduct which formed the basis of penalty having been committed in the year 1976, and as no ACR at all was written for the year 1986-87, there is absolutely no justification for imposing a penalty of censure in the year 1986 and for placing the same in the ACR folder of the applicant for the year 1986-87. This argument also has no force at all. Though the misconduct was alleged to have been committed in theyear 1976, the applicant was proceeded against under Rule 14 of the CCS (CCA) Rules only in the year1984 and the penalty of dismissal was imposed only in the year 1986. It was this order of dismissal which was modified to that of censure. So the modified penalty also would take effect in the year 1986. A penalty can be imposed only after the closure of a disciplinary proceeding. Therefore, the argument that the penalty of censure should have been entered in the ARC dossier of 1976 has no merit. The further argument that as no ACR was written in the year 1986-87, the order cannot be placed in the ACR folder of that year also has no force because even in the absence of the entry in the ACR the folder will still be there and it is permissible to keep a copy of the order and make an entry of the same for the year 1986-87. In the result, finding no merit in this application, leaving the parties to bear their own costs.

(R.K. Ahooja)
Member (A)

(A.V.Haridasan)
Vice Chairman (J)

Mittal