

Central Administrative Tribunal
Principal Bench

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O.A. No. 1390/91

New Delhi, this the 3rd day of August, 1995

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

P.R. Toora,
s/o Shri Diwan Chand,
R/o 826, Sector VII,
R.K. Puram,
New Delhi.

...Applicant

(By Shri M.L. Chri, Advocate)

Versus

Union of India through

1. 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.
3. Sh. W. Hasan,
Commissioner of Income-tax,
Kanpur.

...Respondents

(By Shri R.S. Aggarwal, Advocate)

ORDER

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

The applicant was working in the senior scale of Income-tax Officer and was served with a memo of charge-sheet dated 7th March, 1989 while he was posted as Junior Authorised Representative, ITAT, Delhi under Rule 14 of the COS(CCA) Rules, 1965. On 6.6.1991, the applicant filed this application praying for the grant of reliefs that

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the impugned memo of chargesheet dated 7.3.1989 be quashed. He has also prayed for the grant of interim relief and by the order dated 7.6.1991, the respondents were restrained from proceedings with the disciplinary action in pursuance of the aforesaid chargesheet for a period of 14 days and by the order dated 20.6.1991 when Shri R.S. Aggarwal appeared for the respondents, this order of interim direction was modified that the respondents may go on with the departmental disciplinary proceedings but the final order may not be issued in the proceedings till further orders and that the matter shall be heard finally after the respondents file the reply on 23.8.1991 but since there has been delay in filing the counter by the respondents, the matter could not be heard earlier. In the meantime, the proceedings of the enquiry continued and Central Vigilance Commission (CVC) with which was entrusted the enquiry on the report of Commissioner for departmental enquiry, held that article of charge framed against the applicant which is as follows has not been proved:

Article of charge No. 1:

Shri P.R. Toora, Group 'A' Officer while functioning as Income-tax Officer, Company Circle- XXI Addl., Delhi, during the period from October 1984 to July, 1986 completed assessments in four cases of newly floated investment companies mentioned in Annexure-II & III, in an irregular manner and apparently with a view to unduly favouring the assessees concerned. Apparently by his above acts, Shri P.R. Toora, failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government

servant and thereby contravened the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964.

The disciplinary authority supplying a copy of the enquiry report to the applicant/by the memo dated 16.6.1992 This dissent on the findings of the Enquiry Officer in on three grounds. The applicant was asked to submit his explanation or representation, if so advised. The applicant has also since furnished his explanation to the disciplinary authority dated 14th August, 1992. But no final order has yet been passed in the said enquiry. In the meantime the applicant has also retired on superannuation on 31st July, 1991.

The challenge to the enquiry has been made by the applicant stating certain facts that there has been a marriage of the daughter of the applicant on 8.2.1985. His daughter was married with ^{the} son of the Deputy Secretary, Ministry of Home Affairs. Due to certain demands made by the father-in-law of his daughter with regard to the dowry the daughter of the applicant has to join the parental home in August, 1985. It is father-in-law of the daughter of the applicant who has written anonymous complaints and prevailed upon the respondent no. 3 Shri W.H.Hassan, Commissioner of Income-tax to harass the applicant by using his official position and started making inspections in an malafide manner with the pre-determined motive of fishing out material for roping in the applicant in framed up charges. An analysis of the charge memo dated 7.3.1989 with the allegations against

the applicant can be summed up as follows:-

(a) The applicant while working as Income Tax Officer, Company Circle XXI (Addl) Delhi, during the period upto October, 1981 to July, 1986 completed assessments in four cases of Newly Flated Investment Companies in an irregular manner and apparently with a view to unduly favouring the assessees.

(b) During the course of assessment proceedings, the applicant did not make adequate enquiries regarding the share-holders who contributed the share capital and in particular it was not ascertained as to the source from where the shareholders contributed the share capital.

(c) Out of the share capital collected, the four companies had advanced loans to some parties, and the applicant failed to enquire why interest was low.

(d) The balance sheets of the four companies showed certain unsecured loan creditors, and the applicant did not make enquiries regarding the same.

(e) The fact that the assessment completed by the applicant was without making proper enquiries and was pre-judicial to the interest of revenue, is evident from the fact that in each of the four cases, the CIT, Delhi-III set aside the assessments under Section 263.

(f) The unaccounted share capital of the company should have been assessed to Income Tax. By not doing so and by not making enquiries, the assessments had been rendered pre-judicial to the interest of revenue.

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(g) By his above acts, the applicant failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government servant and thereby contravened Rule 3(1) (i), 3(1)(ii) 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964.

These enquiry proceedings started in April, 1988 and were slated for 29.5.1991 and he said that at the time of filing of this application stood adjourned sine die.

On notice the respondents contested this application by filing a reply that the allegations of alleged harassment and alleged malafide action on the part of Shri W.Hassan, Income Tax Commissioner are strongly denied. Commissioner of Income-tax, as part of his one of the duties, inspected the assessment performance of the applicant as the applicant was working at the relevant time in the charge of said Shri W.Hassan and that was in the performance of the normal duty, who could select cases and also the period while carrying out inspection of works of the officer in his charge. It is further stated that the move by the applicant is pre-mature. The enquiry was initiated only because there were certain irregularities noticed in assessment completed by the applicant which called into question his integrity and good conduct. It is further stated that in the case of S.Govinda Menon reported in AIR (1967) SC Page 9, Hon'ble Supreme Court of India held that a quasi-judicial authority can be

subjected to disciplinary action if there are grounds to show that he exhibited recklessness or lack of integrity or brought to disrepute the department in the exercise of his quasi judicial functions. In the instant case, the irregularities committed by the applicant cast reflection on his integrity and good conduct. The Enquiry Officer shall give finding on the charges on merit and the disciplinary authority has to pass final order on their basis. The quashing of the chargesheet at this stage would amount to short-circuiting the process of enquiry as envisaged in the C.C.S. (C.C.&A) Rules, 1965.

The applicant has also filed the rejoinder to the aforesaid reply in which he also placed certain more documents regarding the assessment done in certain other cases. He has only re-iterated the facts already averred in detail in the original application stating further that

Shri W.Hassan has joined as Inspecting Assistant Commissioner of Income Tax in Company Range-II in May, 1986. It is said that the inspection of the cases of the applicant for the period from 1.4.1985 to 31.3.1986, the C.B.D.T. (Inspection Division) had already conducted vigilance inspection of the assessments made by the applicant and that the action of said Sh. W.Hassan was malafide. It is further stated that there is no order of judgement of any court supporting the view of the department that share capital should be taxed in the assessment of the company. Thus, the charge against the applicant became infructuous and it proves the correctness of the assessment framed by the applicant.

Heard the learned counsel at length and perused the record. The learned counsel argued that the applicant as Income-tax Officer has made certain assessments under Income-tax Act and the view taken by him has subsequently been expressed by the High Court of Delhi in certain judgements. In view of this it is said that the imputation of misconduct enclosed with the memo of charge-sheet does not make out any misconduct under CCS (Conduct) Rules, 1964 and therefore, the article of charge framed against the applicant referred to above cannot be framed. Merely because the certain assessments were completed under section 143(3)/263 of the Income-tax Act of certain companies in the quasi judicial capacity by the applicant would not rope in for a misconduct under the Service Rules or lack of devotion of duties nor contravenes the provision of rule 3(1)(i)(ii) &(iii) of the Conduct Rules, 1964. We have given a careful consideration to the aspect of this matter and it is not for the Tribunal to see the correctness of the charges. The culpability is alleged against the applicant in the charge for making certain assessments of certain companies. This gives a scope for proceedings departmentally against the applicant in a manner the respondents have also in the counter stated that the assessments made by the applicant reflected his integrity and good conduct and therefore it was thought

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proper to deal with the assessment made by the applicant and departmental proceedings as well. The learned counsel for the applicant has placed reliance on a recent decision of the Principal Bench in O.A. No. 1262/1991 decided on 1.6.1995 in the case of N.K.Jain Vs. Union of India and another. That was also a case where minor penalty charge-sheet was served on Shri N.K.Jain and he came before the Tribunal for quashing of the charge-sheet. When the O.A. was filed an interim order was granted further staying the departmental disciplinary enquiry/proceedings against Shri N.K.Jain. The Union of India went in appeal against the same and the Hon'ble Supreme Court had made certain observations while rejecting that S.L.P. observing that there is no substance for the same and misconduct alleged which have been committed in the course of quasi judicial proceedings, and there is no allegations of culpability. In the judgement by the Principal Bench, there is clear observation in para No. 19 in the end "The arguments of the learned counsel for the applicant that no disciplinary proceedings can be taken against an officer for his actions in connection with discharge of quasi-judicial functions at all is not tenable". Further in the same judgement it is observed "our endeavour is only to see whether the imputations against the applicant are such that it would be in the public interest to take disciplinary action against the applicant." This judgement, therefore, leaves the scope open to see on merit whether

the department can proceed with the charge-sheet after framing the charges or not. The facts of the present case are totally different because culpability is alleged against the applicant while making certain assessments of certain newly floated investment companies. In the present case, when the O.A. was filed, an interim relief was granted that the enquiry may continue but the final order be not passed. In view of this matter, the enquiry is at a complete stage and the Enquiry Officer has also submitted his report. A copy thereof has also been received by the applicant with the note of disagreement of the disciplinary authority to which the applicant has also made a representation and now the matter is pending before the disciplinary authority. This is also a ground where the charge framed against the applicant cannot be quashed after the whole proceedings are almost over and only final order is to be passed by the disciplinary authority.

The learned counsel for the applicant has also placed reliance on the case of V.D.Trivedi V/s.U.O.I. reported in 1993 SCC(L&S) page 324. However, in that case Hon'ble Supreme Court of India while concluding has observed "we are of the view that the action taken by the appellant was quasi-judicial and should not have formed the basis of the disciplinary action". This does not lay down a law that no disciplinary action at all could be taken against the officer in connection with his actions

with quasi-judicial functions. The learned counsel for the applicant has also placed reliance on the case of UCI V/s. R.K. Desai reported in 1993 SCC (L&S) Page 318. The relevant portion of para 7 is quoted below:-

"It seems difficult beyond dispute, and is not in fact disputed before us, that it is not as if an officer belonging to the Central Civil Service is totally immune from disciplinary proceedings wherever he discharges quasi-judicial or judicial functions. If in the discharge of such functions he takes any action pursuant to a corrupt motive or an improper motive to oblige someone or takes revenge on someone, in such a case it is not as if no disciplinary proceedings can be taken at all. On the contrary, merely because he gives a judicial or quasi-judicial decision which is erroneous or even palpably erroneous no disciplinary proceedings would lie".

The same view had already been taken in the case of Union of India Vs. A.N. Saxena reported in 1992 SCC (L&S) Page 861 where the Hon'ble Supreme Court observed that it is not correct that no disciplinary action can be taken in regard to actions taken or purported to be done in the case of judicial and quasi-judicial proceedings. Again in the case of Union of India Vs. K.K. Dhawan reported in 1993(2) SCC (L&S) Page 56, the Hon'ble Supreme Court referred to the case of V.D. Trivedi V/s. UCI (Supra), UCI Vs. R.K. Desai (Supra) and UCI V/s. A.N. Saxena (Supra) and observed that disciplinary action can be taken in the following cases:-

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- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;
- (v) if he had acted in order to unduly favour a party;
- (vi) and if he had been actuated by corrupt motive, however small the bribe may be.

In the present case the charge against the applicant as reproduced at page 2 of the judgement clearly shows that "in an irregular manner and apparently with a view to unduly favouring the assessees concerned". Further " failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Government Servant" justify a departmental enquiry as per the above decision in the case of K.K. Dhawan (Supra).

The Hon'ble Supreme Court in the case of UOI V/s. Upender Singh reported in (1994) 22 AIC 342 S.C has observed that in the face of charges framed in a disciplinary enquiry the Tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this

stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.P.Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Karnal V.Gopi Nath and sons. The Bench comprising M.N.Venkatachaliah, J.(as he then was) and A.M.Ahmed, J., affirmed the principles thus: (SCC P.317, para 8);

"Judicial review, it is trite, is not directed against the decision but is confined to the decision making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorised by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner

in which the decision is made. It will be erroneous to think that the Court sits in judgement not only on the correctness of the decision making process but also on the correctness of the decision itself".

The next point raised by the learned counsel for the applicant is that the respondent no. 3 Shri W. Hassan has acted in a malafide manner and inspite of the fact that the inspection of various assessments made by the applicant had already been done by the C.B.D.T. and Inspecting Income-tax Commissioner with ulterior motive the respondent no. 3 has picked up chosen cases to find fault in various assessments made by the applicant at the instance of the father-in-law of his deserted daughter. The nexus which is sought to be brought by the applicant for malafide cannot be applied in the case of the applicant even if the allegations of malafide with ulterior motive on the part of the person concerned has not been denied by him i.e. respondent no. 3. But in the case of C.S. Rowjee Vs. State of Andhra Pradesh reported in AIR 1964 P. 962, relied upon by the applicant's counsel, Hon'ble Supreme Court of India on appeal held that in the absence of such affidavit the court is left to judge of the veracity of the allegations merely on tests of probability with nothing more substantial by way of answer.

The learned counsel for the applicant also relied upon the authority of the case of Sardar Pratap Singh V/s.

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State of Punjab reported in AIR 1964 SC page 72. In that case no counter affidavit by the Chief Minister was filed and the affidavit was filed in reply by the Secretary in the Department having no personal knowledge regarding allegations made against the Minister and it was held the malafide has been proved. It is because in this case the respondent no. 3 has not filed any reply though he was impleaded as party and the contention of the learned counsel is that the malafide against Shri W. Hassan i.e. respondent no. 3 stands proved. However, it is to be seen that Shri W. Hassan may have acted over jealously in making more inspections over the minimum required would not make his act malafide. Applicant was working under him and he had a right as Income-tax Commissioner to inspect any number of cases not restricting to eight which is the minimum requirement prescribed or that the inspection had already been taken place and resort to further inspection should not be made. This is not malice in law. Thus, the contention of the applicant, therefore, cannot be accepted, that the impugned memo of charge-sheet was issued in a malafide manner at the instance of respondent no. 3.

The last contention of the applicant's counsel is that the view taken by the applicant in making assessments has also been subsequently considered and upheld by the Hon'ble High Court of Delhi. However, this is not the matter in issue. The disciplinary authority and other authorities

may very well look into the matter and it would not be proper at this stage to give a decision because the respondents in their counter has taken a totally different stand. The charge against the applicant is that he has unduly favoured certain companies and caused loss of revenue to the Government. There is also a reflection on his integrity. All these things have to be seen in the disciplinary departmental enquiry.

The learned counsel for the applicant also argued that the Enquiry Officer has already exonerated him and therefore, the disciplinary authority should not have resorted to further action and that the exoneration by the Enquiry Officer holding the charge not proved also substantiate the fact that there is no misconduct or misdemeanour or lack of devotion to duty on the part of the applicant. The final order is yet to be passed by the disciplinary authority and it would not be proper in this case to discuss the charges in detail on merit. We leave the matter here.

The application, therefore, fails and is dismissed and the interim order dated 7.5.1991 as modified by the order dated 20.6.1991 is vacated and the disciplinary authority may pass a final order with a liberty to the applicant if the occasion arises, he may assail the same, if so, advised and any observation made in this order will not come in his way. Cost on parties.

(B.K.SINGH)
MEMBER(A)

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(J.P.SHARMA)
MEMBER(J)

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