

4

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL**  
**N E W D E L H I**

7

O.A. No. 2061 of 1991  
T.A. No.

199

DATE OF DECISION 14.2.92

S.C. Sarkar	Petitioner
Shri R. Kapoor	Advocate for the Petitioner(s)
Versus	
Union of India	Respondent
Shri R.S. Aggarwal	Advocate for the Respondent(s)

**CORAM**

The Hon'ble Mr. Justice Ram Pal Singh, Vice-Chairman (J).

The Hon'ble Mr. I.P. Gupta, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? ~~Yes~~
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Judgment of the Bench delivered by Hon'ble Shri  
 Justice Ram Pal Singh, Vice-Chairman (J).)

JUDGMENT

The applicant by this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985, has prayed for quashing the impugned Memorandum of Chargesheet dated 18.7.91 instituting disciplinary proceedings against the applicant.

2. The applicant is an officer of Indian Revenue Service having joined as Income Tax Officer (Class I). He was promoted to the next higher grade of Assistant Commissioner (now designated as Deputy Commissioner) of Income-tax from 15.1.1980 and has been holding that post since then. According to the O.A., from 1.1.1986, he was allowed the pay in the selection grade and was due for promotion to the grade of Commissioner of Income-tax. While he was awaiting his promotion, he received a Memorandum dated 18.7.91

*Land Lin*

which was served upon him. Thus, it appears that action against the applicant was contemplated in a departmental enquiry. He contends that the proposed enquiry is being held for his having passed a statutory order quasi-judicial in nature in the year 1983. According to him, some complaint was made in 1984 and the Department deputed one of its officers to enquire into the / The matter pertained to an order passed by him under Section 144B of the Income-tax Act. Thus, he contends that any statutory act in exercising the quasi-judicial powers cannot be subject to departmental enquiry. He also contends that the completed assessments could be reopened/revised if the same were considered erroneous or prejudicial to the interests of the revenue by the C.I.T., but the authorities having failed to take any such action have started disciplinary proceedings which are likely to mar his future promotional avenues.

3. The respondents, on notice, appeared and filed their return. They contended that by passing an order under Section 144B of the Income-tax Act, the applicant failed to maintain devotion to duty. Consequently, minor penalty proceedings were initiated against him, but they conceded in the return that no grounds were found with regard to the doubtful integrity of the applicant. The respondents also contended that the orders were passed in a cursory manner by the applicant in exercise of his statutory duties causing substantial loss to the Government. The reason cited by the respondents is that the applicant passed the orders under Section 144B of the Income-tax Act within three days of the receipt of the report of the I.T.O. and from it it is evident that the applicant was not interested in any real enquiry into the affairs of the assessee. The cases in which quasi-judicial orders were passed by the applicant have been enumerated at length in the counter which we need not refer to.

4. We have heard this case on the request of the counsel of the parties at the admission stage because the pleadings were complete. Learned counsel for the applicant, Shri R. Kapoor, and the learned counsel for the respondents, Shri R.S. Aggarwal, were extensively heard.

*Rankin*

5. Shri R.S. Aggarwal, learned counsel for the applicant, frankly conceded that the order passed by the applicant under Section 144B of the Income-tax Act was quasi-judicial in nature and it was in exercise of the statutory duty. The question for decision is as to whether any order passed by the applicant which was of a quasi-judicial nature can be the subject matter of the disciplinary authority or not and we proceed to answer it directly.

6. The learned counsel for the respondents has, in support, placed reliance upon the case of Govinda Menon vs. U.O.I. (AIR 1967 S.C. 1274). On the strength of this judgment, the respondents contended that even quasi-judicial orders, if passed in a careless and negligent manner, can be made the subject of the departmental enquiry. In this judgment of the apex court, it has been observed that if there is no prima facie material of showing recklessness or misconduct on the part of the Commissioner in the discharge of his official duty, then initiation of a departmental enquiry cannot be justified. Thus, a prima facie material showing recklessness or carelessness on the part of the delinquent has to be shown by the respondents. We have made a search for a prima facie material, but nothing has been placed by the respondents to show that the quasi-judicial orders were passed in a reckless, careless and negligent manner by the applicant. Only because the orders under Section 144B of the Income-tax Act were passed within three days by the applicant does not show that the applicant acted in a careless and negligent manner. When prompt decisions from quasi-judicial authorities and judicial authorities is the call of the day, the quick disposal of pending matters cannot be branded as having been passed carelessly and negligently. Had he passed the quasi-judicial orders after a lapse of several years, then, according to the respondents, the element of carelessness and negligence would not remain present? Promptness in disposal of pendency deserves a pat and not a departmental enquiry. If orders are passed by an authority under the provisions of any law of the land in exercise of quasi-judicial functions, that

Lamlin

authority cannot be said to have acted in a careless and negligent manner unless there is proof that the authority acted so. As mentioned by us, no material on record has been placed as a prima facie proof that the orders were passed in a careless and negligent manner. Needless to say that we have to conclude that the respondents have failed to satisfy us that a prima facie case of negligence existed when the applicant passed the quasi-judicial orders under Section 144 B of the Income-tax Act.

7. In the case of Shri V.B. Trivedi (Civil Appeal No. 4986-87 of 1990 arising out of S.L.P. (C) No. 2635-36 (1989), the apex court observed:

"..as we are also of the view that the action taken by the appellant was quasi-judicial and should not have formed the basis of disciplinary action..."

In the case of C.S. Kesava (1986) Vol. 176 Income Tax Reports, page 375, the Kerala High Court held that:

"Officers entrusted with quasi-judicial powers to decide issues arising between citizens and the Government should have the freedom to take independent decisions in accordance with law without threat of disciplinary action, if their decisions go against the interest of the Government. An order passed by such an Officer against the interest of the Government must be challenged by the Government before the appellate or revisional authority. The Officer passing such order cannot be subject to disciplinary proceedings."

This Tribunal in the case of Virudra Prasad (1988) A.T.C. page 190 held that:

"Assuming there was an error of judgement, that cannot be a valid ground to hold that the quasi-judicial authority was guilty of misconduct."

The same view was reiterated in the case of Sudhir Chandra (1990) 14 A.T.C. 337:

"However, we would like to point out that the Supreme Court has held in the aforesaid case that there is scope for initiation of such proceedings only if there was prima facie material for showing recklessness or misconduct on the part of the officer in the discharge of his official duties."

In the case of S.K. Lal vs. Union of India & Anr. (O.A. No. 509/91 judgment dated 21.10.91) in which one of us was a party (Hon'ble

Lal

Shri Justice Ram Pal Singh), it was observed:

"If the functionaries exercising quasi-judicial functions are to live under constant fear of departmental enquiry, then there is no necessity of constituting such an authority and conferring upon it such a quasi-judicial power. The quasi-judicial power is to be exercised with independence, impartiality and objectivity and to the best of its judgment, without being deterred by the result thereof, guided of course by the parameters laid down in the statute and following the procedure prescribed therein. Merely because the orders of the authority result in a benefit to a citizen, it will not be safe to draw an inference of conferment of undue favour, for it will jeopardize the judicial exercise of power."

8. It is evident from the impugned chargesheet that it does not contain the imputation of any personal monetary gain or benefit or any corrupt practice against the applicant. The step of the respondents in initiating disciplinary proceedings against the applicant was an arbitrary step. Officers entrusted with such duties must be given freedom to discharge their duties in accordance with their judicial discretion. The circumstances of the imputed charges should be separate and separable from the exercise of the quasi-judicial functions. The quasi-judicial functions cannot be exercised with independence, impartiality and objectivity if the functionaries are kept in constant <sup>fer</sup> of harassment in a disciplinary proceeding.

9. The learned counsel for the respondents also contended that this Tribunal should not while exercising the powers of judicial review, interfere with the departmental proceedings at the initial stage. The answer to this argument is clearly contained in the case of *Madhav Rao Jiwaji Rao Scindia* (AIR 1988 S.C. 709) in which the apex court while dealing with the powers of a Criminal Court under Section 482 of the Code of Criminal Procedure had observed:

"7. The legal position is well-settled and when a prosecution at the initial stage is asked to be quashed, the test to be applied by the Court is as to whether the uncontested allegations made, *prima facie* establish the offence. It is also for the Court to take into consideration any special features which appear in a particular case to consider whether it is expedient and in the interest of justice to permit a prosecution to continue. This is so on the basis that the Court cannot be utilised for any oblique purpose and where in the opinion of the Court chances of an ultimate conviction are bleak and, therefore, no useful purpose is likely to be served by allowing a criminal prosecution to continue, the Court may while taking into consideration the special facts of a case also quash the proceeding even though it may be at a preliminary stage."

Lamlih

Though the judgment was delivered by the apex court with regard to the quashing of a criminal prosecution, this basic principle of law shall also be applicable where the prayer is for quashing the charge sheet in a departmental enquiry at the initial stage.

10. Thus, we are of the view that this O.A. deserves to be allowed. Consequently, we allow this O.A. The Chargesheet and Memorandum of Chargesheet dated 18.7.1991 (Annexure A-1) cannot be sustained in law and are, therefore, quashed. Parties are directed to bear their own costs.

*L. P. Gupta*  
(L.P. GUPTA) 14/2/92

MEMBER (A)

*Ram Pal Singh*  
(RAM PAL SINGH) 14.2.92

VICE-CHAIRMAN (J)