

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
THE CAPITAL BENCH, NEW DELHI.

CA No. 2083/1991

DATE OF DECISION: 20.08.1993.

Shri H.R. Chopre Petitioner(s)

Versus

Lt. Governor, Delhi Respondent(s)

(For Instructions)

1. Whether it be referred to the Reporter or not? yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

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(S.K. DHOON)
VICE CHAIRMAN(J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn.No. OA 2083/91

Date of decision: 20.8.1993

Shri H.R.Chopra ... Petitioner

vs.

Lt. Governor, Delhi ... Respondent

For the petitioner ... Sh.A.K.Bhera, Counsel.

For the respondent ... Sh.D.N.Goberdhan, Counsel

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAON, VICE CHAIRMAN
THE HON'BLE MR. I.K.RASGOTRA, MEMBER (A)

JUDGEMENT(ORAL)

(By Hon'ble Mr. Justice S.K.
Dhaon, Vice Chairman)

Disciplinary proceedings under Rule 14 of the CCS(CCA) Rules, 1965 were initiated against the petitioner, a Sales Tax Officer in the Delhi Administration. On 26.3.1991, the Lt.Governor, acting as disciplinary authority, passed an order of punishment. He directed that the petitioner should be compulsorily retired from service. The said order is being impugned in the present OA.

2. According to the charge-memo, the petitioner while working as Sales Tax Officer, Central Registration Cell between 13.8.1984 and 6.5.1986 committed misconduct, gross negligence and dereliction of duty by granting registration to M/s.Janardan Dass Sanjay Kumar in spite of availability of adverse material against

the said dealer. Subsequent enquiries conducted by the Enforcement Branch revealed that no such firm was functioning from the given address and obviously it was a bogus dealer. Thus, by granting registration to a non-functioning/bogus dealer, the petitioner failed to maintain absolute integrity and devotion to duty and acted in a manner, which is unbecoming of a Government servant.

3. The petitioner had passed two different orders of registration in favour of M/s.Janardan Dass Sanjay Kumar. The first order was under the Central Sales Tax Act and the second was under the Delhi Sales Tax Act. The relevant provisions in the two Acts are substantially the same. We shall, therefore, refer to the provisions, as material, of the Delhi Sales Tax Act(the Act).

4. Section 14 of the Act is divided into three sub-sections. Sub-section(1) provides, inter-alia, that no dealer shall carry on business as a dealer unless he has been registered and possesses a certificates of registration. Sub-section(2) states that every dealer requiring registration shall make an application for registration within such time, in such manner and to such authority, as may be prescribed. Sub-section (3) posits,inter-alia, that if the authority is satisfied that the application is in order, it shall,in accordance with such rules as may be prescribed, register the applicant within the prescribed period and grant him a certificate of registration in the prescribed form.

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5. We have, therefore, to travel to the rules framed under the Act because the petitioner was required to act in accordance with them, while considering and disposing of an application for registration. It is admitted that no rules had been framed either under the Central Sales Tax Act or under the Act. Hence, no statutory rules were in existence at the relevant time. However, certain departmental instructions had been duly notified. Those instructions were applicable to proceedings for the grant of registration under both the Acts.

6. In substance, the instructions contained the procedure to be followed by a Sales Tax Officer for ascertaining the genuineness of the firm seeking registration. The instructions fell under different heads. The instructions contained under the sub-head "Security" shall be referred to by us later on.

7. The petitioner took the defence that he followed the relevant statutory provisions as well as the contents of the instructions in letter and spirit.

8. The Inquiry Officer recorded the evidence of both the sides and came to the conclusion that even though the petitioner ostensibly observed the requirement of the statutory provisions as well as the instructions yet the firm M/s.Janardan Dass Sanjay Kumar was, in fact, not carrying on its business from the place from where it was alleged to do so. In substance, he recorded the finding that the firm was really non-functional. He also dilated upon the fact that the petitioner accepted

the security offered by M/s.Rameshwar Dass & sons for and on behalf of the firm M/s.Janaradan Dass Sanjay Kumar in spite of the recommendation of the Sales Tax Officer,Ward No.29, in whose jurisdiction M/s.Rameshwar Dass & sons carried on business, to the contrary. The Inquiry Officer opined that the charges had been brought home to the petitioner.

9. The Lt.Governor, in his capacity as the punishing authority, passed the impugned order. His order runs in 5 paragraphs. Substantially paragraphs 1 to 4 contain the narration of facts. The order, as material, is extracted:

" The Competent authority fully agrees with the findings of the I.O. that in spite of the fact that once the STO Ward 29 had clearly certified against the surety of M/s.Rameshwar Dass & sons for grant of registration in the case of M/s.Janardhan Dass Sanjay Kumar that it was "not acceptable" written in green ink in his own handwriting dated 28.1.86 by STO Ward 29, the C.O.should not have accepted the same. Thus, subsequent circumstances of the dealer turning bogus prove that the observation of STO Ward 29 was correct, to which the C.O.(Sh.H.R.Chopra) failed to agree."

The Lt.Governor, it is clear to us, had passed the order of punishment merely on the ground that the petitioner committed an act of misconduct by accepting the security offered by M/s.Rameshwar Dass & sons. He had emphasised that the views expressed by the Sales Tax Officer, Ward 29 regarding M/s.Rameshwar Dass & sons were fortified by the fact that subsequently M/s.Janardan Dass Sanjay Kumar was found to be a non-functional firm.

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10. Apparently the Lt.Governor assumed that the firm M/s.Janardan Dass Sanjay Kumar was a bogus firm. He was required to apply his mind on the crucial question whether the said firm was really a bogus one after appraising the material on record and after taking into consideration the opinion of the Inquiry Officer. As a punishing authority, he was required to form his own judgement on the said issue. He had full discretion either to agree or disagree with the view point of the Inquiry Officer. He even did not express any opinion as to whether he was in agreement with the Inquiry Officer's report in that behalf. In substance, he failed to exercise the statutory power vested in him of recording a finding that the aforesaid firm was really a non-functional one.

11. We may now examine the instructions under the sub-head "Security" with a view to finding out as to whether the petitioner had misconducted himself in accepting the security offered by M/s.Rameshwar Dass & sons. The contents of the said sub-head are these. If the Sales Tax Officer feels satisfied of the genuineness of contents of the application,he will then estimate the yearly tax involved and direct the dealer to furnish appropriate security for the due payment of taxes. The security must be furnished by the dealer by the prescribed date. The security may be furnished by the dealer in any of the modes prescribed under Rule 17,namely cash, pledging of promissory notes and stock certificates of any State Government or(short-term) deposit, receipts of any scheduled bank,mortgage of immovable

property, hypothecation or pledge of movable property, personal surety of a registered dealer, bank guarantee, etc.. Personal surety of a registered dealer is the most common and preferable mode. Surety bond and signatures of the surety dealer are verified from his ward file. (underlined by us).

12. Various modes of furnishing security by a dealer seeking registration are mentioned in the instructions. However, the words underlined by us above, show that the personal surety of a registered dealer is considered to be a common and preferable mode of the offer and acceptance of security. It is emphasised that the surety bond and the signatures of the dealer standing surety should be verified from the ward where such a dealer is carrying on business. Obviously, the verification has to be done by the Sales Tax Officer in whose jurisdiction such a ward lies. It follows that the petitioner had to contact the Sales Tax Officer Ward 29, in whose jurisdiction M/s.Rameshwar Dass & sons were carrying on business. The report of the Sales Tax Officer Ward 29 indicated that M/s.Rameshwar Dass & sons had a turn over of Rs.11,125 during the year 1983-84, Rs.2026/-during the year 1984-85 and Rs.11,39,958 during the year 1985-86. It is to be remembered that the security was offered by the firm M/s.Rameshwar Dass & sons on 28.1.1986 i.e.during the Assessment Year 1985-86.

13. As required by the instructions, only the surety bond and the signatures of the

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dealer standing as surety were required to be verified. The Sales Tax Officer Ward 29 did not state in his report that the security had not been offered by M/s.Rameshwar Dass & sons, that the surety bond tendered by the said firm was not a genuine one, and that the bond did not bear the signatures of one of the partners of the said firm. Therefore, there can be no escape from the conclusion that the firm offering the security or standing as the surety was a genuine one. Furthermore, it could not be said that the surety bond had not been offered in accordance with the instructions. It is true that the Sales Tax Officer Ward 29 gave the remarks "not acceptable" but, that was not the requirement of either the statutory provisions or the instructions.

14. It is true that the petitioner did not accept the recommendation of the Sales Tax Officer Ward 29 that the security offered by M/s.Rameshwar Dass & sons should not be accepted. The Inquiry Officer had accepted the position that there were no statutory rules to the effect that the petitioner was bound by the remarks of the Sales Tax Officer, Ward 29. Yet, according to him, the petitioner had acted imprudently in not accepting the recommendation of that Sales Tax Officer. The Inquiry Officer could not come to the conclusion that the petitioner was guilty of misconduct merely because he did not act prudently. A person, though acting imprudently, may not be acting dishonestly. It is to be noted that it is not/ Department's case that arrears of Sales Tax payable by M/s.Janardan Dass Sanjay Kumar were not

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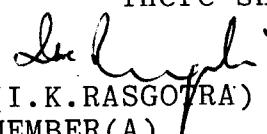
paid off by M/s.Rameshwar Dass & sons, the surety.The Inquiry Officer also recorded a finding that the petitioner indulged in nepotism. Again such a conclusion was without any basis as it was no body's case that the petitioner was in any way connected with M/s.Janardan Dass Sanjay Kumar or was even distantly related to any of the partners of the said firm.

15. The Lt.Governor,by necessary implication, did not accept any other recommendation of the Inquiry Officer except that by accepting the surety bond offered by M/s.Rameshwar Dass & sons, the petitioner had committed misconduct. The order of the Lt.Governor is,therefore, not sustainable.

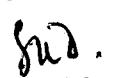
16. This Tribunal on 13.9.1991 passed an interim order to the effect that the impugned order shall not be given effect to. The interim order is operating even now. We are informed that during all these years, the petitioner continued to be in service. We presume that the petitioner was being paid his usual emoluments during all these years. However, we make it clear that if the petitioner has not been paid the usual emoluments and there are some arrears, the same shall be paid to him. He shall be treated to be in service throughout.

17. The OA succeeds and is allowed. The impugned order dated 26.3.1991 passed by the Lt.Governor is quashed.

There shall be no order as to costs.


(I.K.RASGOTRA)
MEMBER(A)

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(S.K.DHAON)
VICE-CHAIRMAN(J)