

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. 509/91

Date of decision: 21.10.91

(H)

Sh.S.K.Lal

Applicant

Sh.P.P.Khurana

Counsel for the petitioner

Vs.

Union of India & Another

Respondents.

Sh.Vinod Kant with Sh.R.S.Agarwal Counsel for the respondents.

CORAM:

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

The Hon'ble Sh.R.Venkatesan, 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?
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT
(Delivered by Hon'ble Sh.Justice Ram Pal Singh,
Vice Chairman (J)).

By this O.A., filed under Section 19 of the Administrative Tribunals Act of 1985, the applicant prays for quashing the impugned Memo dated 15.11.90 (Annexure A-9) whereby the applicant has been charged in a departmental enquiry under the provisions of Rule 14 of the CCS(CCA) Rules of 1965, for having passed orders dated 27.11.89 and 1.3.90 under Section 132 of the Income Tax Act, in a careless and negligent manner.

2. The applicant belongs to the 1962 batch of the Indian Revenue Service (Income Tax) and was last promoted as Commissioner of Income Tax in September, 1983. In the year 1989, he was posted as Commissioner of Income Tax, Delhi IX, New Delhi, when a search and seizure operation was conducted at the residence and business premises of one Lalit Singh.

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Sh.R.K.Aggarwal, 2510-A, Gali Mundewalan, Sadar Thana Road, in pursuance of the authorisation under Section 132 of the Act. Searches were also carried out at Bank where Sh.R.K.Aggarwal maintained accounts either in his own name or in the names of members of his family or where he was holding Benami accounts. The residence of Shri R.K.Aggarwal fell within the jurisdiction of the applicant, Commissioner of Income Tax (CIT), Delhi IX, New Delhi. During the search and seizure operation, cash, jewellery and documents were seized alongwith a Bank Pass Book of Punjab National Bank in the name of one Surinder Kumar wherein it was noticed by the search L party that the pay orders of the total value of Rs.50.40 lakhs were purchased on 25.4.89. This search and seizure operation was carried out on 26.4.89. A restraint order, under second proviso to Section 132(1) of the Act was served by the authorised Officer on the Punjab National Bank, Mall Road, Delhi, on 28.4.89 commanding the said Bank not to remove, part with or otherwise deal with the pay orders of the value of Rs.50.40 lakhs without previous permission of the authorised officer. On 25.8.89 an order under Section 132 (5) of the Act was passed by the Asstt.Commissioner (Inv.) Circle 14(1), Delhi, holding that the said pay order would be retained in the hands of Sh.R.K.Aggarwal. Similar order under Section 132(5) of the Act was also passed by the Assistant Commissioner (Inv.), Circle 16(1), New Delhi on 23.8.89 in the case of Surinder Kumar in whose name the bank account was opened and in whose bank a debit entry for purchase of pay orders was present. Sh.R.K.Aggarwal aggrieved by the order passed on 25.8.89, filed an application before the applicant under the provisions of Section 132(11) of the Act on 21.9.89. Section 132(11) deals with the subject that if any person objects for any reason to an order made under sub-section (5) of Section 132(11).

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132 of the Act, may, within thirty days of the date of such order, file an application to the Chief Commissioner or Commissioner stating therein reasons for such objection and requesting for appropriate relief in the matter.

3. Before proceeding further it would be relevant at this stage to mention that one M/s Bansal Commodities claimed that the pay orders were in their possession against valuable consideration. According to M/s Bansal Commodities they had advanced money to the business concerns of Sh.R.K. Aggarwal for purchase of Copper wire and the said pay orders had been purchased by the said Sh.R.K. Aggarwal and by authorisation given in their favour in the name of M/s Hindustan Copper Ltd. Hence, they had been handed over the pay orders of Rs.50.40 lakhs for obtaining the said copper wire from M/s Hindustan Copper Ltd. M/s Bansal Commodities filed an application under Section 132(11) of the Act before the applicant raising the aforesaid grounds. Alongwith this application under Section 132(11) of the Act on 22.9.89 this M/s Bansal Commodities also filed an application, for fixing an early date of hearing, on 26.9.89, on the ground that his business was adversely affected for lack of liquid funds (Annexure A-1 and A-2). The applicant considered the early hearing application on 5.10.89 and fixed 2.11.89 for the hearing. Thereafter, it was taken up on 9.11.89 and then on 16.11.89 and on 23.11.89. At last the matter was heard on 27.11.89 and the applicant partly allowed this application filed under Section 132(11) of the Act by M/s Bansal Commodities and the applicant vacated the restraint order in respect of the pay orders of Rs.50.40 lakhs. No doubt this detailed order which was passed by the applicant was made subject to certain conditions contained in, Annexure A-3 In the meantime regular assessment order was passed by the Assistant Commissioner (Inv.) Circle 16(1), Delhi in respect of Surinder Kumar and a demand of over Rs.84
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lakhs was raised. A copy of this assessment order was received by the applicant vide letter dated 19.2.90 from C.I.T., Delhi 10, New Delhi by which the applicant was informed about this assessment in respect of Surinder Kumar (Annexure A-4). On receipt of this letter (A-4) the applicant issued notice to M/s Bansal Commodities on 22.2.90 under the heading of the subject 'interim order under section 132(12) dated 27.11.89' by which M/s Bansal Commodities were directed by the applicant to attend his office on 27.2.90 as the final order was proposed to be passed under Section 132(12) of the Act. M/s Bansal Commodities appeared and argued the case under notice and the applicant passed further orders on 1.3.90, whose operative part may be reproduced for convenience (Annexure A-5):-

"Taking into account the fact that regular assessment has now been made in the case of Surinder Kumar it is obvious that his entire bank deposits are recoverable as tax levied on him. The petition of the applicant praying for release of this very deposits consequently becomes infructuous and has to be dismissed as such".

M/s Bansal Commodities felt aggrieved by this order and challenged it before the High Court of Delhi in a Writ Petition (C.W.No.1253/90) The present respondents, including the applicant in this O.A. were a party to that writ matter and they filed their counter affidavit sworn by one Ajay Mankotia, Under Secretary, C.B.D.T., Ministry of Finance wherein they supported the orders (Annexure A-5) passed by the applicant and contended therein that the orders passed by the respondents were in accordance with law. They also contended therein that earlier orders were subject to final assessments (Annexure A-6).

4. A memorandum dated 12.4.90 from the respondents was served upon the applicant, wherein the propriety of orders passed by the applicant was raised with regard to orders dated 27.11.89 and 1.3.90 (Annexure A-7).

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The applicant submitted his reply dated 20.4.90 (Annexure A-8) wherein he stoutly denied the allegations made against him in the Memorandum and defended the orders passed by him. Thereafter, the applicant was served with a regular charge memo dt.15.11.90, on 27.11.89 and 1.3.90. / Articles of Charges are lengthy hence, we shall be brief in our reproduction of the same:-

"The said Sh.S.K.Lal while functioning as the Commissioner of Income Tax, Delhi IX, Delhi during the Financial Year 1989-90 passed an order u/s 132(12) of the Income Tax Act, 1961 on 27.11.89 on a petition, u/s 132(7) read with Section 132(11) of Income Tax Act, filed by M/s Bansal Commodities of 4/9, Asaf Ali Road, New Delhi. Subsequently, by an order dated 1.3.90, the said Sh.S.K.Lal cancelled his aforementioned order. Records relating to these proceedings show that the aforementioned order dated 27.11.89 was passed by the said Sh.S.K.Lal in a careless and negligent manner, without proper investigations, ignoring evidences available on the record and in a manner which conferred undue benefits upon the petitioner. The records further show that when this action of the said Sh.S.K.Lal was questioned by his administrative superiors, he passed a further improper order on 1.3.90 without any authority of law, cancelling his earlier order dated 27.11.89. He has, thus, violated Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the C.C.C.(Conduct) Rules, 1964. Chargesheet dated 15.11.90 (Annexure A-9)".

5. To sum up, in brief, the charges in the proposed departmental enquiry against the applicant can be said to be that he passed order dated 27.11.89 in a careless and negligent manner and without proper investigations, ignoring the evidence available on record and this order conferred undue benefits; that on 1.3.90 an improper order was passed by the applicant without any authority of law etc. etc. It is this charge sheet in the proposed departmental enquiry which is under challenge by the applicant on the ground that the applicant passed the orders on 27.11.89 and 1.3.90 while exercising his quasai-judicial functions in accordance with the provisions of Section 132 of the Act. Another ground for challenge is that the pay orders were not physically found or seized under the proviso of Section 132(1) of the Act. He has supported, in his O.A., these two above mentioned orders passed by him, and contends that it was to the best of his ability that he passed these quasai-judicial orders. Another ground which the applicant raises in this O.A. is that the respondents who were proposing to hold enquiry

against him, were the respondents in the aforesaid Writ Petition before the High Court of Delhi and in their counter affidavit they had supported these orders and maintained that these two aforesaid orders were passed by him in accordance with law. He further contends in the O.A. that the charges in the proposed departmental enquiry do not contain the allegation of corruption or of personal gain against the applicant. He further contends that no allegations have been made by the respondents that he omitted to observe any statutory provisions or follow any administrative instructions. The said charge memo is an abuse of the powers vested in the respondents, which are being used against him in an oppressive manner for having passed quasai-judicial orders.

6. In the O.A. the applicant also prayed for an interim relief which was considered by a Bench of this Tribunal on 26.2.91 and it was directed that the respondents shall not proceed with further proceedings in pursuance of the chargesheet dated 15.11.90 served on the applicant. The interim order is still continuing.

7. Respondents, in their counter Memorandum of Chargesheet dated 15.11.90 has been issued against the applicant initiating disciplinary proceedings under Rule 14 of the C.C.S. (C.C.A.) Rules, 1965. They raised a preliminary objection that the applicant has not yet denied the charges and hence, in absence of a cause of action the O.A. is premature. Respondents further contend that at the time of the filing of the O.A. the penalty was not imposed hence, no substantive right of the applicant has been infringed by merely serving of the chargesheet. The respondents admit that the applicant could pass the orders like the order passed on 27.11.89 and 1.3.90 but they maintain that the departmental enquiry was initiated because they were passed by the applicant in a careless and negligent manner. They further contend that these orders passed by the applicant have conferred *Leave Act*

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undue benefits upon Sh.R.K.Aggarwal and M/s Bansal Commodities.

They admit that the reply affidavit, before the High Court, was filed by Sh.Ajay Mankhotiya, Under Secretary, Finance on behalf of the respondents. They further contend that undue hurry was shown by the applicant in passing orders with regard to the petition of M/s Bansal Commodities which was very new and older cases were pending since long for adjudication and this was done by the applicant with the intention of giving undue favour and advantages to M/s Bansal Commodities. They also contend that the applicant was careless in not calling the comments from the Assessing Officer, Bombay before he passed the orders on 27.11.89 and 1.3.90. They further contend that is is the conduct of the applicant which is being enquired in the proposed departmental enquiry. They further maintained that the conduct, manner, negligence and recklessness can be made the basis of a departmental enquiry. In a detailed return they have refuted the contents of the O.A. and inter-alia pray for its dismissal.

8. It would be relevant at this stage to examine the Articles of Charges, served with a charge memo dated 15.11.90, upon the applicant (Annexure A-9)

"The said Sh.S.K.Lal while functioning as a Commissioner of Income Tax, Delhi IX, during the Financial Year 1989-90, passed an order under Section 132(12) of the Income Tax Act, 1961 on 27.11.89 on a Petition U/s 132(7), section 132(11) of the Income Tax Act, filed by M/s Bansal Commodities of 4/9, Asaf Ali Road, New Delhi. Subsequently, by another order dated 1.3.90, the said Sh.S.K.Lal cancelled his aforementioned order. Records relating to these proceedings show that the aforementioned order dated 27.11.89 was passed by the said Sh.S.K.Lal in a careless and negligent manner, without proper investigations, ignoring evidences available on the record and in a manner which conferred undue benefits upon the petitioner. The records further show that when this action of the said Sh.S.K.Lal was questioned by his administrative superiors, he passed a further improper order on 1.3.90 without any authority of law, cancelling his earlier order dated 27.11.89. He has, thus, violated rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of C.C.S. (Conduct) rules, 1964".

Sh.Vinod Kant, the learned counsel for the respondents frankly conceded at the Bar that the said orders, passed by the applicant

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on 27.11.89 and 1.3.90 were passed under sub-sections of Section 132 of the Income Tax Act, were quasi-judicial orders and the applicant has exercised the powers as the Commissioner of Income Tax while passing those orders. But he added that these orders were passed in a careless and negligent manner. The applicant also in his lengthy reply to the earlier ^{memorandum} (Annexure A-8) dated 20.4.90, has denied the allegations that he passed the order on 27.11.89 and 1.3.90 in a careless and negligent manner and contended that these orders were passed within the exercise of quasi-judicial powers and in accordance with the provisions of Section 132 of Income Tax Act. In the same breath he said that the said orders have not resulted in any loss to the Revenue. In the alternative, he has pleaded with the disciplinary authority that assuming the said orders are wrong, yet it was only an honest error of judgement.

9. The pay orders were not physically found or seized under the second proviso to Section 132(1) of the Income Tax Act, so in such cases the authorised Officer may serve an order of deemed seizure. The purpose of Section 132(11) and 132(12) of the Income Tax Act is to afford quick relief to aggrieved persons by holding summary enquiries. While passing order dated 27.11.89 the applicant tried to safeguard the interest of the Revenue by stipulating the condition that his order was subject to such order as Commissioner of Income Tax, Delhi X, might deem fit to pass with regard to Surinder Kumar. It appears, that the order dated 27.11.89, by which the order of restraint on pay orders was vacated, was circumscribed and conditioned by order which may be passed in future by the Commissioner of Income Tax, Delhi X in the case of Surinder Kumar. Even if 27.11.89 order survived for sometime, it stood vacated by the order passed subsequently on 1.3.90. Both these orders dated 27.11.89 and 1.3.90 were passed under the provisions of sub-section 11 and 12 of Section 132 of the Act. For convenience they are reproduced below:-

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"11) If any person objects for any reason to an order made under sub-section (5) he may, within thirty days of the date of such order, make an application to the Chief Commissioner or Commissioner, stating therein the reasons for such objection and requesting for appropriate relief in the matter.

12) On receipt of the application under sub-section (10) the Board, or on receipt of the application under sub-section (11) the Chief Commissioner or Commissioner may, after giving the applicant an opportunity of being heard, pass such orders as it (or he) thinks fit".

10. If orders are passed by an authority under the provisions of any law of the land and in exercise of the quasi-judicial functions that authority cannot be said to have acted in a careless and negligent manner unless there is proof that the applicant acted in a ~~recklessness~~ and negligent manner in the discharge of his duties or that he failed to act honestly or in good faith or that he omitted to observe the prescribed conditions which are essential exercise of the statutory powers. (Govinda Menon Vs. U.O.I. A.I.R. 1967 S.C. 1274). In this case the Apex Court has observed that if there is no prima facie material for 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.

11. Let us, therefore, examine as to what that prima facie case is which led the respondents to initiate the enquiry under challenge. The respondents in their return have simply stated that the orders dated 27.11.89 and 1.3.90 were passed in a reckless, negligent and careless manner. On the other hand when order dated 1.3.90 was under scrutiny of the Delhi High Court in Writ Petition No.1253/90, filed by M/s Bansal Commodities, the respondents, in their return affidavit, filed by Sh.Ajay Mankotia, Under Secretary, C.B.D.T., Ministry of Finance, on behalf of the respondents, justified the propriety, validity and legality of this order (copy of that counter affidavit C.W. No.1253/90 is Annexure A-6). We need not reproduce the excerpts from it. Yet, an affidavit

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filed in the High Court has a sanctity specially when it is filed on behalf of Union of India (U.O.I.) If U.O.I. is permitted to change colours in every litigation, by taking inconsistent and contradictory stand and disown its previous affidavit ^{against their stand} then the sanctity of averment on oath will be lost, shaking the very foundation of administration of justice. According to the applicant, if the order passed by the applicant on 1.3.90 was not correct or proper in accordance with law, then what prevented them from contending before the High Court in C.W. No.1253/90 that it was passed in a reckless and negligent manner. They could have also placed the prima facie evidence before the High Court challenging the act of the applicant in passing the order dated 1.3.90.

12. If inconsistency or contradictory stands in pleadings in a litigation is ignored, as the stand taken by the respondents indicates, then the age old golden principles behind the concept of estoppel shall be shaken, disturbing the very foundation of the edifice of justice. Needless to say that we have to conclude that the respondents have failed to satisfy us that a prima facie case of negligent conduct or recklessness existed when the applicant passed the orders of 27.11.89 and 1.3.90 and we place our reliance on the case of Govinda Menon (Supra).

13. Though Sh.P.P.Khurana, the learned counsel for the applicant has cited ~~plthora of~~ case laws, yet we are not inclined to unnecessarily burden this judgement with constipatory citations. We shall consider only those, which have relevance. In the case of Sh.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~~ ^{formed} the basis of disciplinary action". Kerala High Court in the case of C.S.Kesava (1986) Vol.176 Income Tax Reports, page 375 observed:-

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"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".

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

"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 Administrative Tribunal cases, page 337, by another Bench of this Tribunal, dealing with the Income Tax functionary who was chargesheeted in a departmental enquiry and passed quasi-judicial order. In this Bench the case of Govinda Menon (Supra) was also considered and the Bench observed:-

"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".

And that is what we have held herein above that the respondents have failed to bring out any prima facie material for showing recklessness or misconduct on the part of the applicant in passing the orders on 27.11.89 and 1.3.90.

15. 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' judgement, without being deterred by the result thereof, guided ofcourse by the parameters laid down in.

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the statute and following the procedure prescribed therein. Merely because the orders of the authority results 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.

16. 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 the 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 ~~the~~ imputed charges should be separate and separable from the exercise of the quasi-judicial decisions. The quasi-judicial functions cannot be exercised with independence, impartiality and objectivity, if the functionaries are kept in constant fear of harassment in a disciplinary proceeding. No doubt, officers who exercise quasi-judicial functions cannot claim impunity from disciplinary proceedings against them for misconduct or corruption but before deciding upon starting such proceedings careful thought should be given whether the imputations relate to distinct or independent circumstances and whether prima facie material is available against that officer. Because if it is not done, then the distinction between culpable misconduct and interference with exercise of independent judgement will be blurred and not only the cause of justice but even administrative efficiency will be badly affected.

17. The learned counsel for the respondents, in the end, contended that ordinarily disciplinary proceedings should not be interfered with in a judicial review until it has been concluded. We are reminded of the case of Madhav Rao Jiwaji Rao Scindia (A.I.R. 1988, Supreme Court 709) in which the Apex Court while

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dealing with the powers of a Criminal Court under Section 482 of the Code of Criminal Procedure, had observed with regard to the quashing of a chargesheet:-

"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 uncontrverted 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".

Though the judgement 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. We have considered earlier in the judgement that the respondents have not placed any *prima-facie* material that the applicant passed quasi-judicial orders on 27.11.89 and 1.3.90 in a careless and negligent manner. On the contrary the respondents supported these orders in the judicial proceedings before the Delhi High Court and in a sworn affidavit and contended that these orders were passed in accordance with law in a proper and just manner. Respondents, now cannot be permitted, in this O.A., to take a contrary stand and retract from their earlier pleadings. They are estopped in law from doing so. Any contrary stand now being taken by them has to be rejected. The stand taken by the respondents earlier before the High Court under writ jurisdiction binds them legally and morally and any retraction from it can only be termed nothing less than malafide and arbitrary. (M.P. Sugar Mills Vs. State of U.P. A.I.R. 1979 S.C. 621).

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18. We, therefore, conclude that this O.A. has to be allowed. Consequently, we allow this O.A. The Charge Sheet and Memorandum of Charges dated 15.11.90 (Annexure 9, marked with O.A.) cannot be sustained in law. It is accordingly quashed. Parties shall bear their own costs.

R Venkatesan
(R.VENKATESAN)

MEMBER(A)

Ram Pal Singh 21.10.91
(RAM PAL SINGH)

VICE CHAIRMAN (J).