

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.1778/92

NEW DELHI THIS THE 22nd DAY OF FEBRUARY, 1994.

HON'BLE MR.JUSTICE S.K.DHAON, VICE-CHAIRMAN
HON'BLE MR.B.K.SINGH, MEMBER(A)

Shri M.V.Nayar
r/o A-1/13,
Safdarjung Enclave
New Delhi-110029

... Applicant

BY ADVOCATE MRS.MEERA CHHIBBER.

VS

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

2. Under Secretary to the
Government of India
Central Board of Direct Taxes
Department of Revenue
Ministry of Finance
Government of India
North Block
Central Secretariat
New Delhi.

... Respondents

BY ADVOCATE SHRI R.S.AGARWAL.

ORDER

JUSTICE S.K.DHAON:

The applicant, a Deputy Commissioner of Income Tax, has come to this Tribunal with the prayer that the Office Memorandum dated 11.5.1992 issued by the Government of India in the Ministry of Finance, Department of Revenue, calling upon him to furnish his explanation with regard to various irregular features catalogued in the said memorandum, may be quashed.

2. Certain irregular features, it appears, had been noticed in the orders of assessment passed by the applicant in his capacity as Income Tax Officer Lucknow. These assessment orders, which are six in numbers, range between the Assessment Years 1976-77 and 1980-81.

3. A counter-affidavit has been filed on behalf of the respondents. A rejoinder-affidavit too has been filed. Counsel for the parties have been heard.

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4. An anonymous complaint dated 2.1.1982 was made to the then Prime Minister of India. This complaint, it appears, related to the conduct of the applicant as one of the Income Tax Officers at Lucknow. On 6.4.1987, a charge-memo was given to the applicant. That charge-memo was the subject matter of the orders of assessment passed by the applicant at Delhi.

5. In order to be satisfied as to why the alleged irregularities mentioned in the various orders of assessment passed by the applicant at Lucknow were not included in the chargesheet dated 6.4.1987, we on 21.1.1994 directed the respondents to file an affidavit. That affidavit has been filed. We have perused the same. The affidavit is of Shri Manoj Joshi, Under Secretary, Department of Revenue, Ministry of Finance. The averments in the affidavit, as material, are these. The complaint dated 2.1.1982 addressed to the then Prime Minister did contain the particulars of the cases which are the subject matter of the contemplated inquiry against the applicant. None of the cases mentioned in the said complaint was the subject matter of the disciplinary proceedings initiated against the applicant in the year 1987. When disciplinary proceedings were initiated against the applicant in 1987, the complaint dated 2.1.1982 was being examined from a

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separate file. At the time of issue of charge-sheet dated 6.1.1987, the enquiries in the case of complaint dated 2.1.1982 were not complete and the charges alleged in the complaint had not been completely investigated vis-à-vis the relevant assessment record. Furthermore, the charge-sheet dated 6.4.1987 was issued to the applicant for making certain irregular assessments while working as Inspecting Assistant Commissioner (now DCIT) in Delhi, whereas the charges contained in the complaint pertained to the period when he was posted as Income Tax Officer (now ACIT) at Lucknow. The two matters were dealt with in different files. Report of the assessments made at Lucknow by the applicant showing lapses on his part was received only in the year 1989, thereafter, the same was examined in greater detail and in the year 1992, an explanation was called vide the impugned memorandum. In the instant matter the stage has not reached wherein a decision regarding issuance of charge-memo could be considered.

6. The learned counsel for the applicant has strenuously urged that, in the absence of any explanation on the part of the respondents explaining the inordinate delay in issuing the impugned memorandum, the applicant could not be subjected to harassment. She also contended that on account of the delay, the applicant may be seriously prejudiced in his defence, if eventually a decision is taken to initiate disciplinary proceedings

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against the applicant.

7. The learned counsel for the applicant has placed reliance on the case of **STATE OF MADHYA PRADESH Vs. BANI SINGH** (1991) 16 ATC 504). In that case, the Supreme Court upheld an order wherein the final order punishing a Government servant in disciplinary proceedings was quashed on the ground that the proceedings had been initiated after a delay of 12 years and no satisfactory explanation had been offered for the delay.

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8. The learned counsel for the applicant has also urged that the assessment orders which are referred to in the impugned memorandum were reopened by the Commissioner of Income Tax in the exercise of his revisional jurisdiction and orders adverse to the assesseees were passed. In all the cases, the Income Tax Appellate Tribunal reversed the orders of the Commissioner of Income Tax and restored the orders passed by the applicant. She also stated that in one of the four cases, namely in the case of **M/s. Jaiprakash Associates**, the Income Tax Appellate Tribunal gave further relief to the assesseees.

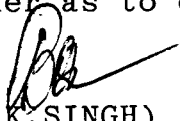
9. We have considered the matter with the care it deserves. In view of the order we are about to pass, we do not consider it expedient to record any finding on the merits of the case as any observation made by us, may act prejudicially to the interest of either of the parties.

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10. This application, in our opinion, is pre-mature. The applicant has been merely asked to give an explanation to the office memorandum. He should, therefore, furnish his explanation. We have no doubt that the relevant competent authority shall apply its mind to the facts of the case before taking a decision to initiate disciplinary proceedings against the applicant. It shall also take into account the aforementioned submissions made on behalf of the applicant and the decision of the Supreme Court in BANI SINGH's case (supra).

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11. With these observations, this application is disposed of finally. There shall be no order as to costs.


(B.K. SINGH)
MEMBER(A)


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

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