

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

29

OA No. 2065/92.

New Delhi, this the 1st day of **March**, 1999

HON'BLE SHRI T.N. BHAT, MEMBER (J)
HON'BLE SHRI S.P.BISWAS, MEMBER (A)

In the matter of:

Shri S.C. Jain,
Income Tax Officer (Retd.),
190, Saket, Meerut,
Meerut.

...Applicant

(By Advocate: Shri P.P.Khurana)

Vs.

Union of India through:

1. Secretary Finance,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Central Secretariat,
North Block, New Delhi.

...Respondents

(By Advocate: Shri R.S.Agarwal)

O R D E R

delivered by Hon'ble Shri T.N.Bhat, Member (J)

1. The applicant herein was for some time working as Assistant Director Inspection (Int.) in the office of Commissioner of Income Tax Meerut and in that capacity he had arranged a raid on the premises owned by one Shri Mansa Ram which disclosed a case of concealment of wealth and non-payment of taxes thereon. This happened some time in the year 1982. The said Shri Mansa Ram later given a written complaint to the then Commissioner of Income Tax as also another complaint to the C.B.I. alleging therein that the applicant had demanded and received an amount of Rs. 1.00 lakh as illegal gratification from him with the promise that he would get

the case decided to the satisfaction of Shri Mansa Ram, but that when the applicant did not fulfil his promise and Shri Mansa Ram asked for return of the amount the applicant refused to pay back the same. After holding a preliminary enquiry the disciplinary authority issued a chargesheet on 10.1.1985 to the applicant with the following allegations:-

"ARTICLE - I That the said Shri S.C. Jain while posted and functioning as Assistant Director of Inspection (Int) in the office of the Commissioner of Income-Tax, Meerut, during 1982 failed to maintain absolute integrity and committed misconduct inasmuch as he demanded and accepted a sum of Rs. one lakh as bribe from Shri Mansa Ram of M/s. Mansa Ram Sat Prakash, Meerut, as a motive or reward for showing favour to him in the assessment of Income-tax on M/s. Mansa Ram Sat Prakash and its allied firms and he thereby contravened Rule 3.1(1)(i) of the Central Civil Services (Conduct) Rules, 1964".

2. The applicant denied the charge. But before an enquiry officer could be appointed to hold departmental enquiry the applicant retired on superannuation on 31.12.1986. It was only on 28.7.1988 that the enquiry officer was appointed. The enquiry officer after holding the enquiry submitted a Report dated 18.9.89 holding the Article of charge as proved. Applicant was accordingly given a show cause notice and he submitted his reply dated 3.4.1990.

by ✓

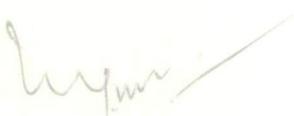
3. Since the applicant in the meantime retired, the matter was referred to the President who was of the tentative view that the report of the enquiry officer should be accepted. The matter was accordingly referred to the Union Public Service Commission for advice and the UPSC also agreed that the charge against the applicant stands proved. UPSC further advised that the punishment of permanently withholding the entire pensionary benefits admissible to Shri S.C.Jain should be imposed. The President after considering the advice tendered by the UPSC issued the impugned order withholding permanently the applicant's entire pensionary benefits.

4. In the departmental enquiry several witnesses were produced. Apart from that some audio-cassettes were also relied upon by the prosecution and it was held that the statements of the two eye-witnesses, namely, Shri Mansa Ram and Shri D.K. Varshney coupled with the supporting evidence of the other witnesses as also the voice of the applicant in the tape recorded conversation between the aforesaid two witnesses and the applicant the charge was established against the applicant. The objections raised by the applicant in his replies during the enquiry proceedings were dealt with by the enquiry officer as also the UPSC and by the President and the same were rejected.

5. The applicant has in the O.A. raised identical grounds which may be reproduced hereinbelow:-

W.W.

"That the impugned order is arbitrary and violative of Article 14 of the Constitution as respondent no. 2 without applying his mind to the evidence and other material on record in a mechanical manner agreed with the advice of the UPSC and imposed the major penalty of forfeiture of entire pensionary benefits; that the impugned order of punishment is void ab-initio as the enquiry proceedings were initiated and conducted in violation of the procedure laid down under Article 14 of the CCS (CCA) Rules and Rule 9 of the Pension Rules; that the enquiry officer was biased and prejudiced and he conducted the departmental enquiry in violation of the principles of natural justice; that the finding of the enquiry officer is perverse and is based upon no evidence; that the action of the respondents is mala fide as respondent no. 2 had placed the applicant under suspension on 30th November, 1983 without assinging any reasons and had also arbitrarily changed the applicant's headquarter from Meerut to Ahmedabad during the period of his suspension and had further, allowed the enquiry proceedings to be delayed for more than five years; that enquiry officer conducted the enquiry with a closed mind; that the conversation recorded in the tapes was not admissible as the necessary precautions had not been taken for depositing those tapes and keeping them in safe custody and were also not sufficiently audible; that the departmental proceedings were continued illegally after the retirement of the applicant.



and; lastly, that the distinguished career of the applicant in the post was not kept in view while awarding the extreme punishment.

6. The applicant seeks the following reliefs:

- "(a) to quash/set aside the order dated 11.2.1992 Annexure A-1, imposing a major penalty of forfeiture of entire pensionary benefits on the applicant.
- "(b) to issue directions or orders directing the respondents to grant him full pension, as admissible under the rules from 31.12.1986, the date of his superannuation with interest at the rate of 18% on the arrears due till the date of payment.
- "(c) to pass such order/orders favourable to the petitioner as deemed fit and proper in the interests of justice and circumstances of the case.
- "(d) to award costs in favour of the petitioner and against the respondents."

7. The respondents have contested the pleas raised by the applicant by filing a detailed counter in which it is contended that the applicant was granted adequate opportunity to defend himself in the departmental enquiry and that all the points raised by him in his replies were properly dealt with and answered both by the enquiry officer as also the UPSC and that the advice of

Amrit

applicant which formed the main basis of the findings against the applicant recorded by the enquiry officer as well as the UPSC.

10. As regards Shri Mansa Ram this witness also has a grudge against the applicant who conducted the search of his business premises. The UPSC has also in its support admitted in so many words that both these persons, namely, D.K. Varshney and Mansa Ram are interested witnesses and their depositions are not to be considered reliable. Even the enquiry officer has in para 12 of his report conceded that the relations between applicant and D.K. Varshney were strained and that the said witness had probably taken a keen interest in this case against the applicant only because of his enmity. However, by adopting some strange logic the enquiry officer has held that this cannot be a sufficient ground to conclude that the case against the applicant is false or the tape recorded cassettes are forged. The same thing can be said about Sh. Mansa Ram who admittedly had a grouse against the applicant as the raiding party was headed by him.

11. It has also been admitted by the enquiry officer as also the UPSC that there are some irreconcilable contradictions and discrepancies in the depositions of both these witnesses particularly in regard to the tape recording done at the residence of the applicant and the handing over of the cassettes to the C.B.I. or to the Chief Commissioner of Income Tax. Not only that, the complainant, namely, Mansa Ram also clearly appears to have contradicted himself in material particulars in regard to the loan secured by him on two

Subj:

the UPSC was rightly accepted by respondent no. 2 acting as a representative of the President. It is denied by the respondents that this is a case of 'no evidence'.

8. We have heard the learned counsel for the parties at some length and have perused the material on record. During the course of his arguments the learned counsel for the applicant also produced before us photocopies of the depositions recorded by the enquiry officer as also the complaint made by Mr. Mansa Ram on which the disciplinary proceedings were initiated. The authenticity of these documents has not been disputed by the learned counsel for the respondents.

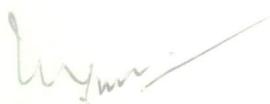
9. In support of the charges the prosecution examined 9 witnesses, namely, S/Shri V.K.Nigam, S.K.Sharma, R.P.Saxena, M.C.Joshi, D.K.Varshney, Mansa Ram, R.P.Kapur, T.C. Pant and J.R.Sharma. Out of the above witnesses only two witnesses, namely, Shri D.K. Varshney and Sh. Mansa Ram are said to have personal knowledge about the alleged incident. Against both of them the applicant has alleged mala fides and personal bias. As regards Shri D.K.Varshney, it is admitted on both sides that prior to the initiation of the disciplinary proceedings against the applicant a raid had been conducted by him on the business premises of the aforesaid witnesses and a large amount of hidden wealth was discovered. We further notice that this person has played a major role in the entire incident leading to the initiation of the disciplinary proceedings against the applicant. As a matter of fact this witness was responsible for tape recording the conversation with the

Myw

occasions for being paid to the applicant. We may indicate here that according to Mansa Ram the loan was secured by him from Sh. D.K.Varshney.

12. That leads us to the discrepancy in the evidence relating to obtaining of the loan. It has been admitted by the prosecution witnesses and also by the enquiry officer in his report that according to the account books of M/s. National Suger Industry owned by D.K.Varshney, which account books have been relied upon in the departmental enquiry against the applicant, there was no amount available with the said Company which could have been given to Sh. Mansa Ram. However, the enquiry officer has taken the specious plea that normally such companies are supposed to have lot of unaccounted wealth and that the same could have been used for giving the amount of Rs. 1.00 lakh to Sh.Mansa Ram. We may legitimately ask as to whether it was open to the enquiry officer or the prosecution to take this plea when reliance was being placed upon the account books of the National Sugal Industry the entries wherein disclosed that there was no money available which could have been given to the complainant Mansa Ram.

13. We further notice that the only independent eye-witness in whose presence the alleged incident had taken place was Sh. Lekh Raj who, though cited as a witness, was never examined during the departmental enquiry. The applicant was, therefore, right in asking the enquiry officer to draw an adverse inference against the prosecution for withholding the aforesaid important witness. In these circumstances, if the



depositions of Mansa Ram and D.K.Varshney are excluded on account of the fact that they are not reliable witnesses the case of the prosecution would crumble down.

14. That further leads us to the other evidence which has been relied upon by the prosecution which consists of tape recorded cassettes. According to the prosecution D.K.Varshney had surreptitiously recorded the convesation in which the applicant, D.K.Varshney, Mansa Ram and Lekh Raj had participated. It has been clearly brought out during the enquiry proceedings that the said cassettes saw the light of the day several years after the convesations were allegedly tape recorded. On the question as to when and to whom were these cassettes handed over by D.K.Varshney, there are glaring contradictions in the evidence. Shri R.Kapur one of the witnesses has stated in his depositin that soon after June/July, 1983 the tapes were handed over to him by Shri. D.K.Varshney and that he forwarded the same to the Director (Vigilance). On the other hand Sh. M.C.Joshi who had investigated the case stated that the tapes which were produced during the preliminary enquiry proceedings were handed over to him by D.K.Varshney in November, 1983. These two statements are irreconcilable and certainly put a question mark on the case of the prosecution, particularly so when Shri M.C. Joshi admits that after receiving the tapes he did not take any steps to seal those cassettes.

15. On the quality of evidence furnished by the audio cassettes we have an admission from the enquiry officer himself that the tapes do not have any

W.W.W.

conversation on one side and on the other side there were disturbances. When the tapes were played before the witnesses during the course of the enquiry it was admitted by them that the tape recorded conversation had long gaps and disturbances. It is only with the help of the conversation transcribed on paper that the witnesses were able to make depositions that the tape recorded conversation was identical to the transcribed conversation.

16. The next question which arises is whether the principles of natural justice have been contravened, when admittedly no copy of the transcribed conversation was made available to the applicant before he was asked to cross-examine the witnesses. The applicant did make a request that the transcribed conversation could not be relied upon nor used for supporting the case of the prosecution and that if the enquiry officer or the presenting officer rely upon the said written conversation then the applicant should be afforded an opportunity to first go through the same and prepare himself to cross-examine the witnesses. We notice that the enquiry officer refused transcribed conversation was not one of the relied upon documents the applicant was not entitled to a copy thereof at the time when the chargesheet was served upon him or soon thereafter. The applicant was compelled to cross examine the witnesses there and then. In our considered view this clearly amounted to denial of reasonable opportunity to the applicant. Even on the question of making available the cassettes to the applicant to enable him to prepare his defence we have sufficient material on record to show that despite



repeated requests made by the applicant and specific directions given by the enquiry officer the presenting officer or the Investigating Officer did not allow the applicant the opportunity to listen to the tape recorded conversation even though the applicant made two or three trips to Dehradun where the cassettes had been kept. It was only after the lapse of 2-3 years that the applicant was eventually allowed to hear the tape recorded conversation. By that time even according to the admission of the enquiry officer a major part of the conversation recorded in those tapes was inaudible and there were also lots of disturbances in that conversation including long gaps. We may also mention that in order to apply its mind to the question as to whether the tape recorded conversation could be used as a reliable piece of evidence, the Tribunal had directed the respondents as far back as on 10.2.1993 to produce the tape recorded cassettes on the next date of hearing.¹ It appears that the said direction was never complied with by the respondents. Even after the arguments of the learned counsel for the parties were heard and concluded the respondents did not deem it necessary to furnish those cassettes.

17. Applicant's counsel has further taken the plea that one of the important documents for the production of which the applicant had made a specific request was held back from the applicant on the plea that it would not be in public interest to show it to the applicant, as the document was a confidential one. We find ourselves in agreement with the learned counsel for the applicant that by denying the access to that documents

W.W.

the principles of natural justice has been contravened. The document related to the correspondence between the Chief Commissioner of Income Tax, Meerut and the higher Income tax authorities relating to a complaint made earlier by D.K.Varshney or Mansa Ram against the applicant. According to the applicant's counsel the document for the production of which the applicant had sought a direction to the respondents was a report furnished by the Chief Commissioner of Income Tax, Meerut in which the applicant had been cleared of all charges that had been levelled against him by the aforesaid witnesses. By no stretch of reasoning could such a document be held to be a document in respect of which privilege could have been claimed, particularly so when the same was sought to be produced during the course of a disciplinary enquiry.

18. We may now proceed to notice the judgements which are relied upon by the learned counsel for the applicant, particularly those which relate to the evidentiary value of tape recorded cassettes. In Lachhamandas vs. Deep Chand (AIR 1974 (Rajasthan) 79, the Rajasthan High Court held that a tape recorded conversation a transcript of which is not placed on record at the earliest opportunity should not be admitted in evidence. transcribed conversation of the tape recorded conversation came to light only during the departmental enquiry proceedings which commenced several years after the alleged incident of the tape recording.

14/11/2023

19 The question of evidentiary value of tape recorded conversation has been dealt with in detail by the Apex Court in Ram Singh & Ors. vs. Col. Ram Singh, reported in 1985 (Suppl) SCC 611. The following conditions have been laid down for admitting a tape recorded statement in evidence:-

- (i) The voice of the speaker must be identified by the maker of the record or other persons recognising his voice. Where the maker is unable to identify the voice, strict proof will be required to determine whether or not it was the voice of the alleged speaker.
- (ii) The accuracy of the tape-recorded statement must be proved by the maker of the record by satisfactory evidence direct or circumstantial.
- (iii) Possibility of tampering with, or erasure of any part of, the tape-recorded statement must be totally excluded.
- (iv) The tape-recorded statement must be relevant.
- (v) The recorded cassette must be sealed and must be kept in safe or official custody.
- (vi) The voice of the particular speaker must be clearly audible and must not be lost or distorted by other sounds or disturbances.

W/m

20. In that case it was further observed that after recording statements of the witnesses on a tape recorder, the Deputy Commissioner, instead of keeping the cassette in his own custody, should have deposited it in the record room and by his omission to do so the possibility of tampering with or erasure of the recorded statement cannot be ruled out. As in the aforesaid case before the Apex Court so before us in the instant case some witnesses have refused to positively identify the voice of the applicant. The Apex Court further held that while relying upon tape recorded cassette as an evidence one should proceed very cautiously, as in the case of mutilated documents, and that where the tape recording is not coherent, distinct or clear, it should not be relied upon. In the instant case the prosecution has heavily relied upon the tape recorded conversation while at the same time admitting that the depositions of Mansa Ram and D.K.Varshney are not reliable. Their depositions have been accepted only on the ground that these are supported by the evidence in the shape of tape recorded conversation.

21. But, as already indicated, there are several circumstances which make the tape recorded conversation un-worthy of any credence.

22. We are conscious of the fact that while dealing with the disciplinary enquiries and the evidence recorded during those proceedings we are not sitting in appeal and that our jurisdiction is a limited one. But at the same time we are of the view that the Tribunal or the Courts can certainly interfere where the findings in the

A handwritten signature in black ink, appearing to read "L.M.W." followed by a diagonal line.

disciplinary proceedings are either perverse or not based upon any evidence. On the basis of the facts and circumstances already discussed hereinabove we are convinced that the findings recorded by the enquiry officer which have subsequently been accepted by the UPSC, respondent no. 2 herein, is perverse and that this is a case of 'no evidence'. In this regard we may refer to a classic judgement of the Apex Court delivered way back in 1972 in State of Assam vs. Mohan Chandra Kalita and Anr., reported in AIR 1972 SC 2535. In that judgement it was held that the charge in a departmental enquiry cannot be sustained on mere conjectures in the absence of evidence. In another judgement reported in AIR 1969 SC-983 (Central Bank of India Ltd. vs. Prakash Chand Jain) it was held that although technical rules of evidence do not apply to domestic enquiries yet substantive rules, which form part of principles of natural justice, cannot be ignored by domestic Tribunals.

23. Learned counsel for the respondents has however referred to a few judgements, notably the one reported in 1996 (1) Scale 810 (State of Tamil Nadu & Anr. vs. S. Subramanian) wherein it is held that the Tribunal has only power of judicial review of the administrative action and that it is the exclusive domain of the disciplinary authority to consider the evidence on record and to record findings whether the charge stands proved or not. However, on carefully going through the judgement we find that the jurisdiction of the Tribunal/Court to consider whether the conclusion is based on evidence on record and supports the finding or whether the conclusion is based on 'no evidence' has been recognized in that

tiny w/

judgement as well. In holding the view that we have hereinabove we are not appreciating or re-appreciating the evidence, our view is based upon the premise that there was no evidence on the basis of which the finding of misconduct could be recorded against the applicant. We have come to the above conclusion in this O.A. on the basis of the manner in which the decision has been taken by the concerned authorities and we find that the same is not in accordance with well settled principle of law.

24. Another judgement relied upon by the learned counsel for the respondents is 1995(1) SCC 216, where also the same principle has been laid down. On going through the judgement of the Apex Court in that case we find that the Tribunal had not found any fault with the proceedings conducted by the enquiry authority but had set aside the order of dismissal passed by the disciplinary authority on the ground of insufficiency of evidence to prove the charges. It was in these circumstances that the Apex Court held that the Tribunal had no jurisdiction to re-appreciate the evidence or to set aside the order of dismissal merely on the ground that the evidence was insufficient. This judgement has also no application to the facts of the instant case.

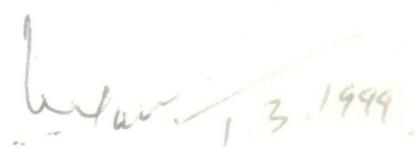
25. In view of what has been held and discussed above we are of the considered view that the impugned order of punishment awarded to the applicant is not sustainable. We accordingly allow this O.A. and set aside the impugned order dated 11.2.1992 by which a major penalty of forfeiture of entire pensionary benefits admissible to the applicant on a permanent basis has been

try me

passed. We direct the respondents to pay to the applicant all the pensionary benefits as admissible to him under the rules from 31.12.1986 which was the date of his superannuation. However, we do not consider this case to be one where costs should be allowed to the applicant.



(S.P. Biswas)
Member (A)



(T.N. Bhat)
Member (J)