

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

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Date of Decision: 17.3.93

OA 2307/92

SHRI E. LAKRA

... APPLICANT.

Vs.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE SHRI J.P. SHARMA, MEMBER (J).

HON'BLE SHRI S.R. ADIGE, MEMBER (A).

For the Applicant

... SHRI K.V. SRIKUMAR.

For the Respondents

... SHRI R.S. AGGARWAL.

J U D G E M E N T

(DELIVERED BY HON'BLE SHRI S.R. ADIGE, MEMBER (A).)

This is an application dt. 24.8.92 u/s 19 of the Administrative Tribunals Act, 1985, filed by Shri E.Lakra, Deputy Commissioner of Income Tax, praying for quashing of the impugned memorandum dt. 17.6.92 (Annexure A-6) proposing to take action against the applicant under Rule 16 of the CCS (CCA) Rules, 1965; and for directing the respondents to consider the case of the applicant through the DPC for the post of Commissioner of Income Tax.

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2. The applicant's case is that he was due for being placed in the Selection Grade (non-functional) alongwith his batch-mates of the 1969 batch of Indian Revenue Services (Income Tax). The orders placing the Commissioners/ Deputy Commissioners of Income Tax (non-functional) in the pay scale of Rs.4500-5700 were issued on 23.8.90 and the officers mentioned in the said order were granted Selection Grade from varying dates, but the applicant was denied Selection Grade although his juniors were promoted. He was again due for promotion as Commissioner of Income Tax alongwith his batch-mates. The DPC met on 20.9.90 and recommended the names of 45 officers, out of whom 30 officers were junior to him, but here again he was superceded. He later came to know that the DPCs, which met to recommend the officers for placement in Selection Grade and also for promotion to the grade of Commissioner of Income Tax in September, 1990, had considered the applicant's case, and and recommendations had been put in sealed cover(s) by the respective DPCs, although no disciplinary proceedings were pending against the applicant at that point of time. Meanwhile, the applicant was served with memorandum dt. 22.11.90 (Annexure A-2), calling upon him to explain his conduct in regard to certain matters. He submitted his reply on 2.1.91, and in the meantime, he filed OA 1639/91 in the Principal Bench of this Tribunal, which was duly

entertained, admitted and interim orders passed, in pursuance of which the applicant was given his Selection Grade w.e.f. 1.1.86. However, he avers that his due promotion as Commissioner of Income Tax from September, 1990 has not been given to him, because respondent No.4. had deliberately prevented him from being promoted as Commissioner of Income Tax. The applicant further contends that he separately filed an application before the CAT, Jabalpur Bench, in 1989, challenging the composition of the DPC, which is still pending. In the meeting of that DPC on 5, 6 & 7 April, 1988, respondent No.4 was himself promoted as Commissioner of Income Tax, who has been making efforts to damage the promotional prospect of the applicant, it is that incident when respondent No.1 issued the impugned memorandum dt. 17.6.92, which is similar to the allegations made earlier in the memorandum dt. 22.11.90, to which he had already submitted a reply. The applicant alleges that a trap was laid down against him, and a forged complaint was engineered that a sum of Rs.25,000/- was paid to him by M/s.Ashokan & Co. and the applicant further demanded a sum of Rs.25,000/- from the said firm. Thereafter, without verifying the allegations, respondent No.4 directed the Asstt. Commissioner to write a letter to the said concerned asking him whether the allegations made were correct. The applicant further alleges that respondent No.4 wrote to the Dy. Commissioner of Income Tax, Range-I, Raipur, making certain allegations

against the applicant, sought to interfere in the applicant's tour programme, recorded adverse entries in the applicant's C.R. for the year 1989-90 without any basis, and made certain personal allegations against the applicant in his letter dt. 3.7.90 (Annexure A-12). Thereafter, he made representations to the Commissioner of Scheduled Caste/Scheduled Tribes, New Delhi, Chairman, National Commission for Scheduled Caste/Scheduled Tribes, New Delhi, and Chairman, Central Board of Direct Taxes, New Delhi, etc. but he has not yet received any reply till date. His wife had also submitted a representation to the Hon'ble Prime Minister, which was acknowledged by the Prime Minister's Office. Being depressed that appropriate steps had not been taken, the applicant states that he sent a legal notice to respondent No.4 through his lawyer, which is well covered as per Rule 3(9) of the CCS (Conduct) Rules, 1964. The applicant states that he has been issued a memorandum for alleged violation of Rule 3(1)(i) of CCS (Conduct) Rules, 1964, but the same relates to the doubtful integrity and the entire allegations made against the applicant do not refer to any doubtful integrity on his part.

3. He has accordingly prayed that the impugned memorandum dt. 17.6.92 be quashed and the respondents be directed to consider his case through the DPC for the post of Commissioner of Income Tax.

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4. The respondents have contested this application and in their counter-affidavit have stated that the applicant has been issued a charge sheet on 17.6.92, detailing specific charges of contravening the provisions of Rule 3(1)(1) of the CCS (Conduct) Rules, 1964. The validity of the said charge was to be enquired into by an enquiry officer under CCS (CCA) Rules, 1965. During the course of which the applicant, as per rules, would have full opportunity to defend his conduct. This application is, therefore, premature, as the applicant has not availed of the opportunity for his defence offered to him by the CCS (CCA) Rules, 1965. It has been stated that charge sheet dt. 17.6.92 was issued to the applicant for acting in a manner which was unbecoming of a Government servant. A written complaint on printed letter pad of the complainant firm M/s. P. Ashokan, B-7, MPHB Balco Township, Korba, District Bilaspur, Madhya Pradesh, was received stating that on 25.9.89, a sum of Rs.25,000/- was paid to the applicant and the said firm was being harrassed for paying further sum of Rs.25,000/-. The Commissioner of Income Tax, Jabalpur (Respondent No.4) proceeded through Asstt. Commissioner of Income Tax (Vigilance), Jabalpur, to investigate into the complaint. By his letter dt. 3.1.90, Shri P. Ashokan, Partner of the complainant firm disowned the complaint petition and denied the allegation made.

Thereafter, on 2.4.90, the applicant wrote to Chief Commissioner of Income Tax, Bhopal, alleging that respondent No.4 and the Assistant Commissioner of Income Tax, (Vigilance), Jabalpur, had tried to malign his image by writing to the complainant firm, and stated that he intended filing a defamation case against the respondent No.4 and the Assistant Commissioner, claiming damages for a sum of Rs.10,00,000/- (Ten Lakhs), subject to obtaining the approval of the Head of the Department. But instead of obtaining prior approval of the Head of the Department, he chose to send a legal notice dt. 8.6.90 to respondent No.4 to explain his conduct within 15 days as to why the applicant should not proceed against him in a court of law for damages caused to the applicant's reputation. This conduct was unbecoming of a Government servant and contravened Rule 3(1) of CCA (Conduct) Rules, 1964.

5. We have heard Shri K.V. Srikumar, learned counsel for the applicant, and Shri R.S. Aggarwal, learned counsel for the respondents.

6. Shri Srikumar has urged that sending a legal notice to the superior officer, does not constitute any conduct unbecoming of a Government servant. He states that the applicant sought approval of the Head of the Department to send the legal notice, and waited for the prescribed period, but as no reply was received within the prescribed

period, he sent the legal notice to respondent No.4.

7. He has also relied on two decisions of the Hon'ble Supreme Court, reported in (1985 SC 504) and (1990 (7) SCR Bombay 37) in support of his contention.

8. In this connection, the Administrative Tribunals Act, 1985, lays down that an application should not be admitted unless other remedies are exhausted. Section 20, A.T. Act reads as follows :-

"(1) A Tribunal shall not ordinarily admit an application unless it is satisfied that the applicant had availed of all the remedies available to him under the relevant service rules as to redressal of grievances.

(2) For the purposes of sub-section (1), a person shall be deemed to have availed of all the remedies available to him under the relevant service rules as to redressal of grievances,-

(a) if a final order has been made by Government or other authority or officer or other person competent to pass such order under such rules, rejecting any appeal preferred or representation made by such person in connection with the grievance; or

(b) where no final order has been made by the Government or other authority or officer or other person competent to pass such order with regard to the appeal preferred or representation made by such person, if a period of six months from the date on which such appeal was preferred or representation was made has expired.

(3) For the purposes of sub-sections (1) and (2), any remedy available to an applicant by way of submission of a memorial to the President or to the Governor of a State or to any other functionary shall not be deemed to be one of the remedies which are available unless the applicant had elected to submit such memorial."

9. It is clear that the departmental enquiry against the applicant is only at the stage of the memorandum of

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charges, to which he has been asked to submit his representation, and this is by no means a final order. Even if his representation is not accepted, the applicant will get an ample opportunity to defend himself before the Enquiry Officer, and the Disciplinary Authority, as well as at the stage of appeal and revision, and, therefore, his application before the Tribunal is wholly premature. There is a catena of decisions, wherein interference by the Tribunal, during the course of departmental enquiry, has been strenuously deprecated as un-warranted interference, and no extraordinary reasons have been advanced to interfere in the conduct of the departmental proceedings at this stage. Under the circumstances, prayer for quashing the impugned memorandum dated 17.6.92, and restraining the respondents from taking any further proceedings in pursuance of the said impugned memorandum is rejected.

10. As regards the other prayer made by the applicant viz, to direct the respondents to consider the applicant's case through the DPC for the post of Commissioner of Income Tax, the applicant has himself admitted, in paragraph 4(iv) of his application, that his case for promotion to the grade of Commissioner of Income Tax has been considered and put in sealed cover by the DPC, which met in September, 1990. It also appears that his non-promotion as Commissioner of Income Tax has separately been assailed by him through the

OA 3053/92, which is pending before the Tribunal, and hence the question of adjudicating on that issue in this application does not arise.

11. Under the circumstances, this application is dismissed, with the observation that if any grievance survives after the departmental enquiry is disposed of, and the applicant has exhausted all the statutory remedies available to him, he will have the liberty to approach this Tribunal afresh, if so advised. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

J.P. Sharma
(J.P. SHARMA) 17.3.88
MEMBER (J)