

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A.NO. 352/92

DATE OF DECISION: 24.11.92.

P.K. MANDAL

..APPLICANT

VERSUS

UNION OF INDIA

..RESPONDENTS

SHRI G.D. GUPTA

..COUNSEL FOR THE APPLICANT.

SHRI R.S. AGGARWAL

..COUNSEL FOR THE RESPONDENTS

CORAM:

HON'BLE JUSTICE SHRI RAM PAL SINGH, VICE CHAIRMAN (J).

HON'BLE SHRI I.P. GUPTA, ADMINISTRATIVE MEMBER.

JUDGEMENT

( DELIVERED BY HON'BLE JUSTICE SHRI RAM PAL SINGH

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1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

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1. Applicant is an officer of Indian Revenue Service and joined as Income Tax Officer (Class I) on 20.7.1975. Subsequently, he was promoted to higher grade of Assistant Commissioner, now designated as Deputy Commissioner of Income Tax from 6.3.1985. When he was working as Income Tax Officer in West Bengal, he held the post of Income Tax Officer in Ward 'A' of Company District I, Calcutta for a period of 11.7.1984 to 12.2.1985. For this period, the respondents have issued to the applicant, a memorandum containing the charge-sheet in respect of certain cases decided by him as Income Tax Officer at Calcutta (charge-sheet Annexure I). This contains 11 articles of charges out of which 10 pertain to assessment made by him as Income Tax Officer. In substance, these charges refer to the alleged lapses pertaining to assumption of jurisdiction, issue of summons to shareholders of applicant's choice and completion of assessment in undue haste. It also includes matters like service of summons through unofficial agency, existence of privately printed tear of slips of record, and entries in the Revenue Review Register in vacant space, apparently left earlier. Article XI relates to orders passed by the applicant as Deputy Commissioner of Income Tax whereby interest relief admissible under the Law, was granted by the applicant to the assessees. Before the issuance of this charge-sheet, the applicant was served with a memorandum dated 22.8.1989 and was asked thereby to explain these alleged irregularities which are subject matter of the charge-sheet. The applicant submitted his explanation by his reply dated 18.9.1989. That is why, by this OA, filed under Section 19 of the Administrative Tribunal's Act of 1985, the applicant challenges the issuance of the charge-sheet and prays for relief of quashing of the disciplinary proceedings initiated against him.

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2. On notice, the respondents appeared and filed their counter. In their counter, they contended that the memorandum of charge was issued on the basis of substantial materials. According to them, the applicant completely ignored the jurisdiction order and when the assessment proceedings of M/s. Zirk Trading Company was pending before Income Tax Officer, E Ward, Calcutta and a letter was submitted by them on 23.8.1984 before the applicant with this regard, then the applicant without waiting for the jurisdiction order assumed jurisdiction by obtaining a duplicate return of income and started ~~assessment~~ proceedings. His action according to them, were not only malafide and not only highly illegal but were also motivated. They further contended that the records reveal that no enquiries were conducted by the applicant for ascertaining the truth of the fact whether the shareholders had the capacity to invest the money actually or the assessee company had used their own unaccounted money in bogus names of the shareholders. The alleged mistakes of the applicant were deliberate and motivated, as specified in the memorandum of charges. Inter alia, they opposed the prayer of the applicant made in the OA.

3. We have heard the learned counsel for the applicant Shri G.D. Gupta and also Shri R.S. Aggarwal, learned counsel for the respondents in great detail. The learned counsel for the applicant Shri G.D. Gupta contended that the contemplated enquiry relates to the period between 11.7.1984 to 19.2.1985. The memorandum of charge-sheet is dated 10.12.1991. Thus, after a long lapse of time, the charges which are to be enquired have become stale. He also contended in great detail, that these charges pertain to the quasi judicial orders passed by the applicant and in several judgements of this Tribunal as well

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as well as of the Supreme Court, it has been held that quasi judicial orders should not be subjected to a departmental enquiry. He also took us through the different articles of charges and contended that all the charges relate to the exercise of quasi judicial function, performed by the applicant as Income Tax Officer at Calcutta. He also placed before us the following judgments of this Tribunal:

- (1) S.C. Gangwar, OA 2752/91 dated 13.8.1992 decided by a Bench of this Tribunal.
- (2) S.K. Lal, OA 509/91, judgement dated 21.10.1991, decided by a Bench of this Tribunal.
- (3) Arun Kumar Basu, OA 2601/90, judgement dated 28.1.1992 decided by this Tribunal.
- (4) Sultan N.M. Ahluwalia, ITA No.1780 dated 30.10.1992 delivered by the Income Tax Appellate Tribunal.
- (5) Ramesh K. Desai, OA 560/88, judgement dated 4.4.1990 (1990 AISLJ p.241).
- (6) Gurbachan Singh Sahota (1989 (11) ATC 27)

and plethora of judgements wherein, it has been held that the stale and old charges should not be made the subject matter of enquiry; that on orders passed in exercise of quasi judicial powers, the department should not subject the applicant to departmental enquiry etc. etc.. Shri R.S. Aggarwal, learned counsel for the respondents placed reliance in the case of Union of India Vs. A.N. Saxena (JT 1992 (2) SC p.532) and contended that their Lordships of the apex court in this recent judgement have clearly laid down the Law that a

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departmental action can be taken with regard to the orders purported to have been passed in the judicial or quasi judicial proceedings. He further contended that in the said judgement, it has also been laid that if the actions indicate culpability that his desire to oblige himself or duly favour one of the parties or improper motive, then there is no reason also why disciplinary action should not be taken. In the end, he contended that charge-sheet dated 10.12.1991 has been issued on the basis of substantial material and after proper verification of the facts of the cases. We were also taken through all the documents produced by the parties.

4. Article (1) of the charge relates to the assuming of jurisdiction on the part of the applicant over the cases which were not within his jurisdiction. It also pertains to issuance of the summons only to 10 shareholders without any basis and failed to enquire sources of investment in shares and guineness of shareholders. In this article it is alleged that the applicant failed to maintain absolute integrity. Article (2) - under this article, the applicant in year 1983-84 - 1984-85, in the case of M/s. V.B. Industries Ltd. made assessment orders in irregular manner in undue haste and without proper enquiry with assumed jurisdiction, issued summons to some only. Article (3) - pertains to the case of M/s. Status Leasing and Finance Ltd. in which he is alleged to have, without making any enquiry, interpolated the records and issued summons without any basis, that too by unofficial agency. It is further alleged that the applicant failed to verify the guineness of shareholders accepting the claim of Assessee Company

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without verification, similarly, under Article IV, V, VI, VII, VIII, IX and X, allegations are made with regard to his assumption of jurisdiction about several companies without examining the books of accounts and failed to obtain the details of shareholders etc. etc. Under Article XI, the applicant is alleged to have allowed in year 1988, serious irregularity in passing a consolidated order, granting waiver if interests under Section 139(8) and under Section 217 of the Income Tax Act in 9 cases of a group for different assessment years even though the circumstances in all cases were not identical. He is also alleged to have granted waiver of interest under Section 139(8) and 217 of the Income Tax Act. Under this Article, it is clearly alleged that the applicant failed to maintain absolute integrity, exhibiting lack of devotion to the duty by conferring undue and illegal benefits. It is alleged that thus the applicant failed to maintain absolute integrity and exhibited lack of devotion to duty, acting in the manner unbecoming of a Government servant. These articles of charges relate to the culpability of the applicant with regard to the desire to oblige himself performing his quasi-judicial functions. These articles also allege that the applicant unduly favoured the parties to quasi-judicial proceedings with improper notice. These allegations are very serious in nature and are likely to affect the future career of the applicant. It is therefore, all the more desirable that these allegations should be enquired into so that the applicant may clear his name from the allegations and this can be done only when a Departmental enquiry is held. We are aware of the settled position of law, that when an officer is performing judicial or quasi-judicial functions, then the disciplinary proceedings

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can be taken only after great care and caution and close scrutiny of his actions. And if a prima facie case is made out then and only then the departmental proceedings should be initiated. Thus, the necessity of a prima facie case and necessity of extreme care and caution before the initiation of disciplinary enquiry are the sine quo non for initiating a departmental enquiry. Sufficient material to rebut the allegations contained in the Articles of charges for a prima facie case against the applicant has not been made available to us. The honesty and integrity of the applicant is doubted by the respondents as it appears from the Articles of charges and details there of. We are, therefore, unable to arrive at a rational conclusion. In the judgement of A.N. Saxena (supra), the apex court has held:

"It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence, the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour

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one of the parties or an improper motive there  
is no reason why disciplinary action should not  
be taken". (emphasis by us).

5. If the allegations in the articles of charges indicate that the delinquent discharged quasi-judicial functions with culpability of a desire to oblige himself or unduly favour one of the parties with improper motive then it is the departmental enquiry that should go into detail. The disciplinary authority is expected to be aware of the judgements quoted hereinabove in which it has been held that the stale matters of past several years, should not be made the subject matter of departmental enquiry. We also expect that the respondents are well aware that no departmental enquiry should be proceeded against a delinquent if he has passed a judicial or quasi-judicial ~~are~~ order. As the sufficient materials <sup>are</sup> not before us, we cannot separate the grain from the chaff. We are therefore, of the opinion that this O.A. at the present stage, is premature and we are not inclined to quash the departmental enquiry.

6. In the conspectus of the discussions and in the facts and circumstances of this case, we are of the view that this O.A. is premature and should be dismissed. But all the grounds raised by the applicant, shall be open to him if he is aggrieved by the ultimate decision made in the disciplinary enquiry and by the appellate authority. We, therefore, dismiss this O.A. But before parting we express that the Departmental enquiry should be concluded within a period of six months from the date of receipt of this order. Interim order passed earlier stands vacated. There shall be no order as to costs.

*I.P.Gupta*  
 ( I.P.GUPTA ) 24/11/92  
 MEMBER(A)

*Ram Pal Singh*  
 (RAM PAL SINGH)  
 VICE CHAIRMAN(J)