CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No.1379 of 1993 decided on 23.1.1998.

Name of Applicant : Shri Kanti Lal

By Advocate : Shri R.Kapur.

Versus

Name of respondent/s Union of India & ors

By Advocate : Shri R.S.Aggarwal

Corum:

Hon'ble Dr.Jose P.Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. -~~Yes~~/No

(N. Sahu)
Member (Admnv)

Date	Office Report	Orders

Item- 08

OA- 1379/93

31.10.96

Present: None for the applicant.

Shri R.S.Aggarwal, Counsel for respondents.

O.A. is complete for hearing.

As per directions of Hon'ble the Chairman passed on 15.3.96, list this matter before court for hearing on 10.12.96.

(DIWAKAR KUKRETI)
JOINT REGISTRAR.

List in CH II

6

9/12

10/12/96

To remain on BA.

13/8/97

Present: 1. Sh D R Gupta, Counsel for applicant

2. Sh R.S. Aggarwal, Counsel for respondents

Argument heard ~~and concluded~~ for some time. List on 14/8/97 as PH

Bench

Hon'ble Dr. Jose P. Verghese, VC(J)

Hon'ble Mr. N. Sahu, M(A)

PS to
KIC
CO/CB

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1379 of 1993

New Delhi, this the 23rd day of January, 1998

Hon'ble Dr.Jose P.Verghese, Vice Chairman(J)
Hon'ble Mr. N. Sahu, Member (Admnv)

Shri Kanti Lal, S/o late Lala Murari Lal Gupta, R/o 7UA/3, Jawahar Nagar, Delhi - 110 007 - APPLICANT

(By Advocate - Shri R.Kapur)

Versus

1. Union of India through the Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001

2. The Chairman, Central Board of Direct Taxes, North Block, N.Delhi - 110 001

3. The Chief Commissioner of Income Tax-II Central Revenue Building, New Delhi - 110 002 -RESPONDENTS

(By Advocate - Shri R.S.Aggarwal)

JUDGMENT

By Mr. N. Sahu, Member(Admnv) -

This Original Application is directed against the charge-sheet dated 22.5.1989 questioning the disciplinary proceedings and the findings in the enquiry report as violative of Rule 14 of the CCS(CCA)Rules, 1965 read with Article 311 (2) of the Constitution of India. This Original Application is also directed against the order dated 13.1.1992 of respondent no.3, the disciplinary authority, imposing the penalty of compulsory retirement from service; as also against the memorandum dated 19.4.1993, rejecting the appeal.

2. The grounds raised by the applicant are basically four in number. He pleads that he was

11

denied natural justice inasmuch as the listed primary documents and the other relevant documents were not made available. The allegation in Article 1 of the Charge-sheet is that the applicant had issued exemption certificates under Section 197(1A) of the Income Tax Act in respect of 32 assessees on whom he had no jurisdiction. In Article 2 of the charge it has been alleged that he had completed 43 assessments in 18 cases without jurisdiction but the jurisdiction orders covering the distribution of jurisdiction within District-IV which is a primary evidence was not produced. The applicant states that all the four witnesses, two from prosecution and two from defence, denied any knowledge of jurisdiction orders. The non listed document by way of a communication from ITO Headquarters to I.A.C.(System) is stated to be not a primary document. Even the assigned cases to Ward-IV(8) under Section 127 of the Income Tax Act were not produced. Without the availability of the list of these assigned cases it is not possible to say that the charged officer acted without any jurisdiction. Thus, it is submitted that this is a case of no evidence. Under Article - III of the charge-sheet the applicant was alleged to have received returns directly and not through the procedure of numbering the returns at the enquiry counter and the counter distributing the returns to the concerned officers. There is also an allegation that the numbered returns available with the applicant carry fictitious numbers. The allegation in Article-IV of the charge-sheet is that notices under Section 143(2) were issued in 14 cases against

12

departmental instructions only with a view to call the tax payers to his office. This was admittedly a procedural lapse. Applicant's case is that there is no evidence that he deliberately called the assessees to his office. In Article-V of the charge-sheet it is alleged that the notices for hearing were issued prior to receipt of returns and no proper record of hearing was kept and the assessments were completed in unseemingly haste.

3. The other grounds raised by the applicant are that the penalty imposed is not commensurate with the gravity of the misconduct. It is next urged that the disciplinary authority did not take an independent view for awarding the punishment but was influenced by the advice of the Central Vigilance Commission. In view of the above submissions it is prayed that the punishment order be quashed or at least modified being excessive.

4. There are six charges against the applicant. By his report dated 4.3.1991 the enquiry officer held that the first five charges were proved and the sixth charge was not proved. A copy of the enquiry report was made available to the applicant who submitted his representation thereon. The conclusion of the enquiry officer was that the integrity of the charged officer was suspect and, therefore, recommended the penalty of compulsory retirement.

13

5. The first charge was that the applicant dealt with the returns filed by assessees in an irregular manner and beyond his jurisdiction during two spells once during 1982-83 and again during 1984-85. He issued exemption certificates directing the disbursing authority not to deduct any tax in respect of their winnings from lotteries in 32 cases. The respondents relied on a letter dated 1.11.1983 (Ex.5/19 of the enquiry report) which has summarized the jurisdiction of the officers. This was challenged as a secondary evidence by the applicant. The applicant states that no notification issued by the Commissioner of Income-tax under Section 124 of the Income Tax Act defining the jurisdiction of District-IV and Wards thereunder was produced. He claimed that he dealt with cases as per practice and he acted within the jurisdiction known to him. He himself did not produce any order under which he assumed the jurisdiction. The applicant did not seek clarification as to whether he had jurisdiction on those cases or not. He never sought any clarification. The circulars and letters issued at different times and by different authorities clearly point out the jurisdiction of District-IV and Wards thereunder at the relevant time. The applicant admits that there is a Blue Book/Control Register and he admittedly has jurisdiction on the cases mentioned in the said register. It is clear that these 32 cases did not figure in the said Blue Book. Next is the order under Section 127 granting him special jurisdiction over specified cases. These are cases listed and identifiable and these 32 cases are not in

16

that list. The applicant states that the returns and documents in these 32 cases were forwarded to him by the Dak Counter and, therefore, he assumed jurisdiction over them. This is a very facile argument. No Assessing Officer under the Income Tax Act can proceed with a return of income or process any of the claims and exemptions made under the Income Tax Act without a specific jurisdiction. The jurisdiction of each charge; each range; and each ward is publicly notified. This notification is a public document and accessible to every assessee and member of the public. The applicant has a long experience as an Assessing Officer himself and he is supposed to know that an assumption of jurisdiction without knowing the correctness of the jurisdiction is bad in law. The Enquiry/Dak Counter circulating Returns to various officers is not to be taken as an authority. Either by mistake; or by an inadvertence; or by design; or by collusion they may distribute and place wrong returns before a particular Assessing Officer. The primary duty of the applicant as an Assessing Officer is to ensure that the return or the case he processes is within his jurisdiction. It is not a matter of belief nor it is a matter of practice. It is a matter of fact and law. There is a jurisdiction which he knows and which defines the cases. That jurisdiction can be inferred from both the Blue Book as well as from the list of notified cases. He simply cannot assume jurisdiction in the case of assessees who do not figure in either of the categories and who are stated to be non-assessees. A perusal of these 32 cases shows that some of them are not falling even

within District-IV not to speak of IV(8) under the jurisdiction of charged officer. He issued exemption certificates to 8 applicants on the basis of affidavits submitted by them in each case promising that they would purchase the NSCs after the receipt of the lottery amount. Particularly, in the case of non-assessee where subsequent follow up action is nonexistent or negligible, this type of treatment on an affidavit is wholly unwarranted. The basic law is that before the disbursement of the lottery amount, tax at the prescribed rate has to be deducted. If for any reason the recipient of the wind fall finds that there may not be any tax liability for him or that the tax liability will not be as high as per the prescribed rate, he shall approach the Officer under whom he is assessable for an exemption certificate under Section 197(1). Once this exemption certificate is produced the money is paid and for all we know there is no check if a wrong claim is ever made. It is precisely to prevent the inability of the tax administration to pursue people at a later stage that provisions have been made to account for the income received by way of lotteries and legislation has been framed to ensure that due tax is deducted at source. This is a case where the assessing officer should have shown vigilance, circumspection and a sense of care as an Assessing Officer. His primary duty is to secure the interests of revenue and ensure that the tax liability as per the Finance Act is scrupulously collected. By issuing these exemption certifications without taking adequate care the Assessing Officer has not acted in the right spirit. No exemption

16

certificate is issued on the basis of a promise of payment. It will be like locking the stable after the horse had fled. That these very assessees have subsequently purchased the certificates would not absolve him from the charge of showing scant vigilance at the time of issuing the exemption certificate.

6. Under Article 2 of the charge sheet the charged officer was accused of receiving returns of income of 18 new assessees and completed 43 assessments in these cases without any idea as to whether he has any jurisdiction over them or not. He did not deny that he completed the assessment of these 18 assessees. His grounds of defence were that (i) in the absence of any defined jurisdiction he cannot be accused of acting beyond jurisdiction; and (ii) the returns were received from the Dak Counter and they were supposed to know the jurisdiction. We have discussed at length that an Assessing Officer cannot at least act on a mere assumption in such a grave matter as his jurisdiction. As stated above, his jurisdiction is known to him initially by way of the cases listed in the Blue Book and the Notification under Section 127(1). These 18 cases are not admittedly part of these two sources of jurisdiction. The assessments were completed at one go without proper application of mind and in haste. There is a hint of suggestion that this was done to help the assessees.

17

7. The gravest of the charge is in Article -III which mentions that returns were directly entertained and dealt with by the charged officer without their coming through the Central Dak Counter. The returns are usually serially machine - numbered in a chronological order. The number on the return and the number of the acknowledgment are identical and these numbers are consecutive in seriatim. The prosecution found that in 24 cases these numbers were fictitious inasmuch as in the register maintained in the Dak Counter the particulars did not tally with the returns carrying those numbers before the applicant on whom he assumed jurisdiction. In fact some of the returns appearing against serial numbers in the returns sent to the applicant were actually sent to the other Assessing Officers for assessment. The applicant defends his innocence by saying that there was no evidence that he received these returns personally. He claims that these returns were forwarded through a memo. He defended himself saying that he cannot be held responsible if the returns were sent by the Counter clerks without entering these in the forwarding memo. The facts that the returns before him containing the serial numbers are different from the names and addresses of those serial numbers in the Central Dak Register are not disputed by him. Here again it is a question of bonafide belief and propriety that comes into play. If he is an old assessee, then there would be a back up of old assessment records. If he is a new assessee, it is certainly a case of jurisdiction. The Assessing Officer cannot plead that when ever any return came he

acted on that and completed the assessment. The whole system of jurisdiction would go haywire if this line of argument of the applicant is accepted. Under the Income Tax Act he has the primary responsibility of ascertaining whether he has jurisdiction in a particular case before he starts assessing on a new return. He could check it either from old records to be linked to the return in the case of an existing assessee or territorial jurisdiction if it is a case of a new return. The entire onus is on the Assessing Officer to establish that he was satisfied that he has jurisdiction and he acted in all good faith. This he has not discharged in these proceedings.

8. Next charge alleges that the charged officer completed the assessment in 14 cases under Section 143(3) of the Income Tax Act after giving a hearing while according to the instructions of the Central Board of Direct Taxes these assessments should have been finalized in a summary manner. The fact remains that the applicant did not dispute that in these cases assessments should have been completed under Section 143(1) of the Income Tax Act in a summary manner. He made the plea that he did not order issue of notice under Section 143(2). He states that he signed the notices placed before him in bulk without linking them to the relevant file. Thereafter he stated that once the process of hearing had begun he had no other option except to complete the assessment under Section 143(3). The officer is guilty on two counts. It shows lack of alertness or vigilance to state that he signed notices in bulk and initiated proceedings.

This would have been acceptable in the scheme of things before the summary assessment procedure was introduced. Under the summary assessment procedure not more than 2 % of the assessments within certain income groups are fit to be assessed under scrutiny. Therefore, it speaks poorly of the control of the Assessing Officer if in such a dispensation he has made bold to issue notices in bulk for hearing. This shows either non application of mind or lack of control or a deliberate design to defy instructions. It is common knowledge that people have for long resorted to filing voluntarily returns spread over a number of years and showed token incomes and paid nominal tax. Thereby they intended to build up capital. Once this game plan is sanctified by the blessings of the Income Tax Officer, the story of building up capital gains authenticity and legal sanction. That was the outcome when such voluntary returns filed in an innocent manner are closed after the pretence of making a scrutiny. The applicant is guilty in the first instance of initiating scrutiny notices and in the second instance of closing the whole case without scrutiny. His arguments in his defence are totally self-serving, inconsistent and showed no deference to the spirit of the Income Tax scheme. That he completed the assessments under Section 143(3) in the spirit of Section 143(1) is not a fair argument. It is inconsistent and does not need further examination. All these 14 returns are amongst the returns cited under Article III which were alleged

to have been given fictitious numbers and the charged officer did not have any jurisdiction over these new assessees.

9. After careful consideration we find that there is no justification for interfering with the order of penalty imposed on the applicant. On the basic question of jurisdiction the notifications conveying the jurisdiction are published documents. The notification assigning cases under Section 127 is also a public document. Whether produced or not in a judicial proceeding one can take judicial notice of a notification - a public document. The Assessing Officer can proceed with the return of income only when he has jurisdiction over the same. It is clearly his duty to satisfy himself that the return he is dealing with is one within his jurisdiction. If he had any doubts in this regard he could have sought a clarification from his superior officers. No assessing officer starts his day without boldly exhibiting on his table his jurisdiction. The entire gamut of provisions mandates an Assessing Officer to be familiar with his jurisdiction. He must satisfy himself as a responsible officer that the return he is dealing with pertains to a case in which he has jurisdiction. The responsibility for satisfying the Court is entirely on the applicant that he was satisfied about his jurisdiction in that case. For this purpose even if the notification was not readily available he had the Blue Book containing cases of his jurisdiction and the proceedings of the earlier years. Ex facie if any of the returns he had dealt with was

one of those which his predecessor had also dealt with in an earlier year in the same Ward, there was a prima facie basis to hold that he had acted within his jurisdiction. Such is not the case here. Even though notification was not produced, it does not mean that the notification did not exist and because the prosecution did not produce the notification, the applicant cannot absolve himself unless he satisfies the disciplinary authority as to how he arrived at a reasonable belief that he acted on a return which was filed within his jurisdiction. The applicant has not discharged that responsibility. Thus, issuing certificates under Section 197(1); completing assessments on the basis of returns received; completing assessments under Section 143(3) of the Income Tax Act in the manner prescribed under Section 143(1); and allowing cases of capital formation clearly established that the conduct of the applicant was not in accordance with the instructions on the subject issued by the Central Board of Direct Taxes. The conduct of the applicant was not bona fide and incidental to the discharge of his duties as an Assessing Officer. There is also clear indication that in all the first four charges listed above, there is an under-pinning of benefit being given to the assessees whose assessments were completed in the above manner. We have carefully scanned the elaborately recorded order of the disciplinary authority. We do not find any thing to support that the applicant acted in the normal course in a bona fide manner as incidental to the discharge of duties of an Assessing Officer. There was no effort on his

22

part at any stage to check up as to whether the returns he dealt with pertain to his jurisdiction. We find that there is evidence to prove the charges framed.

10. Finally, It is not possible to hold that the respondents were clearly influenced or dictated by the advice of the CVC. The CVC is an expert body to whom Central Government departments go in for advice. Such seeking of advice and guidance is mandatory under the instructions. The purpose of the CVC is to ensure that the departmental proceedings are conducted in accordance with law and the procedure established in law and that the Government officials accused of violating the conduct rules or committing dereliction of duties are not let off or punished without proper evidence and reasons. The advice tendered by the CVC is on similar footing with the opinion obtained from the UPSC. Because the department followed the advice of the CVC for compulsory retirement it does not follow that the departmental decision was taken without application of mind and that the departmental authorities have only repeated in a mechanical manner the CVC's advice. There is no justification for coming to that conclusion. As mentioned above, the CVC renders only an expert opinion to the disciplinary authority just as any other judicial officer seeks expert assistance from so many sources and arrives at his own conclusion. Simply because the CVC's advice was followed it does not mean that it was followed without application of mind. Any decision making authority can rely on any advice and follow the same.

That does not mean it ceases to be the decision of the authority. There is nothing wrong in an expert body advising the disciplinary authority on the basis of the material before it. Such advice can be accepted or rejected. It does not mean that there is application of mind only when the advice is rejected. Even if the advice is accepted the inference always is that it was accepted after the authority satisfied itself that the advice was proper. In view of the above discussion we do not find any merit in this contention.

11. With regard to the question of sufficiency of evidence and the plea of excessive punishment, there are now available a number of decisions of the Hon'ble Supreme Court. In **Tara Chand Vyas** Vs.**Chairman and Disciplinary Authority & others,** (1997) 4 SCC 565 it was held where the enquiry officer elaborately discussed each charge and gave reasons which were considered by the disciplinary and appellate authorities before coming to the conclusion that the charges were proved, the petitioner cannot say that the reasons were lacking. The departmental authorities are not expected to behave like civil courts. In the case of **N.Rajarathinam** Vs. **State of Tamilnadu,** (1996)10 SCC 371 the disciplinary authority imposed the punishment of dismissal on finding the delinquent guilty of demanding and accepting illegal gratification only on the basis of the evidence of one witness. Upholding the punishment, the recommendation of the Public Service Commission to take a lenient view is held to be not binding on the Government. The

24

standard of proof required under the Evidence Act of 1872 is inapplicable to a departmental enquiry. In **High Court of Judicature at Bombay Through its Registrar** Vs.**Udai Singh,** 1997(5) SCC 129 it is held that technical rules of evidence and proof beyond doubt are not applicable to a departmental enquiry. Punishment can be levied on the basis of preponderance of probabilities and the conclusions drawn as a reasonable man from evidence on record. Although discrepancies were noticed in that case, the Hon'ble Supreme Court upheld the punishment. In **Punjab State Civil Supplies Corpn Ltd. Chandigarh & others** Vs. **Narinder Singh Nirdosh,** (1997) 5 SCC 62 their Lordships have held that the High Court was not justified in interfering with the punishment awarded. In **State of Punjab** Vs. **Bakhshish Singh,** (1997) 6 SCC 381 their Lordships have held as under -

> "It is for the disciplinary authority to pass appropriate punishment, the civil court cannot substitute its own view to that of the disciplinary as well as the appellate authority on the nature of the punishment to be imposed upon the delinquent officer. The appellate court in view of its own findings that the respondent's conduct was grave, ought not have interfered with the decree of trial court."

12. As we are satisfied that there was evidence on the basis of which the charges against the applicant could be sustained, we do not consider it fit to interfere with the punishment awarded. The Original Application is dismissed. No costs.

(N. Sahu)
Member(Admnv)

(Dr. Jose P. Verghese)
Vice Chairman(J)

rkv.