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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

O.A.No.1624 of 1993.

Date of Decision: 19.5.1994.

Onkar Singh.....Applicant.

vs.

The Chief Secretary,  
Delhi Administration & others.....Respondents.

( For Instructions )

1. Whether it be referred to the Reporter or not? yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not?

( S.K. <sup>Su</sup>Phaon )

Vice Chairman.

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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI.

Q. A. No. 1624 of 1993

New Delhi, this the 19th day of May, 1994.

Hon'ble Mr Justice S.K.Dhaon, Vice Chairman.  
Hon'ble Mr B.N.Dhoundiyal, Member(A).

Onkar Singh S/O Shri Pir Chand  
at present working as Deputy Medical  
Superintendent/Director(Administration)  
in the office of Lok Nayak Jai Parkash Narain  
Hospital, New Delhi.

. . . . . Applicant.  
( through Mr A.K.Behra, Advocate).

vs

1. Chief Secretary,  
Delhi Administration,  
5, Sham Nath Marg,  
Delhi-54.
2. Secretary,  
Ministry of Home Affairs,  
North Block,  
New Delhi.
3. Secretary,  
Union Public Service Commission,  
Dholpur House,  
Shajahan Road,  
New Delhi-11.
4. Commission of Sales Tax,  
Delhi Administration,  
Vikas Bhawan, I.P.Estate,  
New Delhi.

. . . . . Respondents.

(respondents No. 1 & 4 through Mrs Meera Chhibber  
advocate. None for other respondents.)

ORDER

PER JUSTICE S.K.DHAON ( Oral )

The applicant, a Commissioner of Sales Tax, challenges the legality of the order dated 3.11.1993, passed by the President awarding him a minor punishment, namely, an entry of 'Censure'.

2. The applicant was subjected to disciplinary proceeding under the CCS(CCA) Rules. The charge is that he, while working as Sales Tax Officer in Ward No.44,

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Sales Tax Department, New Delhi, committed gross negligence, dereliction of duty and misconduct inasmuch as he under-assessed M/s. Vee Kay Enterprises, Tri Nagar, Delhi for the years 1979-80, 1980-81, 1981-82 and 1982-83 by framing the assessments at a very low turnover causing loss to the government revenue. Thus, he failed to maintain absolute integrity, devotion to duty and acted in a manner which is un-becoming of a Government servant and thereby contravened sub-rule(1) of Rule 3 of the CCS(Conduct) Rules, 1964.

3. Statement of imputation, as relevant, reads like this:

That the applicant framed the assessments of M/s Vee Kay Enterprises vide his order dated 2.5.1983. A scrutiny of the assessment orders/file of this dealer revealed that the said dealer had obtained 10 ST-I forms on 23.7.1979, 10 ST-I forms on 5.4.1980, 15 ST-I forms on 27.12.80, 12 ST-I forms on 25.4.1981 and 5 ST-I forms on 19.12.81 (total 52 ST-I forms. The dealer had furnished utilisation account in respect of ST-I forms issued on 5.4.1980, 27.12.1980, 25.4.1981 and 19.12.81 showing his purchases from various dealers on a very low scale. Cross-verification of the purchases, as declared by the dealer in his utilisation accounts revealed that the dealer had suppressed substantial purchases and had furnished false and fictitious utilisation account. The applicant failed to scrutinise the utilisation accounts furnished by the dealer at the time of assesment and also failed to make thorough enquiries before accepting the gross turnover as declared by the dealer during the above mentioned four years. He assessed the dealer on the Gross Turnover of Rs. 14076/- during 1979-80, Rs. 28971/25 during 1980-81 and nil turnover during the years 1981-82 (stock of Rs. 310/- was taxed) and nil

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turnover during the years 1982-83. The dealer had shown the total purchases of Rs. 40,285/75 in the utilisation account. The test check verification conducted by the Internal Audit Cell revealed that the above said dealer had issued 3 ST-I forms for Rs. 27592/50, Rs. 38218/32 and Rs. 87084/84 to M/s Johri Mal Jai Narain of Ward No. 26 for purchases during the year 1980-81, whereas the total gross turnover reflected by the dealer during the year 1980-81 was Rs. 28971/25. Similarly, ST-I bearing S.No. A/3-41499 was issued for Rs. 261791/33 during the year 1981-82 whereas gross turnover of the dealer for this period was determined by the applicant as nil. The audit party pointed out in the audit report that the aforesaid dealer had in fact, purchased without payment of tax goods valuing Rs. 9,72,904/- and Rs. 1,32,881/- during the years 1981-82 and 1982-83, respectively but did not account for these purchases in his account. The applicant accepted the declaration of the dealer and failed to detect suppression of purchases/concealment.

4. Section 23 of the Delhi Sales Tax Act, 1975 ('the Act') confers the power of assessment upon the Sales Tax Officer. Sub-section (3) of Section 23 is in two parts. In the first part, it is stated that if the Commissioner is satisfied that the returns furnished in respect of any period are correct and complete and he thinks it necessary to require the presence of the dealer or the production of further evidence, he shall serve on such dealer in the prescribed manner a notice requiring him on a date and at a place specified therein either to attend and produce or cause to be produced all the evidence as is specified in the notice. The second part provides that on the date specified in the notice, or as soon as may be thereafter, the Commissioner shall, after considering all the evidences which may be produced, assess the amount of tax due from the dealer. The crucial word in the second part of this sub-section is "considering". The Commissioner has to exercise quasi-

judicial powers while passing an order of assessment. In that context, the expression "consider" has a significant singular meaning. In our opinion, the statute requires a Commissioner, while passing an order of assessment, to apply his mind objectively and look into all the relevant papers, which may be before him for passing an order of assessment. It cannot be the case of the applicant that the ST-I forms did not form part of the record of the case, which was before him, while passing an order of assessment, in question. We have also referred, in detail, to the statement of imputation. A bare reading of the same would indicate that huge amount of purchases were made by the dealer. Any prudent person, while exercising the power of a Commissioner, has to certainly look into the ST-I statement. The fact that the dealer had accepted the purchase of small amounts should have put him on his guard. The applicant, was therefore, was required to deeply scrutinise the record of the case before passing an order of assessment.

5. The learned counsel for the applicant has placed reliance upon a departmental circular issued by the Commissioner of Sales Tax. This Circular is numbered as 30 of 1979-80 and was issued on 29.11.1979. Paragraph 3 of the Circular, upon which reliance has been placed, if scrutinised carefully, does not in any case advance the case of the applicant. It says that S.T-I forms should normally be accepted for allowing deduction from the turnover unless there is a cogent ground to disallow the same. Surely, it is not the intention of the Circular that a Commissioner of Sales Tax, while passing an order of

assessment should accept the correctness of the entries made in the S.T.I. Forms. The approach should be as to why the form should be accepted as correct. We have already indicated that the applicant, while acting upon the forms, did not act prudently.

6. The learned counsel for the applicant has placed reliance upon Section 67 of the Act. The heading of this provision is "Bar of Suits in Civil Courts". It provides that no suit shall be brought in any Civil Court to set aside or modify any assessment made or any order passed under this Act or the rules made thereunder and no prosecution, suit or other proceedings shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under the Act or the rules made thereunder. The argument is that this provision gives protection to the official of the department even with respect to departmental proceedings. This is not a correct reading of the provision. The purpose for which the same has been enacted is clear. It primarily gives protection to the Government. The Government is not a living person. It has to act through its officers. Therefore, an officer while acting by and on behalf of the Government is given equal protection. This provision really protects the Government and its officers from any legal action initiated by an outsider.

7. Article 310 of the Constitution enshrines the doctrine of pleasure in service jurisprudence. It mandates that a <sup>govt.</sup> ~~civil~~ servant holds office <sup>at the</sup> ~~as~~ pleasure of the President or the Governor, as the case may be. Article 310 is subject to the other provisions of the Constitution. It cannot be subjected to any statutory enactment. Section 67 of the Act, therefore,

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cannot control or regulate the exercise of power under Article 310. This provision, therefore, does not protect the applicant from disciplinary proceedings. The only limitation on the exercise of power under Article 310 is that before taking a decision of doing away with the services of a Government Servant, the procedural safeguard, as contained in Article 311 has to be followed. In the present case, that has happened.

8. Our attention has been drawn to the deposition of the successor Sales Tax Officer, who, conducted re-assessment proceedings of the dealer concerned. His statement, as material, runs like this. He was directed by the higher authorities to take up immediately the re-assessment of the dealer. The dealer had made heavy purchases of lesser value in his ST-II account (Utilisation account of statutory forms). The details of the purchases, as entered in the ST-I forms are reflected in the utilisation account. In the cross-examination, this witness has deposed that the assessments are made on the basis of the returns submitted by the dealer. In case of returns, showing the petty sales, the Sales Tax Officer is not supposed to cross-verify the purchases. This statement, in our opinion, does not help the applicant because the witness has made it clear that cross-verification is not normally done in respect of petty sales.

9. It is next urged that, since the petitioner exercised quasi judicial powers, his alleged misconduct cannot be the subject matter of disciplinary proceedings. The matter has been set at rest by the decision of the Supreme Court in a three-Judge Bench in

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case of Union of India and others vs, K.K.Dhawan, (1993)2 S.C.C.56. Their Lordships, after analysing the entire case law on the subject summed up that disciplinary action can be taken in six situations. We are concerned with situation Nos. 1 and 4. The first is that the disciplinary action can be taken if the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty. The other is that if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of statutory powers. We have considered this matter carefully and we are satisfied that in view of the conditions laid down by the Supreme Court, the applicant cannot be allowed to get away from the fact that he cannot be awarded any punishment in the disciplinary proceedings. To say the least, the facts of this case clearly show that the action of the applicant shows that he did not devote himself to duty.

10. Now, we may examine the order of the President in order to find out as to whether it is in conformity with law laid down by the Supreme Court and is based on relevant material. In the order, it is recited that the applicant should not have made the assessment in a mechanical manner and should have enquired of the dealer as to why he required



so many ST-I forms when he was being assessed for a low turn-over. He should have gone into the matter thoroughly before accepting the return of the dealer. Had he taken some precautions and conducted random checking in a couple of cases, he would have detected the fraud being committed against the Government by the dealer.

11. The President in his order has also referred to the opinion of the U.P.S.C., in which it is stated that the charge against the applicant is proved to the extent of making of negligent and careless assessment without malafide intention or motive. The opinion of the Commission does not run counter to the findings recorded by the President. Negligent and careless assessment is not something different from passing an order of assessment mechanically.

12. The finding of the President and the opinion of the Commission conform to the requirement of condition Nos. 1 and 4, as laid down by the Supreme Court in K.K.Dhawan's case (supra).

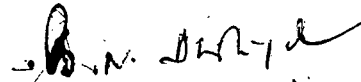
13. Lastly, the learned counsel has placed reliance upon the definition of "negligence", as contained in Black's Law Dictionary, 6th Edition, at page 1032. In the said dictionary, while dealing with the expression "negligence" it is observed that the term refers only to that legal delinquency which results whenever a man fails to exhibit the care which he ought to exhibit, whether it be slight, ordinary or great. It is characterized chiefly by inadvertance, thoughtlessness, inattention and the like while "wantonness" or "recklessness" is characterized by wilfullness. The law of


negligence is founded on reasonable conduct or reasonable care under the circumstances of a particular case. Doctrine of negligence rests on duty to exercise due care while dealing with others so as to obviate injury to others

12. We have already referred to the finding recorded by the President and the opinion expressed by the Commission that the applicant, while passing the order of assessment, did not exercise due care. Therefore, the argument does not advance the case of the applicant.

13. The learned counsel has placed reliance upon the judgment of the Supreme Court in Jai Laxmi Salt Works (P) Ltd. JT 1994(3)SC 492. In paragraph 10, it is observed that 'Negligence' ordinarily means failure to do statutory duty or otherwise giving rise to damage. This was a case relating to tortious claim, nonetheless, we can utilise the definition, as contained in paragraph 10, to the detriment of the applicant. Clearly, the sum and substance of the order passed by the respondents and the opinion of the Commission is that the applicant, while acting as a Sales Tax Officer and while passing an order of assessment, failed to perform his statutory duty as required by law.

14. In the result, the application fails and is dismissed but with no order as to costs.

  
( B.N.Dhoundiyal )  
Member(A)

  
( S.K.Dhaon )  
Vice Chairman.