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Central Administrative Tribunal
Principal Bench, New Delhi.

O.A. No.2112 of 1993

3rd day of March, 1994.

Shri N.V. Krishnan, Vice-Chairman(A)

Shri B.S. Hegde, Member (J)

Shri R.K. Jain,
E-11/3, Vasant Vihar,
New Delhi-110057.

Applicant

By Advocate Shri S.C. Gupta, Sr.Counsel
with Shri L.R. Goel, Advocate.

Versus

1. Union of India through
the Secretary,
Ministry of Finance
(Dept. of Revenue),
North Block, New Delhi.

2. Chairman,
Central Board of Direct Taxes,
North Block, New Delhi.

Respondents

By Advocate Shri V.P. Uppal.

O R D E R

Shri N.V. Krishnan, Vice-Chairman

The applicant is a member of the Indian Revenue Service and he filed this application while posted as Deputy Director of Income Tax at Delhi. He is aggrieved by the disciplinary proceedings initiated against him by the Memo. dated 4.2.1991 enclosed with Annex. 'A'

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letter and has sought the following reliefs:-

- (a) Quash and set aside the memorandum bearing No.F.No.C-14011/12/91-V/L dated 4.2.91 as also the substance of imputation of misconduct and misbehaviour in respect to which the inquiry is to be held as set out in the state of Articles of charge appended as Annexure A to the memorandum and the statement of imputation of misconduct or misbehaviour in support of which article of charges appended as Annexure II to the memorandum as also the order dated 17.11.1992 appointing the Inquiring Authority;
- (b) Quash and set aside the order of the Respondents bearing No.F.No.C-14011/12/92-V&L dated 17.7.91;
- (c) (Or in the alternative and without prejudice to the aforementioned reliefs), to direct the Respondents to expedite the disciplinary proceedings commenced under memorandum No. F.C-14011/12/91-V/L dated 4.2.91 and to conclude the same within a specified period.

2. The application came for admission on 6.10.1993. We felt that, in the circumstances of the case, the only prayer that we could consider was item (c) reproduced above. He pointed out then, that, in pursuance of the Annex.'B' order of the Tribunal dated 7.4.1992 in the earlier OA-1375/91, the respondents have considered the reply of the applicant to the memorandum of charges and passed an order on 17.7.1992 (Annex.D) stating that

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the applicant has not been able to explain the charges to the satisfaction of the disciplinary authority and, therefore, Smt. Banani Dasgupta, DCIT (Inquiries), Bombay as the inquiring authority. Subsequently, on 17.11.1992, when the said Smt. Banani Dasgupta was transferred, Shri Muntasir Ahmed, DCIT, was appointed as the enquiring authority to enquire into the charges (Annex.F). It is stated that since then the departmental enquiry is pending without any progress.

3. We, therefore, directed issue of a notice to the respondents in regard to prayer (c).

4. The respondents have filed a short reply to this prayer in which they have explained the various steps that they have to take before the final order can be passed and the respondents requested for at least two years' time to complete the disciplinary proceedings.

5. It is only on this issue that there were hearings since then.

6. On 16.12.1993, the respondents were directed to produce the instructions which require a reference to be made to the Central Vigilance Commission even though the departmental enquiry is not instituted. At the instance of the C.V.C. as also the rules relating to consultation of the U.P.S.C., more particularly, whether this should be done after tentative decision is taken by the department or before that. A statement has been filed by the respondents in which it is stated that

in accordance with the charter given to the Vigilance Commission, it is required to be consulted on all matters relating to Gazetted officers. It is also stated that the report of the Enquiry Officer, along with the advice of the C.V.C., is to be considered by the disciplinary authority with a view to taking a decision whether the report is complete in all respects before a second show-cause notice is given to the charged officer, for which also, reasonable time should be given. After considering the reply, the U.P.S.C. has to be consulted and the Commission takes about six months to give its advice. Hence, for these reasons, respondents have prayed for granting appropriate time to complete the enquiry proceedings.

7. The learned counsel for the applicant, on the other hand, draws our attention to Govt. of India's instructions dated 8.1.1971 under Rule 15 of C.C.A. Rules, which gives a time-limit of three months for passing orders on the Enquiry Officer's report where C.V.C. and U.P.S.C. are not to be consulted.

8. We have heard the learned counsel for both sides. We notice that, in their short reply, the respondents have not stated what proceedings have been taken by the second Enquiry Officer after his appointment by the Annex.F order dated 17.11.1992 until the applicant filed this O.A. in the Tribunal on 4.10.1993. They have also not denied the statement made by the counsel, who submitted that there has been no progress in the inquiry. Obviously, the respondents have not paid sufficient attention to the expeditious disposal of the departmental enquiry, despite the existence of instructions on the subject which underline this requirement.

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9. It is in this background that we have to consider the time-limit that is required to be fixed, if at all, in this case. The learned counsel for the applicant points out that the memorandum of charges relates to completion of assessments in a casual and negligent manner apparently with a view to conferring undue benefits or favours on the assessees. There are three articles of charges relating to 10 assessees. The number of assessment cases involved is, however, 15, as mentioned in Annex.1 of the impugned memorandum of charges dated 4.2.1991. Annex.2 to that memorandum is a statement of imputations. Annex.3 is a list of documents by which the articles of charges are expected to be proved. These include the assessment records as well as, in one case (M/s Makanji Traders referred to in article 3 of charges), the order of the Commissioner of Income Tax relating to jurisdiction, the assessee's letter objecting to jurisdiction and the order of the Commissioner of Income Tax (Appeals). The Finance Bill and Finance Act relating to the assessment year 1985-86 is also a document. Annex.4 states that there are no witnesses to be examined. The applicant has already filed his detailed reply. Therefore, the enquiry case be completed early.

10. This is a case where no witnesses have to be examined. Only records cited in the memorandum of charges and the reply given by the applicant⁵ have to be considered. The Enquiry Officer is

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a Deputy Commissioner of Income Tax, who naturally would understand the import of the charges and statement of allegations on the one hand and the reply given by the applicant on the other. It should not, therefore, be difficult for him to sort out quickly the charges/imputations/points on which the applicant's reply is satisfactory and those on which it is unsatisfactory. It would then be his duty to give an opportunity to the applicant to add to his reply or give any further clarification in regard to those areas in respect of which his reply is unsatisfactory. He can then frame his report. We are of the view that all these can be completed in two months. The applicant has necessarily to cooperate with the Enquiry Officer, to render this possible failing of which the Enquiry Officer can proceed to complete the enquiry in accordance with law. We also make it clear that the disciplinary authority should closely monitor the progress of the enquiry proceedings as we are of the firm view that the reasons given for the pendency of the enquiry, are totally unjustified and unsatisfactory.

11. We note that instructions exist that, where there is no need to consult the U.P.S.C. or the C.V.C., the enquiring authority should decide a departmental enquiry case in 3 months from the date the enquiry report is submitted (Para.8.1 of Chap.XII of Vigilance Manual, Vol.I - First Edn. of the C.V.C.). This can be used as a yardstick

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to determine the time required by it.

12. The respondents have not clearly stated anywhere that the departmental enquiry has been initiated at the instance of the C.V.C. We are of the view, that unless a disciplinary enquiry proceeding is brought under the purview of the resolution dated 11.2.1964, communicating Government's decision to set up the C.V.C., it would not be necessary to refer each and every case to the C.V.C. We notice that, in the present case, the gravamen of the charge is careless and negligent assessment with a view to conferring benefits on the assessees. Obviously, this should be an act of misconduct amounting to corruption. We further notice from the memorandum of charges dated 4.2.1991 enclosed to the Annex.A letter transmitting it to the applicant that a copy of the memorandum of charges has been endorsed to the Director, C.V.C. with reference to the CVC'S U.O. No.UITX dated 25.11.90. Obviously, there has been the involvement of the C.V.C. in this matter and, therefore, in terms of the standing instructions, the C.V.C. has to be consulted. We are of the view that a maximum period of about three months - i.e. the same as the disciplinary authority takes as mentioned in para.11 - should suffice for this purpose.

13. The U.P.S.C. has also to be consulted. It is stated that the Commission takes six months' time normally. That would depend upon the complexity

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of the case which, in turn, would depend, among others, upon the nature of the charges and the number of witnesses examined. In one respect, the present disciplinary proceeding is simple, inasmuch as no witnesses have to be examined. The charge has to be established or disproved only on the basis of the assessment cases and the interpretations placed. In addition, there would be on the record the views recorded by the C.V.C. after examining the Enquiry Officer's report. We are of the view if a suitable request is made by the Government to the U.P.S.C., the latter would consider disposing of this case expeditiously and, therefore, a margin of 3 months seems to be adequate for this purpose. We make it clear that our observations in this respect are not to be treated as any direction to the U.P.S.C., which is not a party to this case.

14. We notice that the reply does not deal with the stage at which the U.P.S.C. is to be consulted. We, however, observe that the Home Ministry has issued instructions on 4.8.1964 that when consulting the U.P.S.C., the Govt. has to state what decision it has taken provisionally on the penalty. It is not required to give any comments on the merits of the charges/reply or express any findings on the charges.

15. In regard to provisional penalty, the Government would have received the advice of the C.V.C. Therefore

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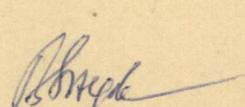
at this stage, Government may not require much time at all.

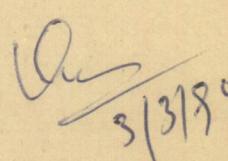
16. The next stage is reached when the advice of the U.P.S.C. is received. Unless there is a disagreement, there should be no difficulty in reaching a final decision in the case.

17. Considering all these circumstances, Govt. can take all decisions required at various stages in three months, as very little original work has to be done by Government except in the case of disagreement.

18. Therefore, the final order can be passed in 11 months, i.e., 2 months for the Enquiry Officer and three months each for the C.V.C., U.P.S.C. and Government. Providing for slippages in the schedule, a limit of 12 months is reasonable.

19. We, therefore, dispose of this O.A. with a direction to the respondents to ensure that the final orders in the disciplinary proceedings are passed as expeditiously as possible - say, in 12 months from today - keeping in view the observations we have made herein.


(B.S. Hegde)
Member(j)


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(N.V. Krishnan)
Vice-Chairman(A)