

(14)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 2229/93

NEW DELHI THIS THE 25th DAY OF NOVEMBER, 1994.

MR. JUSTICE S.K. DHAON, VICE-CHAIRMAN (J)
MR. B.K. SINGH, MEMBER (A)

Shri R.P. Rajesh
S/o late Sh.B. Ram
R/o Central Govt. Officers'
Quarters, Block 'D'
Flat No. 1
Purna Dass Road,
Calcutta-29.

APPLICANT

...
BY ADVOCATE SHRI P.P. KHURANA.

vs.

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

2. Central Board of Direct Taxes
through its Chairman,
Ministry of Finance
North Block
New Delhi.

...
RESPONDENTS

BY ADVOCATE SHRI V.P. UPPAL.

ORDER

JUSTICE S.K. DHAON:

Chapter XX-A of the Income Tax Act, 1961 pertains to "Acquisition of Immovable Properties in certain cases of Transfer to Counteract Evasion of Tax". The applicant, a Deputy Commissioner of Income Tax, was authorised by the Central Government to perform the functions of a competent authority under the aforesaid chapter. A memorandum dated 3.8.1993 issued by the President was served upon him (the applicant) indicating therein that an inquiry against him was proposed to be held under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965. Along with the memorandum, a statement of article of charge framed against him together with a statement of imputations of misconduct or misbehaviour by which the article of charge was sought to be established, were also served upon him. During the pendency of the disciplinary proceedings, the instant OA was filed on 18.10.1993

Sd/-

praying, inter-alia, that the disciplinary proceedings may be quashed.

2. On 16.12.1993, this Tribunal(Hon'ble Mr.N.V. Krishnan, Vice-Chairman(A) & Hon'ble Mr.B.S.Hegde, Member (J)) passed an interim order restraining the department from proceeding further in the departmental enquiry against the applicant. That order continues to operate even now.

3. The charge against the applicant is that while posted as Inspecting Assistant Commissioner (Acquisition), New Delhi, he committed grave irregularities while dealing with some acquisition cases and thereby failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government servant. He thus violated the provisions of Rules 3(1)(i),3(1)(ii) and 3(1)(iii) of the Central Civil Services Conduct Rules. The imputation is that while dealing with the properties which were transferred for an apparent consideration exceeding Rs.3 lakhs, the applicant acted in violation of the letter of the Commissioner of Income Tax, Delhi-II bearing No.C-II/Hq.II/67/82-83 844 dated 11.3.1983 wherein the Central Board of Direct Taxes(the Board) had decided that in all acquisition cases where the apparent consideration exceeded Rs.3 lakhs, the matter should invariably be referred to the Valuation Cell and that the report of the Valuation Cell be duly considered for deciding whether or not to initiate acquisition proceedings. In certain cases, no reference was made to the Valuation Cell at all. One of the misconduct was that in one case, the applicant issued a notice of preliminary inquiry on 25.8.1984 fixing the case for hearing on 27.8.1984. On that day, he made a reference and called for the report of the Valuation Officer. However, on the same day, he dropped the proceedings. The allegation is that he having referred

the case to the Valuation Cell ought to have waited for the report instead of rushing through the proceedings and dropping the same. Since the matter was not getting barred by time, there was no hurry to close the proceedings. This conduct on the part of the applicant reflected mala fide intentions. The other misconduct attributed is that he arbitrarily adopted a rate of Rs.1450/-per Sq.mt.for the cost of construction. He relied upon the rate adopted by the Valuation Cell in various cases pertaining to old Delhi in 1984. He claimed that the construction rates worked out by the Valuation Cell in respect of different areas of Old Delhi relevant to the year 1984 had been compiled by him and kept in a Master Folder. However, the Master Folder was not shown to the department by the applicant. One other misconduct alleged against him is that he did not indicate any basis for arriving at the land rate of Rs.2,200 per sq.ft. on the relevant day. He failed to furnish any detailed reason for accepting the aforesaid rate.

4. In **UNION OF INDIA .vs. UPENDRA SINGH (JT 1994(1) S.C.658)**, it is held that in the case of charges framed in a disciplinary inquiry the Tribunal or Court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any)no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At that stage,the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of

the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgement not only on the correctness of the decision making process but also on the correctness of the decision itself.

5. The Hon'ble Supreme Court in the aforesaid case quoted with approval six situations set out by their Lordships in the case of **UNION OF INDIA vs. K.K. DHAWAN** (1993 (2) SCC 56) in which the disciplinary action can be taken with respect to the judicial/quasi judicial conduct. They are:

- (i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers.
- (v) if he had acted in order to unduly favour a party;
- (vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

6. Keeping in view the decision of their Lordships in **Upendra Singh** (supra), we may now examine the contentions advanced at the Bar in support of this application and also determine the question as to whether in view of the facts and circumstances of this case, we have jurisdiction to interfere with the disciplinary proceedings which are still going on.

7. A good deal of arguments have been advanced at the Bar on the question as to whether the aforesaid letter of the Commissioner of Income Tax, Delhi-II dated 11.3.1983 conveyed the decision of the Board. We are refraining from giving a concluded judgement on this point as in view of the order we are about to pass, any decision given either way, is likely to prejudice the rights of the parties.

8. The learned counsel for the applicant has very fairly conceded that the decision taken by the competent authority under Chapter XX-A not to initiate acquisition proceedings in the case of transfer of a property is not subject to any appeal, revision or review by any authority of the Income Tax department. Such a decision, therefore, is final so as the machinery provided under the Income Tax Act is concerned. It follows that the decision of the competent authority to adopt a certain rate of the cost of construction or the rate of land is final. Surely, it could not be intended that the competent authority would be vested with arbitrary powers to adopt a particular rate. It necessary follows that it has to justify the rate adopted by it on relevant considerations in spite of the fact that while adopting such a rate, it has exercised a quasi-judicial function and, therefore, its conduct is quasi-judicial in nature. It is open to the department in the disciplinary proceedings to establish by evidence that the competent authority deliberately and designedly adopted the certain rate with mala fide intentions. Such a conduct, in our opinion, would fall within one of the six situations set out by their Lordships in K.K.Dhawan's case(supra).

9. The learned counsel for the applicant has vehemently urged that the list of the documents supplied to the applicant along with the article of charge do not, in any manner, indicate that the same has any

CJ

relevance with the adoption of the cost of construction or the rate of the land. He has also drawn our attention to the fact that in the disciplinary proceedings, the department has not proposed to examine any oral evidence. This is so as in the list of witnesses, the expression 'nil' is mentioned. Be that as it may, there is no warrant for the proposition that in the disciplinary proceedings, the department cannot rely on any other evidence either documentary or oral which is not indicated along with the article of charge. Any document or any witness other than the one mentioned in the list supplied to a delinquent Government servant can be brought on record in the disciplinary proceedings after observing the principles of natural justice and after affording a full opportunity to the delinquent Government servant to rebut the same.

10. Having given due consideration to the facts and circumstances of the case, we feel that we should not interfere at this stage with the disciplinary proceedings and while doing so, we will be acting in consonance with the dictum laid down by their Lordships in Upendra Singh(supra).

11. We, however, make it clear that any observations made by us in the present order will have no bearing on the merits of the disciplinary proceedings. It will be open to the applicant to challenge the legality and propriety of any order of punishment, if passed against him, by taking appropriate proceedings before an appropriate forum and in those proceedings, it will be open to him to advance all possible contentions as are admissible under the law.

12. This application is dismissed but without any order as to costs.

(B.K.SINGH)
MEMBER(A)
SNS

(S.K.DHAON)
VICE-CHAIRMAN(J)