

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.799/1993

NEW DELHI, this 11th day of February, 1994

Hon'ble Shri N.V. Krishnan, Vice-Chairman(A)
Hon'ble Shri C.J. Roy, Member(J)

Shri K.C.Kukreja
s/o Shri Parma Nand
272, Sector IV, RK Puram
New Delhi-11 022

.. Applicant

By Shri G.D.Gupta with Shri S.M.Rattanpaul,
Counsel

VERSUS

Union of India, through

1. Secretary
Department of Revenue
Ministry of Finance, North Block
New Delhi

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

3. Chief Commissioner of Income-Tax(Admn.)
Income Tax Department
CR Building, New Delhi

4. Commissioner of Departmental Enquiry
Chief Vigilance Commission
Jamnagar House
New Delhi

.. Respondents

By Shri V.P.Uppal, Advocate

ORDER

By Hon'ble Shri C.J. Roy, Member(J)

The applicant has assailed the charge -sheet Memorandum dated 12.10.1992 and prayed for quashing of the same, with direction to the respondents to release him the retiral benefits, alongwith interest thereof on the delayed payment.

2. Briefly stated, the facts of the case are that the applicant, who was due to retire as Income Tax Officer (Group B) on 31.10.1992 on attaining superannuation, was issued with the impugned Memo dated 12.10.92 at the fag

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end of his service, alleging certain irregularities to have been committed by him while functioning as Income Tax Officer, District VII (2nd Addl.), New Delhi during the period 1986-87 and informing him that an enquiry was proposed to be held against him under Rule 14 of the CCS(CCA) Rules, 1965. The applicant submitted reply on 22.10.92, followed by another representation dated 30.11.92, denying the allegations cited in the charge-sheet and for dropping of the same. But the applicant was informed vide Memo dated 4.3.93 that an Inquiry Officer-Commissioner of Departmental Inquiry was appointed, thereby indirectly rejecting his representations without assigning any reason therefor.

3. As per the charge-sheet, the applicant is alleged to have been involved in irregularities in the maintenance of Demand & Collection Register and delay in issue of refunds in seven cases wherein the assessment were made between December, 1986 and March, 1987. The applicant states that on the basis of anonymous and unsigned complaint, an inspection of his work was carried out during February-June, 1987 in the seven cases cited and the irregularities were incorporated in the inspection report dated 22.7.87 (Annexure A-4) and vide letter dated 6.8.87 (Annexure A-5), the applicant was asked to submit his comments. He gave his comments on 12.10.87 (Annexure A-6). The applicant did not hear anything further from the respondents till 1991.

4. Earlier the applicant was issued with a Memo dated 21.8.91 (Annexure A-7) pointing out the serious irregularities/lapses committed by him in three more cases during March, 1987 and asking him to explain his position within ten days therefrom. The applicant submitted his reply on 10.2.92 (Annexure A-8), after he was allowed inspection of records from 21 to 24.1.92. In spite of all these, the applicant alleges that he was issued with the impugned memo as a result of which his retiral benefits are stated to have been withheld. He also alleges that the Central Vigilance Commission has pressurised the disciplinary authority (Respondent No.3 herein) in the issuance of the impugned though that authority had repeatedly concluded that no case was made out against the applicant.

5. The applicant, therefore, alleges that the charge-sheet has been issued to him malafide with a view to harass him by depriving him of full retiral benefits at the instance of the Central Vigilance Commission. Hence this application.

6. The respondents have filed their counter denying any malafide in the issuance of the impugned memo. They concede that there has been delay in the initiation of the disciplinary proceedings but they also aver that investigation is a complex and time consuming process and it can start only after the lapses come to the notice of the Department. They deny the argument that no inquiry can be held with regard to allegations/charges pertaining to discharge of

quasi-judicial functions by the applicant. They also deny that the Central Vigilance Commission pressurised the disciplinary authority to issue the impugned charge-sheet. They agree that the advice of the Central Vigilance Commission is not binding but the disciplinary authority is required to apply his mind to the Central Vigilance Commission's advice before accepting the same. As such, the charge-sheet was issued after independent and due application of mind by the disciplinary authority on the basis of the facts and circumstances of the case. They further aver that some of the retiral benefits like pension, Group Insurance Scheme, leave encashment etc. have already been/or are in the process of being made to the applicant but payment of gratuity and commutation of pension have been withheld under Rule 69 of the CCS(Pension) Rules.

7. It is denied by the respondents that the enquiry is being held on the basis of an anonymous and unsigned complaint. It is stated that a Deputy Commissioner of Income Tax conducted a vigilance inspection on the omissions and commissions and also submissions made by the applicant and the enquiry was held based on his inspection report. The respondents further contend that the Inquiry Officer, an outsider, will look into the charges in an objective and dispassionate manner and come with his findings on the merits of each charge. Thus, they aver that the interest of the applicant has not so far been jeopardised so as to warrant redressal

by this Tribunal. Any intervention by the Tribunal at this stage will be premature and will militate against the principles of natural justice.

8. The applicant has filed his rejoinder denying the averments made in the counter and reasserting what he has stated in the OA. He also reiterates that the assessment made by him in all the seven cases was upheld and as such there was no question of any lack of integrity or devotion to duty or negligence or misconduct on his part.

9. The applicant filed on 7.10.93 MP 3209/93 for a direction to the respondents to produce the correspondence exchanged between the Chief Commissioner of Income Tax-III and the Central Vigilance Commission and the Director(Vigilance) in the Income Tax Department so as to facilitate adjudication of the OA. This was prayed in the context of the allegations made in the OA that the disciplinary proceedings have been initiated on the compulsion of the Director of Vigilance, much against the wishes of the disciplinary authority. Therefore, a notice was issued to the respondents to produce the records. These records were examined and the case came for final hearing and it was reserved for order.

10. We had already admitted the application on 14.5.93 but declined to give any interim relief in regard to continuing the departmental enquiry proceedings. However, when the learned counsel for the applicant submitted that the proceedings be declared void in view

of the fact that the disciplinary authority was pressurised into taking a decision at the instance of the Director of Vigilance, we felt it necessary to consider this aspect of the matter as it really goes to the root of the matter. Therefore, we are not concerned with the merits of the charges in the disciplinary proceedings or the merit of the reply filed by the respondents. We are concerned only with the point whether the disciplinary authority has independently applied his mind and decided to issue the charge-memo or he has surrendered his judgement and is acting on the direction of the Director of Vigilance.

11. The short point for consideration is whether the impugned memo for initiation of departmental enquiry is at the instance of the C.V.C. so as to render it invalid.

12. We have heard the counsel for both the parties and perused the records made available to us, including the departmental file leading to the issuance of the impugned memo.

13. We have perused the file No.CIT/VIG/G/DP(407)/8/91 of the third respondent i.e. the Chief Commissioner of Income-Tax III (CCIT-III, for short) relating to the applicant. We notice that this file was initiated on the receipt of an anonymous complaint sometime in March, 1986 (page 1). On the basis of this complaint, the Inspecting Assistant Commissioner, Income Tax(Vig.) wrote to the Commissioner of Income Tax, Delhi X on

12.11.86 (page 3) for a report. As seen from the latter's reply dated 12.2.88 (page 9) this was enquired into by the IAC Range X-B who carried out a vigilance inspection as desired. He submitted his report on 22.7.87 - Annexure A-4 of the OA - which was then forwarded by the CIT to the Dy. Director (Vig.), who requested the CIT to obtain comments of the applicant. These comments were obtained - Annexure A-6 of the OA - and thereafter, the CIT sent his comments to the IAC (Vig) vide his letter dated 12.2.1988 (page 9).

14. Nothing happened till 1991. On 2.8.91 (page 20), the Dy. Director of IT(Vig) in the Directorate of Inspection(Vigilance) forwarded a draft memorandum which was to be signed and issued to the applicant by his disciplinary authority asking for his reply. The reply was to be sent to the DI(Vig) with the comments of the disciplinary authority. This memorandum issued on 21.8.91 is at Annexure A-7 of the OA. The applicant gave his reply on 10.2.92 (Annexure A-8). This was forwarded by the CIT-III with his comments as would appear from later notes.

15. It would appear that this was considered in the Central Vigilance Commission which tendered its advice on 20.5.92 that major penalty proceedings should be initiated against the applicant. This was conveyed in the letter dated 9.6.92 (p. 60) of the Dy. Director, IT(Vig) to Shri Amitabh Mishra, Dy. Commissioner, IT(Vig) in the office of the CCIT-III alongwith the advice and relevant notes of the Central Vigilance Commission. Thereupon, the advice tendered by the Chief

Vigilance Commissioner was examined critically in the office of the third respondent, the disciplinary authority on 3.7.1992. A perusal of this note, which was approved by the CCIT-III on 3.7.92 (page 25/notes) discloses that the disciplinary authority disagreed with the CVC's advice and felt that it was a proper case to request the CVC to reconsider his advice.

16. The charges which were ultimately framed against the applicant are based on this very enquiry. The two major issues which come out from the charges (Annexure A-I) are irregularities in the assessment of certain cases and the delay in refunds. On these issues the note concurred in by the CCIT-III stated that perhaps the CVC has not gone fully into the record and not seen the second report of the CIT-VII who gave his comments on the reply dated 10.2.92 (Annexure A-8) furnished by the applicant to the memorandum/referred to in para 14 ^{dated 21.8.91} supra.

17. In regard to refunds, it is mentioned in the note that the applicant stated in his reply that he had disposed of 5800 cases, out of which refunds must have culminated in about 1600 cases. The complaints of delay have been made in 67 cases. Out of these, 45 refund files were made available to the applicant. Refunds were issued within the statutory limit of 3 months in 26 cases. In 18 cases where there was greater delay, the officer has explained it by giving proper reasons. The case of non issue of refund is only one and a valid explanation has been given for this also.

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18. Adverting to the irregularities in assessment, it is noted that the CIT-VII had held that the non-verification of cash credits and non-verification of loan confirmation furnished by the assesseees were minor lapses. The CVC has disagreed with this view. The CCIT-VII has observed as under in this connection (page 24):

"The concept of scrutiny does not seem to be very clear in the mind of the CVC. With the workload of about 6000 summary assessments, an ITO is not expected to do the kind of scrutiny which an ITO of investigation circle is expected to do. More often than not, scrutiny of a case involves only a ~~te~~k check of accounts. The CIT-VII has rightly observed that it was a minor lapse when these confirmatiks were not cross checked. In fact, this alleged irregularity should be viewed in the perspective of the general trends of scrutiny prevailing in the department. We should also bear in mind that Group B ITOs are not given formal training in law or procedure. Therefore they learn only by observing what others are doing in similar circumstances. So, if this is the general standard of scrutiny in the depaprtment, it would be unfair to single out a single ITO for charge-sheeting"

19. The CCIT-III approved the proposal for requesting the CVC to reconsider its opinion. A letter was issued by Shri Amitabh Misra, DC-IT (Vig) on 6.7.92 (page 66) addressed to the Director of IT(Vig) reproducing in extenso the note dated 3.7.92 approved by him. No reply was received by him in regard to his request that the opinion of the CVC should be reconsidered.

20. Instead, the Chief Commissioner, IT(Admn) received a letter dated 23.7.92 from the Dy. Director, IT(Vig) relating to the complaint against the applicant, which gave the following direction (p.74):

" 2. In this context, I am directed to inform you that a decision has been taken with the approval of Member (P&V) that we may proceed with the initiation of disciplinary proceedings against Shri K.C.Kukreja, ITO, Group B, Delhi o at this stage and that on receipt of the Inquiry Officer's report and the 2nd stage advice of the CVC thereon, a suitable recommendation can be made to the CVC for dealing with the matter.

3. I am further directed to request you to issue the charge-sheet to Shri K.C.Kukreja, ITO, Group B immediately."

No reference is made to the request made by Respondent 3 for consideration of the CVC's advice.

20. It is on receipt of this letter that, subsequently, the charges were framed against the applicant and communicated to him by the impugned Annexure A-I memorandum dated 12.10.1992.

21. These documents in the original record make it clear that the CCIT-III (Respondent 3) was not at all inclined to initiate any major penalty proceedings against the applicant. He made a proposal to the Director of Vigilance to request the CVC to reconsider the matter. Instead of getting any reply from him, a directive was received from that Directorate which is reproduced above. It appears that two factors have been responsible for the above decision. Firstly, the CCIT-III

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has raised objections to which a final reply was yet to be sent. Perhaps the objections merited serious consideration. However, the authorities were worried that the applicant was due to retire on 31.10.92 and therefore it was felt imperative to initiate action before he retired, otherwise the proceedings cannot be initiated after retirement, being barred by Rule 9(2)(b)(ii) of the CCS Pension Rules, 1972. Therefore, it appears that the Director Vigilance short circuited the procedure and sought and obtained the approval of Member (P&V) to initiate the disciplinary proceedings with the plea that the objections of the CCIT-III could be looked into at a later stage. That seems to be the implication of the decision taken on 23.7.92, to initiate disciplinary proceedings "at this stage", as stated in the extract above.

22. In our view, the direction reproduced in para 20 skirts the important issues raised in the letter of the CCIT-III calling for a reconsideration of the CVC's advice. The decision taken, as stated in the extract above totally ignored the provisions of law and is imposed on the disciplinary authority who had thus to succumb to the advice of the CVC, despite his disagreement with that advice. This is also a decision of convenience because, instead of resolving the conflicting views of the CCIT-III and the CVC, it was thought expedient to start disciplinary proceedings before the applicant retired on 31.10.92. As a matter of fact, the memo of charges came to be issued only on 12.10.92 while the applicant retired from service on 31.10.92. In other words, without applying his mind as

to whether proceedings should be commenced under Rule 14 of the CCS(CCA) Rules, the disciplinary authority mechanically issued the charge-sheet on the directive contained in the above referred letter. This is contrary to Rule 14 (2) of the CCS(CCA) Rules, 1965, which reads as follows:

"Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof."

23. It has been held by the Hon'ble Supreme Court in the case of Nagaraj Shivarao Karjagi Vs. Syndicate Bank in CA 213/91 with WP(C) No.1287/89 (JT-1991(2)SC-529) that "the punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer".

24. What applies to punishment also applies to exercising the powers under Rule 14(2). The disciplinary proceedings under Rule 14 can be initiated only if the disciplinary authority himself is of the

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opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant. He cannot be dictated or directed to take such a decision. In the present case there has been such a direction both of the Central Vigilance Commission and the Member (P&V), both of which should have been ignored.

25. In the circumstances, we are of the view that the memorandum of charges (Annexure A-1) has been issued without the satisfaction of the disciplinary authority and under extraneous pressure. Therefore, the departmental proceedings against the applicant are totally unsustainable. We, therefore, allow this application and quash and set aside the impugned charge-sheet dated 12.10.92 and direct the respondents to release all the retiral benefits to the applicant within three months from the date of communication of this order. However, in the peculiar circumstances of the case, no interest is allowed. The application is thus disposed of. No order as to costs.

per 11/14/94
[Signature]
(C.J. Roy)
Member(J)

[Signature]
11.2.94
(N.V. Krishnan)
Vice-Chairman(A)

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