

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 10th day of February, 2004.

QUORUM : HON. MR. JUSTICE S.R. SINGH, V.C.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 57 of 1997

A.K. Dixit, aged about 49 years, Son of Sri Aditya Narain Dixit, R/O W/44, MIG, Juhi G. Hamidpur Road, Kanpur-14, at present posted as Assistant Commissioner Income-Tax, Circle-II (3), Aykar Bhawan, Civil Lines, Kanpur.....Applicant.
Counsel for applicant : Sri B.P. Srivastava.

Versus

1. The Union of India through the Ministry of Finance, New Delhi.
2. The Director (Wigilance and Litigation), Department of Revenue, Central Board of Direct Taxes, New Delhi.
3. The Chief Commissioner of Income-Tax, Ayakar Bhawan, Civil Lines, Kanpur.

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..... Respondents.

Counsel for respondents : Sri A. Mohiley.

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BY HON. MR. D. R. TIWARI, A.M.

By this instant O.A. instituted under section 19 of A.T. Act, 1985, the applicant has challenged the order dated 4th November, 1996 by which a minor penalty of stoppage of increment for one year without cumudative effect was imposed (Annexure A-1). He has further prayed that a direction be issued to the opposite parties, not to withhold any increment from the applicant's pay.

2. The facts of the case, in brief, are that the applicant, at the relevant time, was posted as Income-Tax Officer (I.T.O.) at Banda during the financial year 1989-90. The disciplinary proceeding under Rule 16 of CCS(CCA) Rules, 1965 was initiated by issue of memo dated 21.11.1994 (Annexure A-5). The main charges against the applicant were

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that, during the financial year 1989-90, he did not sign ITNS-150 and intimation slips in a large number of returns processed under Section 143(1) though these cases had been entered in the Demand and Collection Register (D &CR) and had been shown as disposal of the respective months which was against the procedure prescribed for entering the cases in the D&CR. The number of such cases was 267. He also failed to issue refunds in about 240 such cases. Hence, the applicant failed to maintain devotion to duty and displayed conduct unbecoming of a Government servant and was guilty of contravention of clauses (ii) and (iii) of Sub-Rule (1) of Rule 3 of the CCS (Conduct) Rules, 1964.

3. By a memorandum dated 24.9.90, the applicant was asked to explain the lapses committed by him which were noticed during the inspection conducted in July, 1990 (Annexure A-2). He submitted his explanation vide his letters dated 8.10.90 & 31.1.91 (Annexures 3 & 4) after inspection of relevant records.

4. The applicant has taken serious exception to the second memorandum dated 21.11.1994 after a lapse of 4 years of the first memorandum. He has contended that of the two charges in the first memorandum, one had been dropped in the second memorandum. He has vehemently opposed the allegation that he had directed his assessment clerks to enter cases first in D&CR and thereafter put up ITNS-150 and intimation slips for his signature. He has pleaded that inspite of his request dated 8.12.94, no copy of such direction, alleged to have been issued by him, had been supplied.

5. The applicant has further contended that the impugned order dated 4th Nov. 1996 has been passed against the principle of natural justice as much the advice of the U.P.S.C. has not been supplied to him.

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6. The respondents, on the other hand, have opposed the contentions of the applicant. It has been submitted that the memo dated 24.9.90 was only in the nature of preliminary enquiry. It was merely in the nature of coming to the conclusion as to whether a prima-facie case existed for initiation of formal disciplinary proceeding and the only formal memo dated 21.11.94 was issued under Rule 16 of the CCS(CCA) Rules, 1965. It has been further submitted that one charge was dropped which related to the non-application of Section 44AC of the Income-Tax Act, 1961 in the case of Gajraj Singh, a Forest Contractor for assessment year 1989-90. In this case a proposal under section 263 was mooted and then dropped after explanation of assessee. It has been further submitted that the question of direction to assessment clerks is conflicting and contradictory. On the one hand, he admits issuing direction to assessment clerks as detailed out in the memorandum and on the other hand, he has complained of not being furnished a copy of the said direction. Going by his statement, it is clear that he had, in fact, issued directions to the assessment clerks.

7. In so far as the question of supply of UPSC's advice is concerned, the respondents have stated that a copy of the advice received from the UPSC is invariably enclosed with the penalty order. The original receipt signed by the applicant did not indicate that the copy of the advice was not enclosed with the order. However, when it was pointed out that the same was not received by him, a copy was sent to him on 8.4.1997. It has been submitted that the delay in providing the copy would not vitiate the disciplinary proceedings.

8. We have carefully considered the rival contentions of the parties and perused the pleadings on record.

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9. The basic question which falls for our consideration and decision is whether the supply of advice of the UPSC is mandatory and non-furnishing would result in grave prejudice to the applicant. The learned counsel, Sri ~~S. P. Sinha, B.~~ B. P. Srivastava appearing on behalf of the applicant, during the course of the hearing, has contended that the supply of advice of UPSC to the applicant is mandatory. In support of his contention, the learned counsel placed reliance on the decision of the Apex Court in case of State Bank of India Vs. D.C. Aggarwal (AIR 1993 SC 1197). This is a case which is distinguishable on facts and the nature of disciplinary proceedings. Aggarwal's ^(Supra) case was relating to report of Central Vigilance Commission which was relied on for imposition of penalty. It was also a case in which major penalty proceedings were conducted unlike the case in hand which is about minor penalty proceeding under Rule 16 of the CCS(CCA) Rule, 1965. Decision in this case does not assist the applicant. Sri A. Mohiley, the learned counsel for the respondents, on the other hand, has relied on the decision of the Hon'ble Supreme Court in the following cases :-

- (i) Managing Director, E.C.I.L. Vs. B. Karunakar and others 1993 SCC (L&S) 1184.
- (ii) State of U.P. Vs. Harendra Arora & others 2001 SCC (L&S) 959.

Both the cases of B. Karunakar and Harendra Arora (Supra) refer to the test of prejudice in non-furnishing of enquiry report to the delinquent employee. It is well known that the Apex Court laid down the law in Md. Ramzan Khan that the furnishing of enquiry report was mandatory. In Karunakar, the court reviewed genesis of supply of enquiry report and finally concluded and laid down the theory of prejudice. The recent trend of decisions are to the effect that, even if, certain formalities or legal requirements have not been followed, ~~the~~ the 'test of prejudice' is to be satisfied by the delinquent employee. It was held that the delinquent employee is obliged to show that by non-furnishing of the report of

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enquiry he has been prejudiced. The test of prejudice, now, would apply even to cases where there is requirement of furnishing copy of enquiry report under statutory provisions and/or service rules.

10. In the backdrop of the legal position stated, we have to examine the question relating to supply of advice of the U.P.S.C. At the outset, it may be mentioned that we are dealing with minor penalty proceedings in which case the full fledged enquiry is not conducted. Rule 16 (1) (a) provides that the enquiry as provided under Rule 14 may be held in which the disciplinary authority is of the opinion that such enquiry is necessary. Rule 16(1A) further provides for full fledged enquiry under certain circumstances. Sri ~~B. S. Srinivas~~ ^{B. P. Srivastava}, learned counsel for the applicant, made a faint attempt to demonstrate that the applicant has been at disadvantage because the enquiry ^{not} ~~not~~ was conducted under 16 (1A). We are not impressed by his argument as the circumstances mentioned in that rule do not at all apply in this case. Moreover, a specific demand has to be made for the purpose which is absent in this case.

11. The issue of supply of advice of U.P.S.C. has been raised which ought to be answered in a proper perspective in view of provisions of the constitution and statute. The disciplinary matters are referred to U.P.S.C by virtue of Article 320 (3) (c) of the Constitution, read with proviso thereto, and further, read with U.P.S.C (Consultation) Regulations, 1958 and it is mandatory for the President, acting as the punishing authority to consult the U.P.S.C. The entire case file alongwith Charge Memo and the enquiry report, if any, is sent to the U.P.S.C. In the instant case, the Charge Memo dated 21.11.1994 along with the case file was forwarded ^{for} ~~to~~ the advice. It is clear from the above that the Charge Memo has already been issued to the applicant on which he has filed a detailed

representation. This representation was also forwarded to the U.P.S.C. in the case file. The advice of the U.P.S.C. has been agreed to by the Disciplinary Authority. Even if the advice is furnished to the applicant, he could ^{hardly more} say than he had already stated in reply to the charge memo. Rule 17 of the CCS(CCA) Rules, 1965 is as under :-

"Orders made by the Disciplinary Authority shall be communicated to the Government servant who shall also be supplied with.....a copy of the advice, if any, given by the Commission, and where the Disciplinary Authority has not accepted the advice of the Commission, a brief statement of the reasons of the reasons for such non-acceptance."

In the instant case, the Disciplinary Authority has accepted the advice and no cause of prejudice is made out.

12. We are further fortified in our opinion by the Full Bench judgment of the Tribunal, which is extracted below :-

"The charged officer has already given his interpretation and comments on the finding of the Enquiry Officer, the U.P.S.C. given its own and the Disciplinary Authority can then finally make up its mind. We cannot, therefore, say that non-supply of the advice at the predecessional stage to the charged officer is a denial of fair hearing to the applicant as he has already exercised his right to fair hearing when he has made a representation on the same material as is before the U.P.S.C."

Chiranjit Lal Vs. Union of India & others
1997-2001 Kalra's A.T.F.B.J. 52 decided on 24.4.99.

13. In view of the facts mentioned above, the O.A. is devoid of merit and is accordingly dismissed. There is no justification to interfere with the punishment order dated 4.11.1996.

No order as to costs.

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