

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 6<sup>th</sup> day of <sup>September</sup> August, 1996

Original Application No.833 of 1988

District : Agra

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Babu Lal Arya

S/o Sri R.P. Chaudhary

R/o A-424, Transjamuna Colony,

Agra.

(By Sri Rakesh Bahadur, Advocate)

. . . . . Applicant

Versus

1. Union of India

through the Ministry of Finance

Government of India

New Delhi.

2. Inspecting Asst. Commissioner of Income Tax

Range-I, Agra.

3. Commissioner of Income Tax,

Agra.

(By Sri Prashant Mathur, Advocate)

. . . . . Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

The applicant was working as permanent lower division clerk in the 'G' Ward of Circle No.II in office of the Inspecting Asst. Commissioner of Income Tax, Range II, Agra, By an order dated 26-11-1982, he was transferred

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to the office of the Inspecting Asst. Commissioner, Income Tax (Assessment) Agra. The applicant represented against this order and the same was cancelled by an order dated 19-3-1983. The applicant was meanwhile on leave from 26-11-1982. After the order of transfer was cancelled, he joined his duties in 'G' Ward on 29-3-1983. He was subsequently served with a charge memo dated 16-6-1983 in which three articles of charges were levelled. The applicant having denied ~~of the~~ charges, an inquiry officer was appointed. The Inquiry Officer in his report found all the charges as established against the applicant. The disciplinary authority after accepting the findings of the Inquiry Officer imposed penalty of dismissal from service by the impugned order dated 1-8-1986 (Annexure A-3). The applicant preferred an appeal against the order of dismissal from service which was rejected by the appellate authority by its order dated 20-3-1987. Thereafter, the applicant filed a representation to the President of India on 7-9-1987, but no action has so far been taken on this representation. The applicant has submitted that he waited for a long <sup>time</sup> for a reply to this representation but thereafter he was advised by his counsel that there being no provision of statutory appeal or representation before the President of India, he will not get benefit of the pendency of the representation for the purpose of limitation ~~and~~ in filing the application before this Tribunal. Thereafter, he filed this OA on 5-8-1988 seeking the relief of quashing of the impugned order dated 1-8-1986 and 20-3-1987 and a direction to the respondents to reinstate the applicant w.e.f. 1-8-1986 with continuity of service and pay and allowances from that date.

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2. The first ground taken by the applicant is that the order passed by the disciplinary authority is malafide. He has submitted that being Joint Secretary of U.P. Income Tax Union affiliated to the National Federation of Central Government Employees, in that capacity he was leading demonstration by the members of the Staff at Agra. This as well as the lengthy correspondence entered into by him in protest against certain allegedly derogatory remarks made by Inspecting Asst. Commissioner about use of Hindi language had annoyed the officer and made him biased against the applicant. He has further alleged that earlier on 29-4-1986, he had submitted a representation that he was being harassed by the Commissioner Income Tax, Agra, and this also had created bias on the part of the respondents against the applicant.
3. The next ground taken by the applicant is that the first article of charge is very vague and none of the articles of charge levelled against him is properly proved. The further ground taken is that the Inquiry Officer did not allow the applicant to lead evidence to controvert allegation made against him and that he was not furnished with a copy of the complaint, copy of the preliminary inquiry, copy of statement of witnesses and copies of other depositions on the basis of which charge sheet dated 16-8-1983 had been issued. Lastly the applicant has pleaded that the penalty of dismissal is too severe and is disproportionate to the gravity of the charges against him.
4. The respondents have filed a counter affidavit in which it has been stated that as the applicant was not properly working in 'G' Ward, Circle II, Agra, the Dy. Commissioner of Income Tax (earlier designated as Asst. Commissioner of Income Tax) had recommended
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his transfer out of his range without any substitute. Thereupon, the then Commissioner of Income Tax Agra vide order dated 25-11-1982 transferred the applicant to the Office of Inspecting Asst<sup>nt</sup> (now Dy) Commissioner (Assessment) Agra, who posted the applicant under the ITO (SIC). The applicant proceeded on earned leave w.e.f. 27-11-1982 as soon as he came to know about his transfer and remained on leave upto 20-3-1983. During this period he exercised political influence and got a letter written by Sri Babu Ram, MLA, Pilibhit to Sri Pranab Mukherjee, the then Finance Minister recommending cancellation of the applicant's transfer order. Since the applicant did not join his place of transfer, his transfer order was eventually cancelled by the Commissioner Income Tax, Agra by the order dated 18-3-1983. Thereupon, the Inspecting Asst.(Dy) Commissioner, Range II, placed the services of the applicant at the disposal of ITO (Incharge) Circle II, Agra, who posted the applicant in Circle II ('E') Ward. This order was delivered by the Income Tax Officer (Incharge) to Sri Rakesh Mohan, L.D.C., for service on Sri Arya. The service of the letter was made on 13-4-1983 in presence of Supervisor and Head Clerk of the circle but Sri Arya refused to accept that letter. Thereafter, Sri Rakesh Mohan attempted to serve the letter in the room of the I.T.O. but the applicant again refused to accept the same. Thereafter, the order was sent to the applicant through registered post but the same was returned by the postal authorities with the remarks that its service was refused. In view of these circumstances, the charge sheet dated 16-6-1983 was issued to the applicant. Thereafter a proper inquiry was held and the disciplinary authority agreeing with the findings of the Inquiry Officer imposed the penalty of dismissal from service. The appellate authority duly considered the appeal preferred by the  
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applicant and the same was rejected by the impugned order dated 20-3-1987. The revision petition filed by the applicant against the order of the appellate authority was sent to the Government of India, Ministry of Finance by the Commissioner II, Agra, with his comments. The revision petition was duly considered by the President of India and the same was rejected by the order dated 17-8-1988, a copy of which was served on the applicant on 7-8-1988.

5. The applicant has filed a rejoinder affidavit in which he has submitted that he neither disobeyed the orders of the superior officers at any time nor did he bring any political influence to bear upon the respondents to get his transfer order cancelled. The rest of the averments are reiteration of his contention in the OA and denial of contrary averments in the counter affidavit.

6. We have heard learned counsel for both the parties and perused the records carefully.

7. The first article of charge against the applicant relates to the alleged disobedience of the orders of the superior authority. Since the applicant has taken a plea that the said article of charge is vague, we consider it necessary to quote the said article of charge which reads as follows :-

"That the said Shri Babu Lal Arya, while functioning as Lower Division Clerk in the Income Tax Office, Circle-II, Agra has shown disobedience, indiscipline and negligence to official duties and acted in the manner which is unbecoming of a Government servant. The said Babu Lal Arya, LDC after availing of leave joined his duties on 21.3.1983 in 'G' Ward, Circle II, Agra. While working in 'G' Ward, Circle II, Agra, he did not carry out the orders of his immediate

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officer, ITO 'G' Ward, Circle II, Agra, nor did his duties entrusted to him. This amounts to disobedience of his superiors and negligence of his office duties. He has thus contravened the provisions of Rule 3(1)(ii) and (iii) of CCS (Conduct) Rules, 1964."

The statement of imputation in respect of the aforesaid charge reads as follows :-

"Sri Babu Lal Arya, LDC vide order of CIT, Agra transferred from Income Tax Office, Circle II, Agra, to SIC Agra. The transfer order was passed while he was on leave. Instead of joining his duties to his new place of posting he extended his leave. Later on transfer order was cancelled. He joined his duties in I.T.O. Office, G-Ward, Circle-II, Agra on 21.3.83. He did not carry out the orders of his immediate officer and did not work. The work allotted to him remained unfinished. He thus showed gross indiscipline, disobedience and negligence to his official duties. He has contravened and provisions of Rule 3(1)(ii) and (iii) of CCS (Conduct) Rule, 1964."

7. A plain reading of the article of charge and the statement of imputations <sup>may</sup>, in the first flush, give an impression that the charge is somewhat vague in the absence of details of specific act<sub>3</sub> of disobedience to the order of superior and negligence ~~of~~ official duties. However, we have seen from the inquiry report, a copy of which has been annexed to the counter affidavit that this article of charge is based on a letter dated 16-3-1983 addressed by Sri Hari Babu, the then ITO 'G' Ward, Circle II to the ~~IAE~~ of Income Tax, Range II, Agra. This letter contained the details about the conduct of the applicant on various occasions and <sup>had</sup> clear indication regarding his acts amounting to disobedience to orders of the superior

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authorities. This letter dated 16-3-1983 is included in the list of documents by which the article of charge was proposed to be proved. Sri Hari Babu, the author of the said letter was also cited as a witness to depose regarding authenticity of his report dated 16-3-1983. We have also found that Sri Hari Babu was actually examined as a witness for the prosecution but the applicant showed no interest in cross-examining him. Thus, the initial impression that the charge against the applicant regarding disobedience to the orders of the superior authorities are vague, gets effectively dispelled.

8. The other ground taken by the applicant is that the disciplinary action taken against him was malafide as the respondents allegedly were biased against him. It is well settled that any allegation of malafide has to be firmly established by the person who alleges malafide. Moreover, in such a situation, the impleadment of the persons by name against whom malafide is alleged, is a sine qua non for establishing malafide. In the case before us, the applicant's averments regarding malafide are too insufficient to lay any firm foundation for any inference that the disciplinary authority was biased against the applicant. The applicant has also not impleaded the respondents by name. Thus, we have no hesitation in rejecting the plea that the disciplinary action against the applicant is malafide.

9. The applicant has also pleaded that the charges levelled against him have not been properly established. We have carefully gone through the copy of the inquiry report. It is settled law that the Tribunal does not function as an appellate authority in disciplinary matters and, therefore, cannot substitute the findings of the inquiry/disciplinary authorities by its own findings. The Tribunal can interfere only if the findings of the inquiry authority are totally perverse or are not based on evidence.

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A perusal of the inquiry report has satisfied us that the findings of the inquiry authority are neither perverse nor are based on no evidence. We, therefore, see no reason to interfere.

10. Lastly, the applicant has taken the ground that the penalty imposed is too severe and is disproportionate to the gravity of the charges levelled. It is now settled law that the quantum of penalty to be imposed on the basis of specific charges is to be determined by the disciplinary authority and a Tribunal shall not normally interfere if the punishment has been imposed after holding proper inquiry. This was the view taken by the Hon'ble Supreme Court in the case of State Bank of India Vs. Samrendra Kishore Endow 1994 (27) ATC 149. In this case while delineating the confines of judicial review of the High Courts/Administrative Tribunals in disciplinary cases, the Hon'ble Supreme Court had followed the decision in the earlier case of Union of India Vs. Parmananda 1989 (10) ATC 30.

11. While the Tribunal shall not normally trench upon the jurisdiction upon the executive authorities in imposing penalty <sup>or</sup> following the prescribed disciplinary procedure, it has also been recognised in service jurisprudence that a Court/Tribunal should interfere if the penalty imposed is so disproportionate to the gravity of the charges levelled and proved that the imposition of penalty would ipso facto amount to an arbitrary exercise of powers by the disciplinary authority violating Articles 14 and 16 of the Constitution of India.

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In the case of UOI Vs. Giriraj Sharma, AIR 1994 S.C. 215, the Hon'ble Supreme Court held that when a punishment of dismissal ~~order~~<sup>was</sup> imposed on an employee on ~~the~~ charge of overstaying leave period, by only 12 days, such penalty is harsh and, therefore, ~~it~~<sup>it</sup> declined to ~~decide~~<sup>interfere</sup> with the High Court's decision quashing the order of dismissal.

12. Similarly in the case of SK Giri, Home Secretary, Ministry of Home Affairs, 1995(3) A.T.C. 206, the Hon'ble Supreme Court held that the punishment of removal from service imposed ~~only~~ on the appellant, who was a security guard in the Industrial Security Force, for remaining absent for about 25 minutes from the place of duty during which there was a theft of 45 coal bags, is severe and disproportionate and, therefore, deserves to be set aside.

13. In the two cases cited above, it would be clear that ~~the~~ ~~fixt~~ very harsh penalty was imposed for relatively minor misconduct. The question which arises is whether in the case before us the charges against the applicant are relatively minor in nature.

14. The first article of charge relates to generally indisciplined behaviour of ~~the~~ applicant. This charge was based on the report of Shri Hari Babu, the ITO. We have seen the analysis of his deposition in the inquiry report. The various acts of indiscipline on the part of the applicant as mentioned in the deposition are not of minor nature but these betray the attitude on the part of the applicant to flout orders of the higher authorities. ~~we~~<sup>we</sup> ~~do not~~ analyse the other charges. In view of the fact that ~~the~~<sup>this</sup> charge itself is of ~~the~~ serious nature, ~~we~~ we cannot hold that the penalty of dismissal is so disproportionate to the charges levelled ~~so~~ as to render the order ~~of~~ the disciplinary

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capricious or arbitrary.

15. Even if we had found the penalty as too harsh, we would have remanded the matter to the appellate/reviewing authority for reconsideration of the quantum of penalty imposed. In the case of Samrendra Kishore Endow, the Hon'ble Supreme Court had ruled that even if it is considered that punishment imposed is harsh, the proper remedy is to remit the case back to the appellate or disciplinary authority. We have noticed that both, the appellate and the reviewing authorities had considered this aspect i.e. whether the penalty of dismissal imposed on the applicant was commensurate with the gravity of the misconduct, ~~for~~ holding that the penalty was justified, keeping in view the misconduct on the part of the applicant in not attending to his work properly, showing insubordination to the extent of refusal to accept the orders and put political pressure to get his local transfer cancelled.

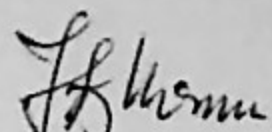
16. It may be further recalled that the applicant had also taken a plea that the Inquiry Officer did not allow him to lead evidence to controvert the allegations made against him and that he was not furnished with a copy of statement of witnesses and copies of other depositions on the basis of which charge sheet dated 16-8-1983 had been issued. We have seen from the report of the inquiry that the applicant insisted on cross-examining one Shri M.N. Dixit and also examining Shri Pranab Mukherjee, the then Finance Minister. This request was refused by the Inquiry Officer for the reasons recorded by him which we did not find arbitrary in any manner. As regards documents, annexures to ~~the~~ charge sheet <sup>indicated</sup> and the list of documents on the basis of which the charges were

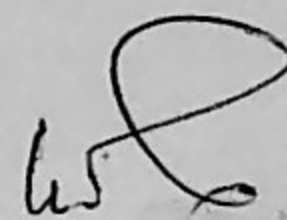
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sought to be proved <sup>and</sup> there is no allegation that copies of these documents were not provided or at least were not shown to him before or during the inquiry.

17. In view of the foregoing we see no reason to interfere with ~~in~~ the order passed by the disciplinary authority or the appellate authority, which is a speaking order giving detailed reasons for the rejection of the appeal. The application is, therefore, dismissed leaving the parties to bear their own costs.

  
Member (J)

  
Member (A)

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