

Open Court

GENERAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Original Application No. 743 of 1995

Allahabad this the 13th day of November, 2002

Hon'ble Mr.S. Dayal, Member (A)  
Hon'ble Mr.A.K. Bhatnagar, Member (J)

Hemant Kumar Saxena, S/o Shri Nazir Lal Saxena,  
R/o 63/71, Vivekanand Marg, Allahabad.

Applicant

By Advocate Shri K.C. Sinha

Versus

1. Union of India through Chief Commissioner of Income Tax, Kanpur.
2. Commissioner of Income Tax, (Appellate Authority) Income Tax Office, Sanjay Place, AGRA.
3. Deputy Commissioner of Income Tax, Range-I, Agra, Income Tax Officer Sanjay Place, Agra.
4. Assistant Commissioner of Income Tax, Circle-I, Agra Income Tax Office, Sanjay Place, Agra.
5. Enquiry Officer, Deputy Commissioner of Income Tax (North Zone), Room No.617, Mayur Bhawan, NEW DELHI.

Respondents

By Advocate Shri Amit Sthalekar

O R D E R ( Oral )

By Hon'ble Mr.S. Dayal, Member (A)

This application has been filed seeking setting aside the charge-sheet dated 31.12.92, the order dated 31.03.94 and order in appeal dated 09.08.94. All consequential benefits have also been sought.

... pg. 2/-

2. The applicant who was working as U.D.C. was implicated in a criminal case alongwith other employees of the department on the ground that he had played active role in getting ~~the refund~~ <sup>Some</sup> ~~butcher~~ <sup>vouchers</sup> encashed. The applicant was placed under suspension on 20-03-86. The applicant filed O.A.No.1018 of 1991 as no charge-sheet was served on him despite passage of considerable time. The Tribunal directed the respondents to issue notice to the applicant within 2 weeks and complete the inquiry within 2 months, failing which the order dated 20.03.86 shall stand automatically quashed, provided the applicant ~~the applicant~~ cooperates with the proceedings. Since the inquiry could not be completed within the time stipulated by the Tribunal. A Misc. Petition No.3008 of 1992 was filed for extension of time. By order dated 20.01.93 time of two months was granted. As the inquiry could not be completed, the respondents again sought time by M.A.No.371/93. Time was granted subject to stipulation that the applicant would be given the benefit of services till conclusion of the inquiry. Since the respondents were alleged not to have obeyed the order, a contempt petition was filed for violation of the order dated 22.03.93, in which notices were issued. This is said to be still pending disposal. The inquiry was conducted, at the end of which the order of dismissal dated 31.03.1994 was passed by the respondents dismissing the applicant from service. The appeal filed by the applicant was disposed of by the order dated

09.08.94 considering it as time barred.

3. We have heard the arguments of Shri K.C. Sinha, counsel for the applicant and Shri Amit Sthalekar, counsel for the respondents.

4. Learned counsel for the applicant has contended that the applicant was not afforded opportunity to defend himself since no subsistence allowance had been paid to him despite furnishing the certificates required under F.R.-53. Although the applicant was not in receipt of suspension allowance, the venue of the inquiry was kept at Delhi while the applicant was suspended while he was working in Agra. Since no subsistence allowance was paid to him, he was not in a position to attend the inquiry at New Delhi and had informed the Inquiry Officer of the same and yet the inquiry was conducted ~~exparte~~ against him. The learned counsel for the applicant has also submitted that eight witnesses were named in annexure-4 to the charge-sheet, but they were not examined during the inquiry, which was held ~~exparte~~ against him. Learned counsel for the applicant also drew attention to the annexures to his rejoinder, which is a copy of Swamy's C.C.S.(C.C.A.) Rules in Chapter-4 on Suspension-Entitlements. In para-6 whereof it is stipulated that Central Govt. employees under suspension who were required to attend the inquiry in connection with <sup>their</sup> suspension outside their Headquarters, were to be paid daily allowances in addition to advance of actual fare. It is contended that such an advance was not paid to him. He has further submitted that his appeal ..pg.4/-

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was rejected as time barred although he had sent an application for grant of time for filing an appeal, in which he had sought time of 20 days for filing an appeal as he was suffering from interric fever and the Doctor had advised 3 weeks bed rest.

5. Learned counsel for the respondents has contended that the charge against the applicant was grave as he was ~~encashed~~ charged with encashment of 13 forged refund vouchers amounting to Rs.24,72,230. He has been mentioned in the charge-sheet that an amount of Rs.4,85,308/- was recovered in cash and Rs.1,45,194-37 were ceased in bank. He has also made a reference to the conduct of the applicant in not receiving the notices and it was found in one of the time at serving the notice on him through a messenger that the applicant though present, denied his presence and slipped away when identified. He has contended that the payment of subsistence allowance was not paid to the applicant because of his failure to submit non-employment certificate as mentioned in the order of dismissal dated 31.03.94 in Objection No.4 and reply thereto.

6. The above issues were raised in memorandum of appeal of the applicant dated 16.06.94. The appellate authority has been charged with the responsibilities of consideration of the following issues as per Rule 27 (2) of C.C.S.(C.C.A.)Rules;

"27(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed

under the said rules, the appellate authority shall consider -

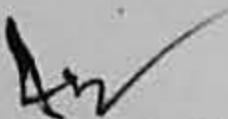
- (a) Whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;
- (b) Whether the findings of the disciplinary authority are warranted by the evidence on the record ; and
- (c) Whether the penalty or the enhanced penalty imposed is adequate or severe;"

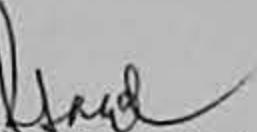
7. The appellate authority, however, took a view that the time limit for filing of appeal was 30.05.94 while the appeal was received in the office on 29.06.94 and even if the date of appeal is considered as 16.06.94, it is still outside the time limit. The appellate authority has itself mentioned in the order that it had authority to entertain the appeal after expiry of 45 days even it was specified that the appellant had sufficient cause for ~~not~~ preferring the appeal in time. The applicant had made an application(annexure A-43) for grant of time of 20 days and had made a request for condonation of delay in application date 18.08.94(annexure A-46). While the respondents have not denied the receipt of application for grant of time of 20 days, they have denied having received any delay condonation application.

8. We are of the view that the appellate authority should have taken a judicious view on the request of extension of time made by the applicant and should have decided the appeal on merits instead of rejecting the same on the ground of delay in filing the same.

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9. We, therefore, set aside the appellate order dated 09.08.1994 and direct the appellate authority to decide the appeal of the applicant on merits within a period of 3 months from the date of receipt of a copy of this order. There shall be no order as to costs.

  
Member (J)

  
Member (A)

/M.M./