

[RESERVED]

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD

(THIS THE 27 DAY OF April 2012)

Present

HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J)

HON'BLE MS. JAYATI CHANDRA, MEMBER (A)

ORIGINAL APPLICATION NO. 486 OF 2007

(U/S 19, Administrative Tribunal Act, 1985)

Hari Shanker Gautam, S/o Late Sundar Lal, Lower Divisional Clerk, (Dismissed), At Office of Assistant Commissioner of Income Tax, Range-3 Mathura, District Mathura, R/o 2 West Pratapnagar Mohalli Road, Mathura, District – Mathura.

.....Applicant

V E R S U S

1. The Union of India, through Secretary, Ministry of Finance, New Delhi.
2. The Chief Commissioner of Income Tax, Kanpur, District Kanpur Nagar.
3. The Commissioner of Income Tax-1, Aaykar Bhawan, Sanjay place Agra, District Agra.
4. Additional Commissioner of Income Tax, Range-3, Mathura, Office of Additional Commissioner of Income Tax-1, Agra, District Agra.
5. Assistant Commissioner of Income Tax, (HQ)/Admn, Office of Commissioner of Income Tax-1, Agra, District Agra.
6. Assistant Commissioner of Income Tax, Range-3, Mathura, Office of Additional Commissioner of Income Tax, Mathura, District Mathura.
7. Shri Manu Tatiwal, The Enquiry Officer, Assistant Commissioner of Income Tax, (A.D.I), office of the Commissioner of Income Tax-1, Aaykar Bhawan, Sanjay Place Agra, District Agra.

.....Respondents

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Advocates for the applicants:- Mr. Vijay Gautam.
Mohd. Parvez.

Advocate for the Respondents:- Mr. Himansu Singh

ORDER

(DELIVERED BY:-

(HON'BLE MR. SANJEEV KAUSHIK, MEMBER-I)

By means of present O.A. filed under Section 19 of the Administrative Tribunals Act 1985 the applicant is aggrieved against the order dated 14.06.2006, passed by respondent No.5, by which the applicant has been dismissed from service and order of the Appellate Authority dated 07.02.2007 (Annexure-1-A).

2. The facts in brief are that the applicant initially joined the respondents' department as a Class-IV employee on 14.08.1967. He was promoted as Lower Divisional Clerk in the month of November, 1982. The applicant was placed under suspension on 03.11.2003 in contemplation of departmental proceedings (Annexure-A-4). He was served with memorandum of Article of Charges by respondent No.5 on 27.04.2005, directing him to file his defence within 10 days (Annexure-A-5). The applicant submitted his reply on 20.05.2005 denying all the allegations levelled against him (Annexure-A-6). The Enquiry Officer held the applicant guilty of charges by submitting his report on 12.05.2006 (Annexure-A-8). The applicant submitted his reply to

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the inquiry report on 12.05.2006 (Annexure-A-9). Acting upon the inquiry report the disciplinary authority i.e. respondent No.5 passed an order of dismissal under rule 11 (ix) of CCS (CCA) rules 1965 (for short 'The Rules'). That instead of filing the appeal the applicant filed the O.A. No.463 of 2006 before this Tribunal, which was disposed of on 14.09.2006 directing the applicant to file statutory appeal before the Appellate Authority as provided under rule 23 of 'The Rules' (Annexure-A-10). It is, thereafter, applicant preferred statutory appeal before respondent No.3 challenging the order of Disciplinary Authority dated 16.06.2006. The Appellate Authority vide its order dated 07.02.2007 has dismissed the appeal, hence the O.A.

3. Pursuant to notice, respondents filed Counter Affidavit. Under the heading of preliminary submission, it is submitted that in the year 2002-03 son of the applicant Sri Alok Kumar Gautam, Advocate was found indulged in bogus refund of claim. An inquiry was conducted by S.P., CBCID, who submitted his report on 28.01.2005 and found that the applicant is also involved in refund scam. It is, thereafter, memorandum of charge sheet was issued. On 05.07.2005 Shri Manu Tentiwal ACIT was appointed to investigate the charges against him, who has submitted his report on 12.05.2006 holding he applicant guilty. Acting upon report on

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14.06.2006 the order of dismissal was passed under rule 15(4) read with rule 11 of 'The Rules' by the ACIT (HQ/Admn.) Agra. Appeal of the applicant was also considered which too was dismissed by the Appellate Authority by passing reasoned order on 07.07.2007. In para No.9 in reply to para No.4.16 it is submitted that the applicant did not follow the procedure prescribed for receipt of income tax return, therefore, he had acted in a manner, which is unbecoming on the part of the Govt. servant and has absolutely failed to maintain integrity and devotion to duty and had violated the provisions of rule 3(1)(i), 3(1)(ii) and 3(1) (iii) of CCS (Conduct) Rules 1964.

4. The applicant has filed Rejoinder Affidavit.

5. We have heard Shri Vijay Gautam, learned counsel for applicant and Shri Himansu Singh, learned counsel representing the respondents.

6. Shri Gautam, learned counsel for applicant vehemently argued that the impugned order of dismissal as well as order of the Appellate Authority is illegal, arbitrary and has been passed without following the procedure. The applicant has been held guilty for the act which he never did, and for the illegality committed by

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his son, applicant cannot be held guilty, therefore, the impugned order be set aside. He further argued that the punishment inflicted upon the applicant is harsh /disproportionate to the alleged charges. While inflicting the punishment the respondents have not considered the past conduct of the applicant, therefore, also impugned order is liable to be set aside. He placed reliance upon the judgment of Hon'ble Apex Court in case of *B.C. Chaturvedi & Ors. 1995 (6) SCC 749 at page 764, U.O.I Vs. K.G. Soni reported as 2006(6) SCC 794 and 2009(7) SCC 248 at page 250 Ramancing Pandey Vs. State of U.P.*

7. On the other hand Shri Himansu Singh argued that the applicant failed to show any procedural illegality during the inquiry proceeding, therefore, this court cannot interfere with the finding recorded by the Enquiry Officer, which is the basis of dismissal order. He further argued that this court cannot act as an Appellate Authority over the finding recorded by the Disciplinary Authority which was affirmed by the Appellate Authority. He placed reliance on the judgment of Hon'ble Apex Court held in the case of *Govt. of Tamil Nadu V. A. Rajapandian, (1995) 1 SCC 216 Para 4: AIR 1995 SC 561*. Lastly he submits that the O.A. be dismissed being devoid of merits.

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8. We have considered the rival submissions and have gone through the record with the able assistance of the learned counsel for the respective parties. The applicant fails to point out any procedural illegality committed by the respondents while conducting the inquiry. The only argument advanced by the learned counsel for applicant is that the applicant has been held responsible for the act done by his son. We have perused the inquiry report as well as the order passed by the Disciplinary Authority, we are satisfied that the full fledged inquiry was conducted and after having the charges proved against the applicant the order of dismissal was passed. The Appellate Authority has also passed the reasoned order by recording finding against the applicant. Particularly, in para No. 13 wherein it is established that the applicant was aware about the deposit of bogus refund in his account, therefore, this fact clearly provided the involvement of the applicant in the racket of refunds issued on the basis of bogus TDS Certificates. In para No.18 of the order the Appellate Authority has also considered the argument of the applicant regarding disproportionate of punishment and have recorded his finding that the act of the applicant comes under the definition of grave misconduct, therefore, the punishment of dismissal from service was reasonable. In view of settled law of law the Courts/Tribunals can only interfere with the finding of

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the Enquiry Officer or punishment order, if the delinquent is able to show any procedural irregularity, admittedly applicant fails to show any procedural irregularity in the present case.

9. It is settled law that the Courts should not interfere with the administrative decisions unless it was illogical or suffers from procedural irregularity or was shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards. In view what has been held in CP Associated provincial picture house limited Vs. wednsburry corporation 1948(1) KB 223, commonly known as wednsburries's Case. *"The Court would not go into the correctness of the choice made by the Administrator open to him and the Court should not substitute its decision to that of the administrator."* The scope of judicial review is limited to the deficiency in decision making process and not the decision. As regards to punishment once the charge of issuance of bogus refund of the basis of forged TDS in collusion with his son and family members are proved which is gravest misconduct, therefore, does not deserve any leniency, otherwise it would be giving premium to a person who admittedly defrauded the Govt. In view of the above factual and legal position, therefore, we are of the view that the impugned order deserves no interference. Accordingly, O.A. is liable to be dismissed being devoid of merits.

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10. O.A. is dismissed being devoid of merits. No order as to costs.

J. Chandra

Member-A

(Signature)
Member-J

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