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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
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Remove
O.A. No. 602 of 1987
XXXXXX

DATE OF DECISION 26.4.1991

Shri Altaf Hussain Bukhari Petitioner

Mr. K.S. Jhaveri Advocate for the Petitioner(s)

Versus

The Inspecting Commissioner of Respondent

I.T. and Ors.

Mr. R.P. Bhatt Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. P.H. Trivedi ... Vice Chairman

The Hon'ble Mr. R.C. Bhatt ... Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Y
2. To be referred to the Reporter or not? M
3. Whether their Lordships wish to see the fair copy of the Judgement? M
4. Whether it needs to be circulated to other Benches of the Tribunal? N

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Shri Altaf Hussain Bukhari,
2114/3, Khanpur Saiyed Wado,
Opp. Narayan Bhuvan,
AHMEDABAD - 380 001.

... Applicant

versus

1. The Inspecting Assistant,
Commissioner of Income Tax,
Ahmedabad Range,
3rd floor, Indurance Building,
Ashram Road,
AHMEDABAD - 380 014.
2. The Commissioner of Income Tax,
Gujarat -II,
2nd floor, Aayakar Bhavan,
Navrangpura,
AHMEDABAD - 380 009.

... Respondents

J U D G E M E N T

Date : 26.4.1991

Per : Hon'ble Mr. P.H. Trivedi

... Vice Chairman

The applicant, in this case, under Section 19 of the Administrative Tribunals Act, 1985, has impugned the orders dt. 27.4.1987 of the Inspecting Assistant Commissioner of Income tax imposing penalty of removal from service of the applicant under C.C.S.(C.C.A) Rules w.e.f. 1st May, 1987 and the order dt. 5.6.1987 of the Commissioner of Income tax confirming and upholding the order dt. 18th September, 1987. The applicant has undergone the disciplinary inquiry for alleged misconduct which in substance is for introducing Shri H.K. Patel who is a fictitiou person for opening account on 13.6.1984 with the Bank of India facilitating the issue of refunds causing pecuniary loss. Another charge is that he gave a false statement that he had not introduced

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the account of Shri Patel or any other person at any time. He was found guilty after inquiry and the appellate authority has recorded a detailed order giving reasons.

2. The challenge of the applicant is on the ground that the Tax Practitioner had allegedly colluded with the applicant who has not been in any manner proceeded against and that the applicant was made a victim or a scapegoat as he is only a group D employee and all the irregularities regarding refunds orders and T.D.A. certificate could not have been done by him alone, if at all. He has also challenged the orders on the ground of insufficient and inadequate and erroneous assessment of evidence. He has stated that he has nothing to do except merely moving files from the I.T.O. to the concerned Clerk and he is not involved in the issuance of the orders. The applicant has heavily relied upon the judgements in -1986 ATC 47 Ram Chander v. Union of India, AIR 1984 S.C. 505 M/s. Glaxo Laboratories (I) Ltd. v. Presiding Officer Meerut and other and AIR 1985 S.C. 504- Rasiklal Vaghajibhai Patel v. Ahmedabad Municipal Corporation and others, for support of his contention that the rules of natural justice require that the rejection of the appeal should not be done mechanically and that proper consideration showing application of mind is to be found from the orders, that the misconduct must have causal connection with the place of work and within duty hours and there should be no extra territorial jurisdiction exercised by the employer and the alleged misconduct should fall within the specified misconduct in service regulations or standing orders and should not be general.

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3. On a perusal of the record, we do not find that the applicant can draw any force or support from the cases cited. Both the disciplinary authority and the appellate authority have given adequate reasons for their conclusions and these orders bear on themselves clear mark of application of their mind and therefore the resultant orders cannot be faulted on that account. The nature of the misconduct of the applicant is also clearly relatable to his functioning in the department which issue the inquiry orders and humble though his station be if he is found guilty on documentary evidence to have introduced a non-existent or a fictitious person to open a Bank account, such misconduct does not become less of a misconduct due to his relatively junior position. The probability of his misconduct having been established it is a matter of evidence which the disciplinary authority and inquiry officer as well as appellate authority are competent to go into. This Tribunal is not required or even competent to take upon itself this function. On this ground, therefore, we do not find that the applicant has any case.

4. We, however, find that after amending his application the petitioner has taken the ground in para 88 that the disciplinary authority failed to give him second show cause notice which is compulsory under the rules and therefore the order at Annexure A-3 is bad in law. We find from the record that this is so. In the order st. 27th April, 1987 imposing punishment of removal Annexure A-3, it is stated that the inquiry officer's report dt. 28.1.1987 is enclosed

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and forms part of this order. This is so stated in terms it is therefore, clear that the inquiry officer's report was not furnished prior to the imposition of the penalty and only accompanied the order of penalty. There have been large number of decisions in which it has been held that the inquiry Officer's report is not required to be furnished to the delequent officer prior to the order of the disciplinary authority imposing penalty, after the amendment of the Constitution removing the provision from Article 311. However, after a decision in Mohd. Ramzan Khan's case of a three Member Bench of the Supreme Court, the law upheld is that the inquiry Officer's report has to be furnished before the order of penalty and such a report being furnished along- with the order of penalty conflicts with the requirements of natural justice from which the amendment of the Article 311 of the Constitution does not exempt it. Further, this decision which holds the field is applicable to all pending matters as it is pending for a decision and has been now filed with the specific ground stated above taken therein. We, therefore, must hold that the proceedings from the stage of disciplinary authority's order are vitiated. We set aside the impugned orders. The respondent authorities are at liberty to proceed with the disciplinary proceedings from the stage of the submission of inquiry Officer's report. We therefore, direct that the respondent authorities pass

[Signature]

appropriate orders regarding the charges levelled against the applicant on giving him an opportunity to represent his case and show cause on a notice issued to him before any orders of penalty are passed.

To the extent stated above, the application has merit and is so held. No order as to costs.

R.C. Bhatt

(R.C. BHATT)
Judicial Member

P.H. Trivedi

(P.H. TRIVEDI)
Vice Chairman