

6

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 166 OF 1988.
~~To A No.~~

DATE OF DECISION 14.10.1988

SHRI. P.L. KHANDELWAL Petitioner

PARTY-IN-PERSON ~~Advocate for the Petitioner(s)~~

Versus

UNION OF INDIA & ORS. Respondent s.

MR.M.R.BHATT FOR MR.R.P.BHATT. Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.S. MISRA, ADMINISTRATIVE MEMBER.

The Hon'ble Mr. P.M. JOSHI, JUDICIAL MEMBER.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal. *Yes*

Prabhudayal Laxminarayan Khandelwal,
Senior Authorised Representative,
Income Tax Appellate Tribunal,
Ahmedabad.

.... Petitioner.

(Party-in-person)

Versus.

1. Government of India,
Notice to be served through
The Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. The Chief Commissioner,
(Administration) of
Income Tax,
Ahmedabad.
3. Central Board of Direct Tax,
Ministry of Finance,
North Block, Central Secretariate,
New Delhi - 110 001. Respondents.

(Mr.M.R.Bhatt for Mr. R.P.Bhatt)

J U D G M E N T

O.A.NO. 166 OF 1988

Date:14.10.1988.

Per: Hon'ble Mr. P.M. Joshi, Judicial Member.

The petitioner Shri Prabhudayal Laxminarayan Khandelwal, working as Senior Authorised Representative, Income Tax Appellate Tribunal, Ahmedabad, has filed this application on 26.2.1988, under section 19 of the Administrative Tribunals Act, 1985, for the redressal of his grievance against the Departmental Enquiry initiated against him. According to him, he is subjected to a departmental proceedings, in respect of one case of Smt. Kamla Devi Bhanot, an assessee of A.II Ward, Jabalpur, while he was discharging his duties as Income Tax Officer and also as Gift Tax Officer in (under the Gift Tax Act) A.II, Ward, Jabalpur, Madhya Pradesh for the period

from 23.8.77 to 20.5.79, wherein it is alleged that the petitioner did not complete the assessment by 31.3.79, with the result, the assessment became barred by limitation. It is alleged by the petitioner that the enquiry is instituted against him for the accusations levelled under charge sheet dated 1.4.87 in respect of the lapses alleged to have been committed during the period from 23.8.77 to 20.5.79, which are absolutely baseless and liable to be quashed on the ground of inordinate delay. The petitioner has therefore prayed that the departmental enquiry initiated against the petitioner in pursuance of show cause notice dated 1.4.87, be quashed and set aside. He has also prayed that the order issued by the Chief Commissioner of Income Tax vide its letter dated 2nd November, 1987 informing him about the decision of the D.P.C. having followed a sealed cover procedure in respect of recommendation for confirmation of the Assistant Commissioner of Income Tax in his case, be also quashed and set aside.

2. The respondents, in their counter, filed by Shri P.C. Halakhandi, Chief Commissioner of Income Tax (Administration) Gujarat, Ahmedabad, have denied the assertions and the allegations made by the petitioner. According to them, the Gift Tax assessment, in the case of Smt. Kamla Devi Bhanot for the assessment year 1973-74 on the basis of the duplicate return filed by her, should have been completed by March 31, 1979. But it was allowed to get barred by limitation by the petitioner, which fact came to the notice of the I.A.C., Jabalpur on November 24, 1980 and after ascertaining the

necessary facts, an explanation of the petitioner was called for vide letter dated September 25, 1981 by the C.I.T., Jabalpur, which was submitted on October 6, 1983. It was further submitted that the matter was then examined by the Directorate of Inspector (Vigilance) and the sequence of events taken into account there was no unreasonable delay in processing the matter. It was further contended, that the petitioner in this application can not claim any relief in respect of selection grade or confirmation in his cadre, for which, he has to file a separate substantive application claiming those reliefs.

3. When the matter came up for hearing, we have heard the petitioner, party-in-person and Mr. M.R. Bhatt for Mr. R.P. Bhatt, the learned counsel appearing for the respondents at a considerable length. We have also perused and considered the materials placed on record.

4. The main grievance of the petitioner is that he is not amenable to the disciplinary jurisdiction for any action or inaction while discharging his duties as Income Tax Officer, while dealing with the cases of the Income Tax assesseees under the Income Tax Act and the Gift Tax Act. Moreover, according to him the disciplinary enquiry commenced against him deserves to be quashed as it has been done after inordinate delay. In support of his submission he has mainly relied upon the decision rendered by the Bench of this Tribunal (comprising of Hon'ble Mr. P.H. Trivedi, Vice Chairman and Hon'ble Mr. P.M. Joshi, Judicial Member) in O.A.No. 475/88 (M.N. Qureshi V/s. Union of India & Ors) and also

several other decisions of the different High Courts and the Supreme Court.

5. Mr. M.R.Bhatt, the learned counsel for the respondents however strenuously urged that the case of Shri M.N.Qureshi decided by this Bench of the Tribunal is quite distinguishable. According to him, the inaction on the part of the petitioner is not passing any orders in the case of Smt. Kamla Devi by March 31, 1979 and allowed to get it barred by limitation, resulting in loss of Revenue, was clearly an exhibition of lack of devotion to duty and the same was in violation of Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964. In his submission there was no unreasonable delay in proceeding with the matter and initiating the proceedings against the petitioner. In this regard he has pressed in service, the circumstances detailed in para 3.2 of the Respondents' counter which read as under :-

However, an effort was made by the Department to find out what was the fate of these proceedings and whether the assessee had challenged the issue of notice under section 16. For this purpose there was some correspondence with the C.I.T. concerned. Intimation about the explanation given by the applicant was given to the Directorate of Inspector (Vigilance) by the C.I.T., Bhopal under letter dated April 7, 1984. The Directorate of Inspector (Vigilance) then wrote back to the C.I.T. Bhopal on 19.6.85 asking him to verify how a notice under section 16 was issued by the applicant's successor. The C.I.T. was also requested to inform the Directorate of Inspection (Vigilance) as to whether the return in response to this notice had been filed, whether assessment had been completed and if so, whether any objection was raised by the assessee in this regard. Ultimately, by his letter dated April 4, 1986 the C.I.T. Jabalpur sent a detailed reply to the Directorate. In that reply it was stated that the issue had become barred by limitation and the proceedings initiated under section 16 and finalised ex-parte in the absence of filling of return by the assessee in response to notice under section 16 were of no legal value. It

was therefore clear that the Department had to proceed on the basis that the assessment became barred by limitation and that has happened during the period when the applicant was the I.T.O. in charge.

6. At the outset, it may be stated here that during the course of the hearing of the petition, it was made explicit to the petitioner that his claim for selection grade or confirmation in his cadre can not be allowed to be agitated alongwith his case for the claim to quash and set aside the departmental enquiry proceedings initiated against him, as both the reliefs are distinct and not connected in any manner. The reliefs therefore prayed for in this regard suffers from plurality of causes of action.

7. Now, in order to comprehend the rival contentions raised by the parties in this application, it will be in the fitness to relate to the statement of imputation of misconduct or misbehaviour alleged against the petitioner, as shown in the memorandum (Annexure A-I) dated 1.4.87 which reads as under :-

Shri P.D.Khandewal was functioning as Income Tax Officer, A-II, Ward., Jabalpur (M.P) from the period 23.8.1977 to 20.5.1979. He was simultaneously functioning as Gift Tax Officer in relation to Gift tax assessments, under the Gift Tax Act.

Smt. Kamla Devi Bhanot, an assessee of A-II Ward, Jabalpur gifted a part of her immovable properties to her daughters-in-law on 13.4.1972 and filed the original gift tax return for Assessment Year 1973-74 on 1-4-1972 as per receipt No.2946. Since the original return was not traceable in the office, the assessee, (Smt. Kamla Devi Bhanot) filed a duplicate return as per receipt No.11614 on 22.8.1977, declaring the taxable gift of Rs. 2,30,000/- on which gift tax payable was Rs. 37,750/-.

Action on all gift tax returns up to Assessment year 1974-75 was to get barred by limitation by 31st March, 1979. Action on the impugned gift tax return for Assessment year 1973-74 filed on 22.8.77 by the assessee (Smt.Kamla Devi Bhanot) was also to get barred by limitation by 31st March, 1979. Shri Khandewal however did not complete the assessment by 31.3.1979. Shri Khandewal as Gift Tax Officer had

jurisdiction over the case for about one year and 9 months when on account of his failure to finalise the assessment by 31.3.1979, the assessment became barred by limitation. Under the law, no action is now possible by which loss to revenue can be recouped. Shri Khandewal by allowing the assessment to get barred by limitation exhibited lack of devotion to duty and thereby violated Rule 3(1)(ii) of the Central Civil Services (Conduct) Rules, 1964.

8. The fact that the petitioner was working as Income Tax Officer, A.II, Ward, at Jabalpur during the relevant period is not in dispute. More over the fact that the petitioner, while dealing with the case of Smt. Kamla Devi it was expected of him to discharge "quasi-judicial" functions as Income Tax Officer under the powers conferred upon him under the Gift Tax Act, is not controverted. It is thus quite evident that when an Income Tax Officer deals with the case of an assessee, he is discharging his duty and their acts are 'quasi-judicial' in nature. In the present case the petitioner is subjected to a departmental enquiry for his inaction on his part, that is, in not completing the assessment in the case of Smt. Kamla Devi Bhanot by March 31, 1979 and thus allowed it to get barred by limitation.

9. The case of lapses resulting in Revenue to the tune of Rs. 37,740/- on the returned Gift of Rs. 2,30,000/- was revealed somewhere in the September 1981. For that matter Commissioner of Income Tax, Jabalpur addressed a confidential letter dated 18th September, 1981 to the Commissioner of Income Tax, Bhopal. Later on, an explanation of the petitioner was called for by the Office of the Commissioner of Income Tax, Bhopal under its letter dated 25th September 1981. The material portions thereof reads as under:-

Shri P.D.Khandelwal,
Sr.Authorised Representative,
Income-tax Appellate Tribunal,
Indore Bench, Indore.

Sir,

Sub: Gift-tax assessment barred by
limitation for asstt.year 1973-74
Assessee Smt.Kamla Devi Bhannot,
Jabalpur.

Smt. Kamladevi Bhanot filed a gift-tax return showing taxable gift of Rs. 2,30,000/- for the assessment year 1973-74 on 1.7.1972. She was assessed to tax by the ITO, A-II, Ward, Jabalpur. Since the original return was not traceable a duplicate return was filed by her on 22.8.1977 vide receipt No. 11614. Asstt. for 1973-74 should have been finalised on or before 31.3.1979 as per the provisions of section 16-A(i) of the Gift-tax Act, 1958. No order was passed and the assessment became barred by limitation. The loss of revenue has been worked out at Rs. 37,750/- on the returned gift of Rs. 2,30,000/-.

10. It is the version of the petitioner that he collected certain informations and that too after great ordeal from the respective Income Tax Officers and thereafter, he sent his explanation under his letter dated 6th October, 1983 which is reproduced in extenso as under :-

To
The Commissioner of Income-tax,
Bhopal.

Sir, Sub: Smt.Kamladevi Bhanot, Gorakhpur,
Jabalpur-Gift-tax asstt. for
A.Y. 1973-74.

Please refer the earlier correspondence on the above mentioned subject. In this connection I am sending you the copy of letter received from the ITO, A-Ward, Jabalpur wherein he has mentioned that proceedings u/s 16 has already been taken in the aforesaid case as well as notice has been served, hence the issue gets closed, the same may please be noted for your record.

Thanking you,

Yours faithfully,
Sd/-(P.D.Khandelwal)
IAC, A.R.III, Ahmedabad.

11. According to the petitioner, thereafter nothing was heard by him from the department and in the meantime, he earned promotion and other benefits and when he is further due for selection grade and

promotion and other benefits, a false case has been made out against him by the interested persons in the department. The allegations in this regard, need not detain us as there are no sufficient materials to support the same. However we have no hesitation in holding that once the department had found the lapses on the part of the petitioner in the year 1981 their decision to initiate departmental proceedings in the year 1987 exhibit inordinate delay. In the instant case, barring making a reference to certain correspondence as referred to in para 3.2 of their counter no material whatsoever has been placed on record to justify the delay caused in the matter. Mere reference of dates of internal communication content of which is not disclosed can not cover up the fact of inordinate delay of nearly six years. (see Kundenlal V/s. Delhi Administration, 1976 (1) S.L.R. 133).

12. In the case of M.N. Qureshi V/s. Union of India (supra) while dealing with the issue of delay and the issue whether the action of an employee discharging quasi-judicial function in the case of Income Tax assessee concerned is amenable to the disciplinary jurisdiction or not, it has been observed as under :-


It is true, whether or not the State Government, in a given case, is guilty of inordinate delay, vitiating the departmental proceedings, must necessarily depend on the facts and circumstances of the case. The gap between the date of the alleged misconduct and the commencement of the enquiry by the Government has to be explained satisfactorily. The commencement of an expeditious departmental inquiry and its completion, like expeditious disposal of a criminal case is primarily in the interest of the department and the delinquent and a mandate of Article 21 of the Constitution of India. It is expected that such disciplinary action has to be taken atleast expeditiously and not after so much unexplained delay.


In the end, the petitioner's orders which are admittedly of a quasi judicial nature and are subject to proceedings in appeal or revision are sought to be made a cause, basis or occasion for disciplinary proceedings for alleged misconduct resulting in loss of revenue after unconscionable delay in framing charges, on the eve of his retirement, without the statement of imputations or the charges framed showing in any manner how the alleged misconduct is separate or separable from the exercise of quasi judicial functions. The mere fact that the petitioner made assessment of cases which were not allegedly within his territorial jurisdiction or are beyond his monetary limits of cases of assessment or that such cases were taken up for assessment without entering them in the register and without following the procedure or sequence prescribed for it, does not show that the circumstances of the imputed charges are separate or separable from the exercise of the quasi-judicial decisions. To allow such disciplinary proceedings to be started in such circumstances especially, after such a period of delay as in this case would be to condone a practice which would introduce scope for fear which would gravely jeopardise the independence, impartiality and objectivity without which quasi-judicial functions can not be exercised. No doubt, officers who exercise quasi judicial functions can not claim immunity from disciplinary proceedings against them for misconduct or corruption but before deciding upon starting such proceedings careful thought should be given whether the imputations relate to distinct or independent circumstances and are clear and grave. If this is not done, the distinction between culpable misconduct and interference with exercise of independent judgment will be blurred and not only the cause of justice, but even of administrative efficiency will be badly affected.

13. Bearing in mind all the facts and circumstances, as discussed above in the instant case it can not be said that the action was taken expeditiously. The reference to internal communication to explain the delay does not inspire any confidence. The circumstances and the manner in which the respondents authority have dealt the matter, it can not be said that this is an expeditious manner of conducting enquiries. We have, therefore, no doubt in holding that inordinate delay in commencing the enquiry in the instant case has resulted in oppression of the petitioner.

14. Moreover, it is evident that the charge (Annexure A-I) reproduced above does not make any imputation of any personal monetary gain or benefit or any corrupt practice against the petitioner. Apart from the allegation of the loss of Revenue as a result of inaction on the part of the petitioner by not dealing with the case of Shri Kamla Devi, we have no doubt in our mind that the petitioner is being subjected to a departmental enquiry for such inaction while discharging quasi-judicial functions. Thus, unless there is a clear allegation or the charge of corruption or any involvement or inaction resulting in any personal gain or otherwise the mere action or inaction while discharging statutory powers and exercising jurisdiction in the matters of "quasi-judicial" functions, by such officers can not be subject matter of the disciplinary jurisdiction of the respondents. The impugned notice initiating a departmental enquiry against the petitioner therefore can not be sustained.

15. In this view of the matter, we allow the application of the petitioner and quash the order contained in Government Memorandum F.C.No.13011/5/85-AD.VI(A) dated 1.4.1987 (Annexure A-I) framing the charges levelled against the petitioner. There will be however no order as to costs.


(P.M. JOSHI)
JUDICIAL MEMBER


(D.S. MISRA)
ADMINISTRATIVE MEMBER