

(7)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

O.A. No. 475 OF 1988.
~~XXAxxNox~~

DATE OF DECISION 30.8.1988

SHRI M.N. QURESHI Petitioner

MR. M.R. ANAND. Advocate for the Petitioner(s)

Versus

UNION OF INDIA & ORS. Respondents

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

CORAM :

The Hon'ble Mr. P.H. TRIVEDI, VICE CHAIRMAN.

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*

Shri M.N. Qureshi,
3/1/B, Ashiana Apartments,
Prabhudas Thakkar College
Road, Paldi, Ahmedabad.

..... Petitioner.

(Advocate: Mr. M.R. Anand)

Versus.

1. Union of India,
(Notice to be served
through the Secretary,
Ministry of Finance,
Secretariat, New Delhi)

2. Commissioner of Income Tax,
Gujarat - I,
Aayakar Bhavan,
Ashram Road, Ahmedabad.

..... Respondents.

(Advocate: Mr. R.P. Bhatt)

J U D G M E N T

O.A.NO. 475 OF 1988.

Date: 30.8.88.

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

The petitioner Mr. M.N.Qureshi, has filed this application under section 19 of the Administrative Tribunals Act, 1985 on 28.6.88. He is an Income Tax Officer, Class II under the Respondents No.2 and due to retire on 31st August, 1988. He is sought to be subjected to a departmental enquiry under order dated 27.4.88 for the 'quasi-judicial' work done by him in the year 1982. The article of charge framed against the petitioner under memorandum dated 27.4.1988 reads as under :-

ARTICLE -I

That Shri M.N.Qureshi while functioning as Income-tax Officer, Circle-IV, Ward-K, Ahmedabad during the period May, 1983 to October, 1983 completed 52 assessments under Sec.143(3) in cases of trusts over which he had no jurisdiction, without proper scrutiny and investigation and caused serious loss to revenue, and corresponding undue benefit to the assessees. Thereby Shri Qureshi failed to maintain absolute integrity

and devotion to duty and exhibited a conduct unbecoming of a Government Servant. Thereby Shri Qureshi violated provisions of Rules 3(1) (i), 3(1)(ii) and 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964.

2. The petitioner has questioned the charge framed against him and seeks to quash the said order on various grounds inter-alia that he is not amenable to the disciplinary jurisdiction of the respondents and their action taken against him is discriminatory and the inordinate delay in commencing the enquiry has resulted in oppression of the petitioner. The petitioner has therefore prayed that the impugned orders at Annexure A-5 (Article of charges) and A-7 (appointment of the Inquiry Officer to enquire into the charges framed against the petitioner) be quashed and set aside as they are illegal, unconstitutional and without jurisdiction. He has further prayed that the respondents be directed to prepare his pension papers and pay him full retirement benefits including promotion to the higher post.

3. The respondents have filed their counter, denying the various contentions raised by the petitioner. It is stated that the petitioner Mr. Qureshi dealt with 52 cases consisting of two set, one of them pertaining to the returns of the Trust with address of 'Silver Arc' filed with Income Tax Office, Circle IV, Ward-N, Ahmedabad and second set of them with clear address of 'Nobles' which was not within the jurisdiction of the petitioner. But despite this being ^{the fact} he finalised the assessment on 20.7.83, 25.7.83 & 26.7.83. In one subject of Trust Cases the ultimate beneficiaries were one Shri Sateesh B. Shah and his family members and in another set of cases the ultimate beneficiaries belong to what is known as 'Nobles' group. According to the

respondents, the assessment completed by Mr.Qureshi were found to be prejudicial to the interest of Revenue and the Commissioner of Income Tax, Gujarat III Ahmedabad had to set aside the assessment in 11 cases of one group on 11.12.84 and 6 cases of another group on 23.7.86 under section 263 of the Income Tax Act directing the Income Tax Officer to make their assessment after making necessary investigation.

4. It is stated that as the petitioner finalised the assessment enblock in 52 cases (without jurisdiction in certain cases) after only one hearing within a span of 6 days and without investigation and scrutiny which indicate lack of bonafide in his case. He was asked to explain how he made assessment of certain cases of multiple trust without having jurisdiction and thereafter further correspondence was ensued between the department and petitioner right upto 29.10.1984 and actions were taken under section 263 of the Income Tax Act, 1961. According to them the delay, if any, is not unreasonable as the complaint was received by the Central Board of Direct Taxes about the applicant and the Board had therefore called for the report and ultimately DI (Vigilance) Ahmedabad sent report to DI (Vigilance) Delhi on 28.7.87 and further report was sent on 15.9.87 and consequently the charge sheet was issued on 27.4.88 as the Central Vigilance Commission in March 1988, advised that department may appoint their own Inquiry Officer and enquire into the charges.

5. When the matter came up for final hearing we have heard the arguments of Shri M.R.Anand, the learned Counsel for the petitioner and Mr.R.P.Bhatt, Standing Counsel, on behalf of the Respondents.

6. During the course of his arguments it was vehemently contended by Mr.M.R.Anand that the petitioner in rendering the assessment of the Income Tax assessees exercised the powers under the Income Tax Act which are 'quasi judicial' in nature and subject to review by the higher authorities and the Courts including High Court and Supreme Court. According to him, such officers exercising 'quasi-judicial' powers can never be subjected to a departmental proceedings, unless there is a clear allegation of corrupt motives. In his submission, the way the petitioner assessed these family trust under section 161 of the Income Tax Act was the way of large number of assessment orders were being passed until the Hon'ble Supreme Court's judgment in Mc Dowell's case reported in 151 I.T.R. p.148 delivered in late 1985. Thus the C.I.T. was wiser by the said judgment and consequently the powers under section 263 in the case of the petitioner was exercised by an order dated 11.12.85 but when the petitioner made the assessment order, the view taken by him was based on the judgment in Nizam's case given by the Hon'ble Supreme Court in late 1970. In support of his submissions he relied on the cases (i) M/s. Ravi Roadways V/s. Asia.B & Ors. (A.I.R. 1970 S.C.1241) and (ii) Sirpur Paper Mills Ltd., V/s. Commissioner of Wealth Tax, Huderabad (A.I.R.1970 S.C.1520), wherein it has been held that exercise of power under section 59(1) of the Motor Vehicles Act, 1939 and the powers exercised by Wealth Tax Officers, are done in the exercise of quasi-judicial in nature and can not be interferred by administrative instructions. Relying on the cases of E.S.Athithyaraman V/s. The Commissioner, Hindu Religious and Charitable Endowments (Administration) Department, Madras (1971 S.L.R. p.41) and the

decision of the Gujarat High Court in Mohanbhai V/s. Y.B. Jhala (1980(1)S.L.R. p.324, it was urged that / ^{the delay of} ~~the~~ 3½ years in the former and 1½ years in the later case, were considered quite unreasonable and in the instant case, in absence of any documents placed on record the explanation given by the respondents will lead to a reasonable inference that the petitioner was entitled to proceed on the basis that his explanation dated 29.10.1984 was accepted by the department and therefore the entire proceedings were dropped. In his submission, the action of the respondents in framing the charges against the applicant 5 years after the event or the alleged misconduct took place, is bad in law and liable to be quashed even on the sole ground of inordinate delay.

7. Mr. R.P.Bhatt, the learned counsel for the respondents however contended that the fact that Mr. Qureshi is due to retire shortly, is only incidental and the petitioner is subjected to a departmental proceedings as he is involved in grave misconduct as the assessments have not been completed in a normal course and the acts done by him constitute positive misconduct or misbehaviour on the part of the petitioner and no malafides are involved in commencing the departmental enquiry. According to him, the time taken was quite just and necessary to do justice to the case of the petitioner and the reliefs, if granted would tantamount to the Tribunal exercising the jurisdiction of the Inquiry Officer and disciplinary authority. In support of his submission he has relied on the case of B.K.Mishra V/s. Union of India through Secretary M.O.H.A & Anr. (A.T.R. 1988(1) C.A.T. 454 (P.B. Delhi) wherein it has been held as under :-

"Courts competent to quash disciplinary proceeding before the completion of the inquiry (i) if some palpable irregularity in the procedure which goes to the root of the matter has been committed (ii) or there is bias shown on the part of the disciplinary authority (iii) or there is an unexplained and intentional delay in initiating disciplinary proceedings: Disciplinary proceeding would not be bad or void or illegal only because of delay in initiating the same. Delay per se would not be fatal to all proceeding irrespective of the circumstances. "

8. Before dealing with the rival contentions raised by the parties, at the outset it may be stated that the broad facts dealing with the charge framed against the petitioner are not in dispute. It is made amply clear that while examining the points raised in this case, we are not required to examine whether the petitioner had assumed the jurisdiction correctly and made correct assessment or not, inasmuch as it falls within the domain of the jurisdiction of the authorities competent to revise or review the same. However on perusal of the extracts from C.I.T's No.HQ II/20/79 dated 16.10.79, the manual of office procedure, functions of the inspecting Assistant Commissioner, Commissioner of Income Tax and assessment orders including the provisions of Section 119, 143, 161, 262 to 263 of the Income Tax Act, 1961, we have no doubt in our mind that the authorities viz; Income Tax Officer & Commissioner of Income Tax etc. the powers and acts done by them while discharging their duties in passing the orders pertaining to the assessment of the Income Tax assessee, are 'quasi-judicial' in nature which are subject to judicial review and can be set aside by higher competent authority including High Court and the Supreme Court. Even during the course of arguments, it was conceded by Mr. R.P.Bhatt, the learned counsel for the respondents that the petitioner, while passing the assessment orders in respect of the Income-Tax

assessees concerned, which are subject matter of charge, did exercise 'quasi-judicial' powers. However according to him, it is a policy of the Government of India that stern actions are to be taken against the Government servant found guilty of corruption and lack of integrity and in the instant case the petitioner is subjected to a departmental proceedings for the lapses on his part resulting into large loss of Revenue.

9. The grievance of the petitioner is mainly two-fold; firstly, that he had acted in a quasi judicial capacity while dealing with the cases of the Income Tax assessee concerned and as such, he is not amenable to the disciplinary jurisdiction. Secondly, that the disciplinary enquiry commenced against him is liable to be quashed as it has been done after inordinate delay.

10. While dealing with the aforesaid contentions, at the outset it may be stated that on the plain reading of the charge (Annexure A-5) reproduced above, ^{it} does not make any imputation of any personal monetary gains or benefits or any corrupt practice. No misconduct of this nature has been alleged against the petitioner. The only allegation against the petitioner is that he completed 52 assessment, under section 143(3) in cases of Trust over which he had no jurisdiction and that he did so without proper scrutiny and investigation causing serious loss to Revenue.

11. The fact that some of the cases decided by the petitioner have been set aside by the Commissioner of Income Tax, under section 263 is not in dispute. Moreover the fact that such orders are still pending for review before the higher authorities as the assessee concerned have filed revision, against the same and thus, the matter is still sub-judice. It is the grievance of the -

petitioner that the view, taken by him, that the amount of tax payable by the Trustee must be the same as that payable by each beneficiary in respect of his share of Income and thus the Trust is not directly taxed, but the beneficiary is taxed for his income from the income of the Trust, is shared by several Income Tax Officers including the appellate commissioners but no action is either taken against these appellate orders by higher authorities or against which large number of I.T.O's who had taken identical views, as taken by the petitioner in the matter of assessment of such Trusts. It is in this context, it is alleged that he has been discriminated. Apart from the allegation of discrimination, we have no doubt in our mind that the petitioner, is being subjected to departmental enquiry for the actions taken by him while discharging quasi-judicial functions and unless there are clear allegation or the charge of corruption or any involvements in any corrupt practice for personal gains or otherwise, the mere allegation that the petitioner assumed jurisdiction in the cases and that he passed the orders without proper scrutiny and investigation can not constitute a misconduct, as these are the quasi-judicial functions discharged by the officers and thus not amenable to the disciplinary jurisdiction of the respondents.

12. It is pertinent to note that the petitioner was called upon to explain the circumstances under which he made such assessments without accepting the returns as such and without taking these cases on his G.I.R/Blue Book before making such assessments under confidential letter dated 30.8.83. The petitioner in his reply dated 8.9.1983 stated that he had taken over the charge of Circle IV, Ward.K., Ahmedabad very recently on his

transfer from Circle VI, Ahmedabad. According to him, the jurisdiction of this Ward (IV) is spread over the area nearby Ashram Road and the area is assigned as per T.P.S. and the returns are being forwarded by the despatch section to the I.T.O., who had actual jurisdiction and on this basis the returns seem to have come to his ward and accordingly, he had proceeded to make the assessment on the basis of the cases put up before him. He also clarified that he had no bad intention or motive in making the assessment as they are made looking to the small income return to fulfil the quota fixed for disposal.

13. Thereafter the petitioner was served with the memorandum dated 5th September 1984 (Annexure A-3) which reads as under :-

MEMORANDUM

Whereas Shri M.N.Qureshi while working as I.T.O. Circle-IV, Ward-K, Ahmedabad has been found to have completed assessments in cases of assesseees detailed in Annexure-A, who had declared their status to be that of Association of Persons, without investigation,

2. And whereas Shri Qureshi had also been found to have completed assessments in large number of cases of Association of Persons over which he had no jurisdiction as returns were filed in another ward, namely Circle-IV, Ward-N, Ahmedabad,

3. And whereas, Shri Qureshi while completing these assessments disregarded the instructions issued by the C.I.T., Gujarat-1, Ahmedabad vide Circular No. Conf/Search/80(1) dated 28.1.81 by which the I.T.Os. were directed to take prior approval of the I.A.C. under whom the I.T.Os. are working before completion of the assessments, and he also disregarded the instructions contained therein as to the manner in which the investigation should be conducted in cases of Association of Persons and completed the assessments without making any investigation whatsoever.

4. Now therefore, Shri Qureshi's conduct requires to be explained and accordingly by this show cause, he is directed to explain his conduct within ten days of the receipt of this Memorandum as to why disciplinary proceedings be not initiated against him under C.C.S.(C.C.A) Rules, 1965.

Sd/-
(R.C. GUPTA)
Chief Commissioner(Adm) and C.I.
Gujarat-1, A'bad.

14. In response to the aforesaid memorandum the petitioner submitted his exhaustive explanation vide reply dated 29th October, 1984 (Annexure A-4). Admittedly thereafter the petitioner heard nothing further in the matter till the charge memo dated 27.4.88 was served upon him. The petitioner was therefore would be justified in inferring that the authorities had decided to drop the charge against him. It is conceded that the imputation against the petitioner, that he completed assessment and dis-regarded the instructions issued by C.I.T. Gujarat-I, Ahmedabad vide circular No. Conf/Search/80(1) dated 21.1.81 by which the I.T.O's were required to take prior approval before completion of the assessment, as contained in para-3 of the aforesaid memorandum dated 5th September 1984, have been dropped as it was explained by the petitioner that no such instructions were communicated to him. The short question for our consideration is whether it is open to the Government to leisurely and at their option issue a charge sheet at any time long after the date on which the offence or misdeamenour took place. In Kundan Lal V/s. Delhi Administration (1976(1) S.L.R. 133,) it was held by the Delhi High Court as follows :-

Elementary fairness to a public servant would require that the Sword of Democles should not be allowed to hang over him longer than necessary; otherwise there is likelihood of degeneration into an engine of oppression. Whether departmental action taken against the pensioner in this case was legal or illegal, minimum fairness required that the said action was taken at least expeditiously and not after so much unexplained delay as has unfortunately happened in this case.

15. Admittedly, the subject matter of the disciplinary enquiry relates to the actions taken by the petitioner while discharging quasi judicial functions, in the year 1983 and the charges dated 27.4.1988 has been served upon the petitioner i.e., nearly after 5 years. In case

of P.K.Mishra (supra), it seems all relevant materials were placed before the Tribunal to convince that the delay, if taken, in the matter, was not unreasonable. In the instant case, barring the list Annexure -I indicating various dates and showing how the correspondence ensued between one authority to another, no materials whatsoever has been placed on record to support their version that the delay was caused as the matter had to be referred to the higher authorities (including Vigilence) for consideration and further scrutiny of the cases. Suffice it to say, that mere reference to dates of internal communications, the content of which is not disclosed can not cover up the fact of inordinate delay of nearly 5 years.

16. 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.

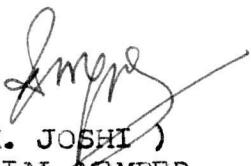
17. Bearing in mind all the facts and circumstances as discussed above, in the instant case it can not be said that the action was taken expeditiously. The explanation rendered in this case does not inspire any confidence. It is to be noted that the action is taken against the petitioner on the fag end of his retirement. The

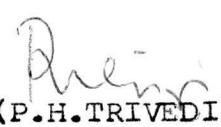
circumstances and the manner in which the respondents authority have dealt the matter, it can not be said that this is an expeditious manner of conducting enquiries. We have, therefore, no doubt in holding that inordinate delay in commencing the enquiry in the instant case has resulted in oppression of the petitioner.

18. 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 unconsciousable 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.

19. In this view of the matter, we allow the application of the petitioner and set aside the orders of the Respondent No.2 - Commissioner of Income Tax, Gujarat-I, Ahmedabad, in memorandum No.AC(ADM)II/7/87-88 dated 27.4.88 framing charges against the petitioner and order Annexure A-7 dated 26th May, 1988 appointing an Inquiry Officer. There will be however no order as to costs. Rule made absolute.


(P.M. JOSHI)
JUDICIAL MEMBER


(P.H. TRIVEDI)
VICE CHAIRMAN

ttc.