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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NO. 589 OF 1993  
Cuttack this the 13<sup>th</sup> day of September, 1999

Iswar Chandra Barik

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

(FOR INSTRUCTIONS)

1. Whether it be referred to reporters or not ? *Yes*
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ? *NO*

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN  
*13.9.99*

*13.9.99*  
(G. NARASIMHAM)  
MEMBER (JUDICIAL)

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ORIGINAL APPLICATION NO. 589 OF 1993  
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CORAM:

THE HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN  
AND  
THE HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)  
...

Iswar Chandra Barik  
aged about 48 years,  
S/o. Late Banchhanidhi Barik  
At: Sankhapata (Near Women's Hostel)  
P.O: Baripada, Dist: Mayurbhanj

By the Advocates : ... Applicant  
G.A.R.Dora

-Versus-

1. Union of India represented  
by the Commissioner of Income Tax  
Orissa, Bhubaneswar
2. Dy. Commissioner of Income Tax  
Rourkela Range, Rourkela  
District: Sundargarh

... Respondents

By the Advocates : Mr.A.K.Bose  
Sr.Standing Counsel  
(Central)

...

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ORDER

MR.G.NARASIMHAM, MEMBER(): In this application under Section 19 of the Administrative Tribunals Act, 1985, applicant Iswar Chandra Barik, who joined as U.D. Clerk in the Income Tax Department on 12.2.1969, seeks to quash punishment order of removal dated 10.3.1993 passed by Respondent No.2(Annexure-19) in a disciplinary proceeding. On appeal the appellate authority, i.e. Respondent No.1 confirmed this punishment order (Annexure-21 dated 1.5.1993).

2. Disciplinary proceeding was initiated through Memo dated 14.4.1980(Annexure-1) for two charges. The first charge is that as U.D.Clerk between 19.2.1969 and 31.3.1978 he acquired assets disproportionate to the known source of his income to the extent of Rs.54, 414.89. The second charge is that he acquired immovable property in his name and in the name of family members and constructed a building in Baripada Town without permission of/intimation to the competent authority. This according to Department, the applicant had contravened Rule-3<sup>3-218</sup>(18) of the CCS(Conduct) Rules.

The charge under Annexure-1 in regard to acquisition of disproportionate assets includes purchase of lands valued Rs.16, 500/- in the name of the applicant's father Shri Banchhanidhi Barik by spending Rs.1131.50 towards stamp and registration fees; land valued Rs.650/- by spending Rs.42.25 towards stamp and registration fees; and land valued Rs.6800.00 in the name of his wife by spending Rs.502.50 towards stamp and registration fees. The cost of construction of the house in Baripada Town standing in the name of his father was estimated at Rs.29,655/-. For this construction the loan

of Rs.4860/- was taken from the Urban Cooperative Bank, Baripada in the year 1975 and repayment of Rs.5427.53 including interest was made. Besides L.I.C. Policy and other assets worth Rs.4707/- were found during search.

It further reveals from the charge that the total income through salary during the relevant period comes to Rs.31, 704.29. Expenditure on food and clothing of the applicant and his family members, as per the statement furnished by the Bureau of Statistics, Orissa, comes to Rs.24, 240.20. The likely savings of the applicant were calculated at Rs.3904.11.

3. The defence of the applicant during disciplinary proceeding as appears from the record is that he has not purchased any land or constructed any house (Benami) in the name of his father, who is independent, and being a pensioner and having independent business. In fact his father was an income tax assessee and had submitted income/returns during the assessments years 1975-76, 1976-77, 1977-78 and 1978-79 (Annexures-22 series). His wife purchased lands from the gifts received from applicant's mother-in-law, who is a Mid wife in the Govt. Hospital and his father in law, a Teacher in a School.

4. The disciplinary authority by order dated 30.12.1985(Annexure-9) after considering the report of the Inquiring Officer/<sup>held</sup> that extent of disproportionate assets was Rs.27, 000/- and accordingly passed order of removal of the applicant from service. However, the appellate authority in order dated 10.3.1986 (Annexure-10) set aside this order and remitted the

matter for further enquiry to determine the issue of Benami and in respect of evidentiary value of the assessment orders of the I.T.O. with regard to returns of the applicant's father. on 8.4.1985(Annexure-13) the disciplinary authority held through this order the extent of disproportionate assets at Rs.35, 000 and passed penalty order of removal of the applicant from service. This order was confirmed in appeal on 9.6.1986(Annexure-15). Thereafter the applicant challenged these orders before this Tribunal in Original Application No.17/90. In judgment dated 7.7.1992 this Tribunal quashed the orders as per the principles laid down in Ramzan Khan case by the Hon'ble Supreme Court and remanded the matter to the disciplinary authority to proceed according to law. The disciplinary authority, after complying the directions of this Tribunal in his order dated 10.3.1993 (Annexure-19) again held the extent of disproportionate assets to the tune of Rs.35, 000 and held the applicant guilty of both the charges and accordingly imposed penalty of removal from service. This was confirmed in appeal on 10.5.1993(Annexure-21). Hence this application.

5. In this application the main grounds urged by the applicant are that his father is not a member of the family under CCSCCA (Conduct) Rules, 1964 and that there is no specific charge that he acquired the property (Benami) in the name of his father. Lands and house standing in the name of his father could not have been treated as assets of the applicant. This apart the findings of the disciplinary authority as well as

appellate authority that applicant had acquired land standing in the name of his father are based on no evidence and those findings were arrived more on suspicion. Besides, the applicant's father is a pensioner and having independent business as reflected in assesment orders(Annexure-22 series) and these assessment orders were illegally not taken into consideration in the disciplinary proceeding. Lands standing in the name of his wife were purchased from the gifts received from his mother in law.

6. Respondents(Department) in their counter justified the validity and legality of the disciplinary proceeding and the findings arrived by the disciplinary authority and confirmed by the appellate authority.

7. We have heard Shri G.A.R.Dora, learned counsel for the applicant and Shri A.K.Bose, learned Sr.Standing Counsel appearing for the respondents. Also perused the records.

After the conclusion of the arguments a copy of the enquiry report has been filed for our perusal with copy to ther side.

8. Charge Memo has been issued for violation of Rule-3(18) of the CCS(Conduct) Rules, 1964. Rule-3 speaks of General Conduct as to the maintenance of integrity, devotion to duty and so on. Rule-18 is concerned with acquisition of properties by the Government servant or in the name of mamber of his family. Members of family under Section 2(c) of the Rules mean, wife or husband, son or daughter or step son or step daughter wholly dependent on him and any other person related to the Government servant whether by blood or marriage or through



Govt.servant's wife and wholly dependent on Government servant. In other words, a father in order to come under the definition of member of the family must be wholly dependent on his son, the Government servant. There is no averment anywhere in the charge memo that father Banchhanidhi Barik is wholly dependent on his son, the applicant. Hence Banchhanidhi Barik, the father cannot come under the definition of family member of the applicant. In view of this, even if the applicant had acquired lands or constructed a house at Baripada in the name of his father without permission or intimation to the competent authority, he cannot be penalised on that count in not obtaining such permission or giving such intimation.

The charge memo vide Annexure-1 reveals that Banchhanidhi Barik retired as Constable from Police Department on 1.9.1967 and his pension was fixed at Rs.27/- per month. He also received Rs.936/- towards gratuity and Rs.785/- towards G.P.F. He is having 6/7 acres of agricultural land of his paternal property. He had five daughters of whom three were got married during his service career. The fourth daughter was married in the year 1975. Nine plot of lands on nine different occasions were purchased, vendee being Banchhanidhi Barik. The total value of those lands comes to Rs.16, 500/- and Rs.1131.50 were spent towards stamp and registration fees. The building at Baripada in the name of Banchhanidhi Barik was constructed during the year 1976-77 and the cost of that building was estimated at Rs.29, 655/-.

It is the contention of the learned counsel for the applicant that if the value of these lands and

building standing in the name of his father are excluded, then there would be no assets disproportionate to the known source of income of the applicant and according to learned counsel these were illegally included in the assets of the applicant.

It is the specific averment in the charge that for construction of house, a loan of Rs.4860/- was taken from the Urban Cooperative Bank, Baripada in the year 1975 and repayment of Rs.5427.53 was found effected till then. it is not clear from this averment whether this loan was taken by the applicant or in the name of his father Banchhanidhi Barik. What is surprising that in the list of documents and witnesses appended to the charge memo, there is no mention of any document or register relating to Urban Cooperative Bank, Baripada of the year 1975 on wards and also no statement of any witness representing that Bank. We have also gone through the impugned order of the disciplinary authority vide Annexure-19, which also does not reveal that any evidence has been led during inquiry relating to this loan amount. The order is also silent in regard to any finding over this obtaining of loan. Hence attempt on the part of the Department that the loan was obtained evidently by the applicant or at his instance for construction of the house fails. Necessarily this loan amount and the refund of the loan amount included in the income and expenditure of applicant's account respectively have to be excluded in assessing disproportionate assets. Thus One of the grounds relied by the Department to establish that the applicant had constructed a house in the name of his father has to be written off.



As earlier indicated it is the admitted case that father of the applicant Banchhanidhi Barik is ~~the~~ a retired Constable and is having his own pension and that he has 6/7 acres of agricultural lands inherited from his parents. It is also a fact that he had submitted income tax returns for four continuous years commencing from the assessment year 1975-76 onwards. The concerned I.T.O., on the basis of the returns has also passed assessments orders which are at Annexure-22 series. Assessment order for the assessment year 1975-76 shows that the total income tax has been assessed at <sup>Rs. 10,280/-</sup> ~~Rs. 2240/-~~. This includes pension of Rs.780/- which means by then applicant's father was drawing pension at the rate of Rs.65/- per month and not Rs.27/- at the time of his retirement on 1.9.1967. The assessed income also includes income from agriculture at Rs.3500/- and income <sup>from</sup> seasonal goods at Rs.6000/-. For the assessment year 1976-77, the assessment of total income was Rs.12,180/- which includes income of Rs.3500 from agriculture. For the year 1977-78, assessment of total income was Rs.12,280/. which inclunes Rs.4000 as income from agriculture. Similarly for the year 1978-79, assessed income was Rs.14,990 which includes Rs.5000 as income from agricultural source and Rs.9000 and odd as business income. These four assessment orders passed by the then I.T.O. in exercise of statutory power under Section 143(1) of the Indian Income Tax Act were altogether ignored for being considered by the disciplinary authority on the ground that these <sup>were</sup> assessment orders ~~then~~ passed without enquiry. On perusal of the assessment orders under Annexure-22 series, it would be clear that these orders were passed on the basis

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of some materials. The fact remains that these orders were passed by the then I.T.O. in exercise of statutory power conferred under Section 143(1) of the Indian Income Tax Act. It needs no reiteration ~~to say~~ that an order passed by an authority in exercise of statutory power cannot be brushed aside as illegal or invalid till the same is not set aside and/or modified by an authority in exercise of statutory power. Admittedly these assessment orders have not been set aside or modified. Hence the disciplinary authority <sup>even</sup> in view <sup>of</sup> exercise of quasi judicial powers cannot completely ignore these assessment orders treating them as illegal or nullity. These assessment orders coupled with the admitted fact that father of the applicant Banchhanidhi Barik is having 6/7 acres of agricultural land, besides monthly pension would undoubtedly establish that he is financially sound and solvent without any necessity to depend on his son, the applicant.

We are aware of the legal position that a Tribunal or a Court cannot act as an appellate authority by reappraising the evidence on record. However, if a particular piece of evidence in favour of the delinquent is illegally ignored and not taken into consideration and in the absence of any evidence, a particular fact has been assumed to be established to the prejudice of the delinquent, the Tribunal or Court would be failing in their duty in not reappraising that part of the evidence. This is clear from the observations of the Hon'ble Supreme Court in para-4 of the judgment in B.C.Chaturvedi case reported in 1996 SCC(L&S) 80 to the

effect that Courts/Tribunals may interfere with the order of the authority holding the proceeding against a delinquent officer in a manner inconsistent to the rules of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. Here the disciplinary authority <sup>assuming</sup> ~~to~~ as the raising of loan from the Bank is not supported by any evidence on record. Similarly, in not taking into account the assessment orders under Annexure-22 series by treating them as illegal orders, the disciplinary authority violated the statutory rules prescribing the mode of enquiry, because, all admissible evidence has not been taken into account and considered which is one of the essential requirements in a disciplinary proceeding. So also this very act of the disciplinary authority violates the rules of natural justice inasmuch as the material piece of evidence in support of the delinquent case have altogether been ignored and not taken into consideration.

Thus the fact remains that the applicant's father Banchhanidhi Barik, besides being a pensioner is having 6/7 acres of agricultural land and he has also paid income tax at least for four years from 1975 to 1979, <sup>without</sup> Without taking these factors into consideration, the disciplinary authority <sup>assuming</sup> ~~assuming~~ the properties standing in the name of Banchhanidhi Barik have been acquired by the applicant simply because, Banchhanidhi Barik even after his retirement had to perform the marriage ceremony of one of his daughters during 1975 cannot be sustained. Had these assessment orders been taken into consideration any reasonable authority would

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have come to a definite conclusion that Banchhanidhi Barik is financially sound and solvent.

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We have therefore, no hesitation to hold that the findings of the disciplinary authority that lands and house standing in the name of applicant's father Banchhanidhi Barik had been acquired by the applicant cannot be legally sustained. These lands valued Rs.16, 500 and building valued Rs.29,655, i.e. total assets amounting to Rs.46, 155 standing in the name of Banchhanidhi Barik have been wrongly treated as assets acquired by the applicant. If these assets amounting Rs.46, 155, stamp and registration fee Rs.1131.00, loan amount of Rs.4860.00 and repayment of loan amount Rs.5427.53 are excluded from computation, there would not be any assets remaining to be construed as disproportionate to the known source of income. Therefore, charge, acquisition of assets disproportionate to the known source of income fails.

9. In fact the other charge with regard to obtaining permission of/intimation to the competent authority in acquisition of lands when the lands were purchased in the name of the applicant and his wife, we hold that the finding of the disciplinary authority can not be interfered with since there is no evidence that the applicant had in fact followed the requirement of Rule-18 of the CCS(Conduct) Rules.

8. We have already held that charge No.1 in regard to acquisition of disproportionate assets fails. Question then arises whether for the misconduct so far as charge No.2 is concerned for not following the procedure under Rule-18 of the CCS(Conduct) Rules in securing the

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permission or giving intimation to the competent authority, punishment of removal from service would be justified. This punishment of removal was apparently imposed keeping in view charge No.1. It is true that a Court or Tribunal normally is not expected to modify the quantum of punishment imposed on the delinquent resulting from a disciplinary proceeding. yet it has been held by the Hon'ble Supreme Court in B.C.Chaturvedi case (Supra) that when punishment imposed in relation to a charge shocks the judicial conscience, in which case it can mould the relief either by directing the authority to reconsider the punishment or in exceptional case by itself imposing the appropriate punishment recording the cogent reasons. We feel for a charge of misconduct in not following the procedure under Rule-18 of CCS(Conduct) Rules, punishment of removal from service would definitely shock our judicial conscience. Hence two courses are left open, i.e., either to remand the matter to the disciplinary authority to reconsider the punishment or to impose an appropriate punishment recording cogent reasons.

Proceeding has been initiated on 14.4.1980 and since then it has through a checkered career as already stated above. As early as 30.12.1985, the applicant was first removed from service by punishment order of the disciplinary authority. The appellate authority set aside the same and remanded the matter for further enquiry. Again on 8.4.1988 the disciplinary authority imposed the same punishment of removal from service. This Tribunal in O.A.17/90 after quashing the punishment of removal from

service remanded the matter to the disciplinary authority. Thereafter the impugned order of punishment was passed on 10.3.1993. This would show, for the last 20 years the applicant has been involved in this proceeding and litigation. Hence we are not inclined to further delay it by remanding the matter to the disciplinary authority for imposition of any other penalty barring dismissal/removal from service. We feel, stoppage of increments for a period of two years within cumulative effect will meet the ends of justice for misconduct in not following the procedure under Rule-18 of CCS(Conduct) Rules.

9. In the result, while quashing the orders of punishment of removal from service passed by the disciplinary authority and confirmed by the appellate authority vide Annexures-19 and 21 respectively, we direct that annual increments of the applicant for two years be withheld without cumulative effect.

It is not clear from the record as to whether the applicant was under suspension and/or still ~~on~~ <sup>in</sup> service by the time the impugned order of punishment was passed by the disciplinary authority. If he was not under suspension he shall be reinstated treating him to be in service all these years from the date the impugned order of removal(Annexure-19) was passed with back wages. If he was under suspension prior to the date the impugned order of removal (Annexure-19) was passed, then the period of suspension shall be treated as such till that date.

10. Respondents are directed to comply the direction with regard to reinstatement of the applicant



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within a period of 15(Fifteen) days from the date of receipt of copies of this order and pay him back wages within a period of 60(Sixty) days from the date of receipt of copies of this order.

In the result the application is allowed to the extent indicated above, but without any order as to costs.

Registry is directed to communicate copies of this order to the parties concerned forthwith.

*(SOMNATH SOM)*  
VICE-CHAIRMAN

B.K.SAHOO  
*13.9.99*

*13.9.99*  
(G.NARASIMHAM)  
MEMBER(JUDICIAL)