

9

**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK**

ORIGINAL APPLICATION NO. 187 OF 2007
CUTTACK, THIS THE ~~30~~ DAY OF February, 2010

Padmanava Sethi.....Applicant

Vrs.

Union of India & OrsRespondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

(C.R.MOHAPATRA)
MEMBER (ADMN.)

(K.THANKAPPAN)
MEMBER (JUDL.)

**CENTRAL ADMINISTRATIVE TRIBUNAL
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CORAM :

**HON'BLE MR. JUSTICE K. THANKAPPAN, MEMBER(J)
HON'BLE MR. C.R.MOHAPATRA, MEMBER(A)**

.....
Padmanava Sethi, aged about 65 years, Son of Late Hadibandhu Sethi of 121, Nayapalli, Sabar Sahi, Madhusuddan Nagar, Bhubaneswar-751012 at present Deputy Commissioner of Income Tax (Retd.) from the office of the Chief Commissioner of Income Tax, Bhubaneswar.

... Applicant

By the Advocates – M/s. B.Panda, D.K.Das, S.C.Barick, B.R.Panda.

-Versus-

1. Union of India represented through Secretary Finance, Ministry of Finance, North Block, Deptt. of Revenue, New Delhi-110001.
2. Central Board of Direct Taxes, represented through its Chairman, Department of Revenue, North Block, New Delhi-110001
3. The Union Public Service Commission, represented through its Secretary, Dholpur House, Shahjahan Road, New Delhi-110001.
4. The Central Vigilance Commissioner, Satarka Bhavan, GPO Complex, INA, New Delhi.
5. The Secretary, Department of Personnel & Training, North Block, New Delhi-110001.
6. The Chief Commissioner of Income-tax, Aayakar Bhawan, Rajaswa Vihar, Bhubaneswar-751007.

... Respondents

By the Advocates - Mr. S.B.Jena

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ORDER

Shri Justice K. Thankappan, Member (J):-

Applicant, a retired Deputy Commissioner of Income Tax has filed this O.A. challenging the order dated 19.10.2006 by which a penalty of 20% cut in pension for a period of three years has been imposed against him. He has, therefore, prayed to quash the said order of penalty and direct the Respondents to pay 18% interest for the delayed payment of his retiral dues.

2. The brief facts which are necessary for the disposal of this O.A. are as follows:

While working as Deputy Commissioner of Income Tax in Puri Ward, the work of the applicant was inspected and a report was sent to the Deputy Director of Income Tax (Vigilance) on 22.4.1991, pursuant to which, a show cause notice was issued to the applicant on 24.10.1991 in contemplation of initiation of disciplinary proceedings against him. Being dissatisfied with the explanation so offered by the applicant, a charge memo dated 04.12.1997 was issued to him alleging that while the applicant was working as Income Tax Officer at Puri for the period from 1987 to 1990, he committed

08

certain act of omission and commission such as wrong assumption of jurisdiction over the cases, deliberate non-selection of cases for scrutiny and conferring undue benefit on the assessees by showing lack of inclination to make proper inquiry and displaying utter disrespect to the procedure and rules laid down under Income Tax Rules. Further, it is alleged that out of 89 cases examined by the Deputy Director of Income Tax (Vigilance) in his inspection note, 7 specific cases have been found irregularly assessed and thereby the applicant committed glaring lapses and irregularities on his part, which amounts to misconduct unbecoming on he part of a Govt. servant. Thereafter, initiating proceeding under Rule 14 of the CCS(CCA) Rules, 1965 an inquiry had been conducted by Commissioner for Departmental Inquiries and Inquiring Authority submitted its report dated 31.12.2001 holding that the allegations leveled rather the misconduct alleged against the applicant had not been proved . However, disagreeing with the findings of the Inquiry Authority, the Disciplinary Authority, upon receiving advice from the Central Vigilance Commission and the Union Public Service Commission, held the applicant guilty for not maintaining absolute integrity, displaying lack of

devotion to duty and behaving in a manner unbecoming of Govt. servant within the meaning of Rule 3(1)(i) Rule 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964, and imposed the penalty of 20% cut in the pension for a period of three years as per order dated 19.10.2006, which is assailed in this O.A.

3. While issuing notice to the Respondents on 22.5.2007, this Tribunal passed an interim order on 2.11.2007 staying the operation of the orders impugned in the O.A.

4. In pursuance of the notice issued by this Tribunal, a counter statement has been filed for and on behalf of the Respondents, in which the stand taken is that the penalty imposed on the applicant was with sanction of law and it was only after receiving the advice of CVC and UPSC. Further, it is stated in the counter reply that the Disciplinary Proceeding was concluded following all prescribed procedures which also involve seeking advice from CVC and UPSC and also with reference to the Department of Personnel and Training, Govt. of India. It is further stated in the counter affidavit that because of the lapse on the part of the applicant, it has caused prejudice to the earning of revenue and the applicant having found to have committed grave misconduct in connivance and collusion with

60

the assesses and on wrongful assumption of jurisdiction, manipulated the records with an intention of creating evidence in favour of the assessees and even the selection of cases for scrutiny was also with the ill motive to confer undue benefit to the assesses, he has been rightly imposed punishment of 20% cut in pension with a view to creating precedent for other eye-openers. It has been submitted that there being no procedural irregularities in conducting disciplinary proceedings against the applicant, the Tribunal should not interfere in the matter.

5. We have heard Mr. B.Panda, Ld. Counsel appearing for the applicant and Mr. S.B.Jena, Ld. Additional Standing Counsel for the Respondents and perused the relevant records produced before this Tribunal.

6. Ld. Counsel appearing for the applicant, Mr. Panda summarizes his arguments as under:

Firstly, Mr. Panda submitted that the charge memo dated 4.12.1997 issued against the applicant is hopelessly belated as it relates to an incident occurred or happened six years prior to the date of issuance of chargesheet as the disciplinary proceedings are based on alleged irregularities noticed as a result of inspection of his work concluded as per

the report of the Deputy Director of Income Tax, which is against the principles laid down by the Apex Court reported in 1995(2) SCC 570 (State of Punjab vs Chaman Lal Goel). On this aspect, Ld. Counsel for the applicant further submitted that even as per 3rd proviso of Rule 9 of the Pension Rules, the proceedings should not be initiated in respect of any event which took place 4 years before such institution. Therefore, the incident, according to the Department involving the alleged misconduct, occurred during 1987-1990, the chargememo issued on 1997 is not sustainable.

The second line of argument of the Ld. Counsel for the applicant is that even as per the alleged charge memo there is no evidence to show that any monetary loss has been sustained by the Government due to the alleged lapse or irregularities on the part of the applicant in assessing 7 instances in which the alleged misconduct is said to have been committed by the applicant. Though, it is also alleged in the charge memo that the applicant has been found guilty of grave misconduct yet the nature of the grave misconduct has not been explained in the charge. Rule 3 of the Conduct Rules only summarizes that the Govt. servant shall maintain integrity,

devotion to duty and do nothing which is unbecoming of Govt. servant. Further, sub-rule (iii) of the said rules says that orders and directions of the superior official shall ordinarily be in writing, oral directions to subordinates shall be avoided as far as possible. Where the issue of oral direction become unavoidable, the official superior shall confirm it in writing immediately thereafter. It is also not clear from the charge leveled against the applicant as to what the procedural irregularity the applicant had committed in assessing the seven cases as the fact remains that he only followed the procedure prescribed under Section 142 of the Income Tax Act, which an Income Tax Officer has to follow in making assessment and there being no allegation that any procedure has been violated by the applicant, the proceeding initiated against the applicant is violated.

The third line of argument of the Ld. Counsel is that the Inquiry Authority has explained everything in the report holding that there is no material to prove that the applicant is guilty of any misconduct. Despite this, the Disciplinary Authority disagreeing with the findings entered by the Inquiry Authority sought advice of CVC as well as UPSC, but, the

disagreement of Disciplinary Authority was not concorded by the UPSC and, in the instant case, a reference was made to the DoPT, Govt. of India. All these would show that there is no culpable, willful or intentional act of omission and commission on the part of the applicant. Ld. Counsel for the applicant also relied on the judgment of the Apex Court reported in AIR 1979 SC 1022 in Union of India and Ors. Vs J.Ahmed, AIR 1999 (2) SLJ 96 SC in M.S.Bindra vs Union of India & Ors and AIR 1992 SC 2188 in State of Punjab & Ors vs Ram Singh.

7. To the above argument of the Ld. Counsel for the applicant, Ld. Counsel for the Respondents Mr. Jena, relying on the counter affidavit, submitted that though the Inquiry Authority exonerated the applicant from the charge, the Disciplinary Authority disagreeing with the said view after issuing a notice to the applicant narrating the points of differences or disagreement sought the opinion of both the CVC as well as the UPSC. The CVC and the UPSC having advised in the light of O.M. issued by DoPT dated 13.6.1995 to proceed against the applicant, upon considering all the aspects of the case and the evidence adduced, the Disciplinary Authority found the applicant guilty of the charges. If so, according to the

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Ld. Counsel for the Respondents, the order impugned, ordering 20% cut in pension for a period of three year is justifiable and this Tribunal should not interfere in the matter.

8. In consideration of the arguments of the Ld. Counsel for the parties and on perusal of the records produced in the O.A., the question to be decided is whether the Respondents are justified in imposing the penalty of 20% cut in pension of the applicant or not.

9. The entire case set up against the applicant is based on the assessment made by him in respect of seven specific cases while he was working as assessing officer at Puri. The prime target pointed out against the applicant is that while assessing on seven establishments, the applicant has completed the assessments without insisting on production of bank accounts and without obtaining capital account of the partners. Further, it is alleged that the applicant did not scrutinize the cases in conformity with the guidelines laid down by the Board from time to time and completed the scrutiny/assessment in a casual and callous way so as to cause loss of revenue. The further charge alleged to have been proved against the applicant is that even after giving notice Under Section 142(1) of the



19
-10-

Income Tax, the applicant has not followed the procedure while assessing and completing the assessments and committed certain omissions and commissions in assessing the 7 different firms, and, in the circumstances, the Disciplinary Authority held that the applicant had committed misconduct of usurping his power and caused loss to the revenue.

10. We have perused the disagreement order made by the Disciplinary Authority with that of the findings entered by the Inquiry Authority. The Inquiry Authority has categorically found in its report dated 31.12.2001 that in each case of the 7 instances "No evidence has been produced to establish wrong assumption of jurisdiction or manipulation of records with the intention of creating evidence in favour of the assessees as alleged" and held the charge has not been proved.

11. The question now to be considered is whether the reasons stated for the disagreement by the Disciplinary Authority with that of Inquiry Authority are acceptable or not rather whether there is any evidence to support the conclusion arrived at by the Disciplinary Authority.

12. As per Section 142 of the Income Tax Act, an assessing officer is empowered to follow the procedure

20

prescribed therein so as to assess a party or a firm and there is no special procedure or rule prescribed for exercising discretion by such officer to assess such firms. Also, there is no evidence adduced before the Inquiry Authority or the Disciplinary Authority to hold that the applicant is guilty of the charges framed against him. That apart, culpable delay occurred in issuing the chargesheet against the applicant is also fatal to the departmental proceeding as held in the Judgment of the Apex Court reported in 1995 SCC(L&S) 541 that "It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after a lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself,

26

the enquiry has to be interdicted". Further, it can be seen that in an earlier judgment of the Apex Court reported in (1992) 1 SCJ 178 in A.R.Antulay vs R.S.Nayak and the Judgment reported in AIR 1998 SC 1833 in the State of Andhra Pradesh vs N.Radha Krishnan, it is held that "inordinate, unexplained delay and that too which is not attributable to the delinquent official would cause serious prejudice to him for his defence".

13. Apart from the delay, even going by the charges and the findings entered by the Disciplinary Authority, we are not in a position to hold that the stand taken by the Disciplinary Authority that the applicant has committed any misconduct is justifiable. The only allegation in the findings entered by the Disciplinary Authority is that in "all seven cases involving nine assessment proceedings in total were further examined at this end and it has been found that lapses committed by you are glaring and cannot be held as bonafide ones". To prove the said allegation, the Disciplinary Authority has not given any cogent reason to find that the applicant has committed any procedural irregularity or committed any omission or commission so as to cause any loss to the revenue. In this context, the only view taken by the Disciplinary Authority is that it is not necessary to

20

prove any loss of revenue but the lapses by itself prove grave misconduct to have been committed by the applicant.

14. In this context, we have to see that actually what is the misconduct committed by the delinquent official. Though, the CCS(CCA) Rules or the Conduct Rules for the Govt. employee do not define misconduct, the question was considered by the Hon'ble Apex Court reported in AIR 1992 SC 2188 in State of Punjab & Ors vs. Ram Singh, wherein the Hon'ble Apex Court by making a reference to the Dictionary meaning of the term, in paragraph 4 of the judgment held as under:

"Misconduct has been defined in Black's Law Dictionary, Sixth Edition at Page 999 thus:-

"A Transgression of some established and definite rule of action, a forbidden act, a dereliction from duty, unlawful behaviour, willful in character, improper or wrong behaviour, its synonyms are misdemeanor, misdeed, misbehaviour, delinquency, impropriety, mismanagement, offence, but not negligence or carelessness."

Misconduct in office has been defined as:-

"Any unlawful behaviour by a public officer in relation to the duties of his office, willful in character. The term

22

embraces acts which the office holder had no right to perform, acts performed improperly, and failure to act in the face of an affirmative duty to act."

Further, in AIR 1979 SC 1022 in Union of India & Ors vs J.Ahmed, it has been held by the Hon'ble Apex Court as under:

"The inhibitions in the Conduct Rules clearly provide that an act or omission contrary thereto so as to run counter to the expected code of conduct would certainly constitute misconduct. Some other act or omission may as well constitute misconduct. Lack of efficiency, failure to attain the highest standard of administrative ability while holding a high post would not themselves constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be so heavy that the degree of culpability would be very high".

A reading of the above principle laid down by the Apex Court and applying the same to the facts of the case, we see that there exists no reasonable findings entered by the Disciplinary Authority to conclude that the applicant has

committed the alleged misconduct making him liable to penalty of 20% cut in the pension for a period of three years.

15. It is also to be noted that neither the Disciplinary Authority, nor the CVC or UPSC has made any analysis of the evidence of the case in hand while disagreeing with the findings entered by the Inquiry Authority. If so, the materials, by virtue of which the Disciplinary Authority found the charges proved against the applicant, lack in this case. We have also seen that all the assessments made by the applicant in the seven referred cases are based on the procedure prescribed under Section 142 of the Income Tax Act. If so, the findings entered by the Disciplinary Authority are baseless and penalty imposed in that behalf is not sustainable in law.

16. One more aspect to be considered in this case is that though as per provision of Vigilance Manual, the Vigilance Commission has got power to advise any authority or any Governmental authority to proceed against the officers but the Commission has no power to issue any order to proceed against an officer unless such investigation is made by the agency contemplated under the provisions of Vigilance Commission Act. In other words, both the Vigilance Commission as well as

the UPSC in the light of the order passed by the DoPT can only issue guidelines to proceed against a delinquent officer. Even though, in the case in hand, both the CVC as well as the UPSC have expressed their agreement with the disagreement made by the Disciplinary Authority, though no finding has been entered or assessment made by them based on the facts and materials of the case. If so, the value of the advise given by both CVC as well as UPSC shall not be taken as a last word for prosecuting and finding the applicant guilty of the charges framed against him without the same being substantiated by materials or evidence corroborating violation or transgression of any procedure which the applicant followed beyond his power or discretion as an assessing officer.

17. For the reasons discussed above, we are of the view that the order dated 19.10.2006 followed by the order dated 12.03.2007 are liable to be quashed declaring the applicant entitled to full pension. Ordered accordingly. Respondents are, therefore, directed to pass appropriate orders releasing full pension as if applicant had not been penalized on account of disciplinary proceedings. It is, however, made clear that if 20% cut in pension has been effected the same shall be

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worked out as arrears pension and paid to the applicant within a reasonable time, at any rate, within three months from the date of receipt of copy of this order.

18. The O.A. is allowed to the extent indicated above.

No costs.

Chatt
(C.R.MOHAPATRA)
MEMBER (ADMN.)

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(K.THANKAPPAN)
MEMBER (JUDL.)

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