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**CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH: CUTTACK**

OA No.447 of 2010

Cuttack, this the ~~22~~ day of September, 2011

CORAM:-

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (A);
AND
THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.).

.....

Shri Durga Prasad Kar, Chief Commissioner of Income Tax (Retd.), aged about 61 years, S/o.Late Bidyadhar Kar, at present R/o.Radhika, 1540, Jagamara (East),Bhubaneswar-751 030.

....Applicant

By legal practitioner: M/s.J.M.Pattnaik,
C.K.Panigrahi,
D.K.Mallick,
A.Mishra,
Counsel.

- Versus -

1. Union of India represented by the Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001.
2. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001.
3. The Director General of Income Tax (Vigilance) & CVC, 1st Floor, Dayal Singh, Public Library Building No.1, Din Dayal Upadhyay Marg, New Delhi-110 002.
4. The Chief Commissioner of Income Tax, Orissa Region, Ayakar Bhawan, Bhubaneswar, Dist. Khurda.

.....Respondents

By legal practitioner: Mr.U.B.Mohapatra, SSC.

ORDER
A.K.PATNAIK, MEMBER (JUDL.).

The facts, in nut shell, are that the Applicant (Shri Durga Prasad Kar), while working as Chief Commissioner of

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Income Tax, on reaching the age of superannuation retired from service w.e.f. 30-04-2009. A charge sheet dated 29-04-2009 was issued to him under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 which according to him, was served just before hours of his retirement on 30-04-2009. By making representation he requested to drop the proceedings and upon receipt ^{of} no favourable reply he has filed this Original Application U/s.19 of the A.T. Act, 1985 impugning the charge sheet under Annexure-A/1 dated 29-04-2009. Applicant's contention is that the charge against him is that as Commissioner of Income Tax, Sambalpur and Commissioner of Income Tax (Appeals), Sambalpur, he accepted and passed orders u/s.263 and subsequently u/s.264 for the Assessment Years 1989-99 and 2000-2001 in respect of M/s.Hotel Sheela Tower Pvt. Ltd and for the assessment years 1990-81 to 1993-94 in respect of M/s. Deepchand Gindalmal, without exercising due diligence, prudence and caution. As the orders passed U/s.263 & 264 by him in the capacity of quasi judicial Authority, in good faith, as per the provisions made in Sec. 293 of the I.T. Act, 1961, he is not liable to be proceeded with under Rule 14 of the CCS (CC&A) Rules, 1965 on the alleged violation of the

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provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964. Further contention of the Applicant is that in absence of any reason for issuing the charge sheet just before few hours of his retirement for alleged incident of passing orders for the assessment years 1989-99, 1990-91, 1993-94 and 2000-2001 not only against the CCS (Pension) Rules but also opposed to the law of the land which proves mala fide exercise of power to delay in disbursement of his statutory retirement dues. Hence it is the contention of the Applicant that when the charge sheet is not sustainable in the eyes of law, allowing the Respondent-Department to proceed with the enquiry, like the Damocles' sword to hang on the head of the Applicant, would tantamount to allowing the applicant to continue in mental stress and strain without any just and valid ground. Therefore, while seeking to quash the charge sheet under Annexure-A/1, his second prayer is to direct the Respondents to release his withheld retirement dues with 18% interest forthwith.

In this connection, he has relied on the order dated 27-07-2009 of the Hon'ble Apex Court dismissing the Special Leave to Appeal (Civil) Nos.11273/2009 preferred by the Income Tax Department challenging the order dated 08-08-2008

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in WP (C) No. 131/2008 of the Hon'ble High Court of Delhi wherein the Hon'ble High Court of Delhi affirmed the order of Principal Bench of this Tribunal dated 21st September, 2007 in OA No. 1190 of 2007 in which the PB, New Delhi quashed the charge sheet under Rule 16 of the CCS (CC&A) Rules, 1965 issued to the Applicant, on a similar allegation of passing order during his incumbency as the Commissioner of Income Tax (Appeals)-XV, Kolkata for the A/Y 1991-92 in favour of M/s.Jai Kali Oil Industries Ltd, without exercising due diligence, prudence and caution.

In support of his stand that order passed in quasi judicial capacity cannot be a subject of misconduct under CCS Rules, a wrong interpretation of law cannot be a ground for misconduct and delay in issuing charge sheet without any plausible explanation, he has placed reliance on several decisions like cases of **Inspector Prem Chand v Govt. of NCT**, 2007 (5) Scale 421, **V.D.Trivedi v Union of India and others**, (1993) 2 SCC 55 **Ramesh Chander Singh v High Court of Allahabad & Anr**, JT 2007 (4) SC 135 **Zunjarrao Bhikaji Nagarkar v Union of India and others**, AIR 1999 SC 2881, **State of Madhya Pradesh v Bani Singh**, AIR 1990 SC 1308,

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P.V.Mahadevan v M.D.Tamil Nadu Housing Board, JT 2005

(7) SC 417, M.V.Bijlani v Union of India, (2006) 5 SCC 88 and

Division Bench decision of the Hon'ble High Court of Delhi in the

case of **P.K.Mathur v Union of India** in WP (C) No.7982 of

2007 disposed of on 4th June, 2008 so also the decision of the PB,

New Delhi dated 13th October, 2008 in OA No. 951 of 2008 filed

by **Shri A.K.Sharma V UOI and others.**

By filing counter, the Respondents contest the case of the Applicant. According to the Respondents the provision of Section 293 of the I.T. Act, 1961 has nothing to do as the charge sheet under Rule 14 of the CCS (CC&A) Rules, 1965 has been issued to the Applicant under Annexure-A/1 well within time for alleged misconduct committed by him in discharging his duty. The misconduct alleged to have been committed by the Applicant or not can be proved after necessary enquire as per the Rules and for this purpose IO and PO have already been appointed and the applicant is free to take up the issue before the IO, DA and AA. As such, it is too premature on the part of the Applicant to approach this Tribunal challenging the charge sheet. Further contention of the Respondents is that the charge sheet was issued to the applicant while he was in service and as

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such the provision of Rule 9(2) (b) (ii) of the CCS (Pension) Rules, 1972 is not applicable to the present case. Accordingly, while the allegations made by the applicant in his OA, the Respondents have prayed for dismissal of this OA. By filing rejoinder, the Applicant reiterated his stand taken in the OA.

Learned Counsel appearing for the parties have more or less reiterated the stand taken in their respective pleadings and having heard them at length we have perused the materials placed on record including the citations placed in support thereof.

The fact that exercise of power in passing the order U/s.263 & 264 by the applicant was an quasi judicial one is not in dispute by the Respondents either in the counter or in course of hearing. The Provision made in Section 293 of the I.T. Act, 1965 clearly provides that for passing orders in quasi judicial capacity no prosecution suit or other proceeding shall lie against the Government or any officer of the Government for anything in good faith done or intended to be done under this Act. The applicant has been issued charge sheet for the specific incident of passing order under section 263 & 264 as quasi judicial authority nothing other than this has been the cause

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stated in support of the misconduct allegedly committed by the Applicant in the charge sheet.

We do not see any justification to deal with the citations relied on by the Applicant in support of his stand that order passed while discharging the duties in a quasi judicial capacity cannot be a subject of misconduct under CCS Rules, a wrong interpretation of law cannot be a ground for misconduct and delay in issuing charge sheet without any plausible explanation etc and it would suffice to state that while the applicant was continuing as Commissioner of Income Tax (Appeals)-XV, Kolkata, in exercise of quasi judicial power he has passed order in favour of M/s.Jai Kali Oil Industries Ltd, for the A/Y 1991-92. Alleging that the aforesaid order was passed by the applicant without exercising due diligence, prudence and caution, a charge sheet was issued to him on 20.12.2006 under Rule 16 of CCS (CC&A) Rules, 1965. This was successfully challenged by the Applicant before the Principal Bench of this Tribunal in OA No. 1190 of 2007 on the grounds as raised in the instant OA. After examining the matter in great details and by placing reliance on various decisions of the Hon'ble Apex Court (some of them have been cited by the Learned Counsel for the

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Applicant in the instant OA), the Principal Bench in order dated 21st September, 2007 quashed the charge sheet dated 20.12.2006. The relevant portion of the order of the Tribunal is quoted herein below:

“35. In the above view of the matter when acting as a quasi judicial, more particularly in the present case acting as an appellate authority over the assessment order passed by the subordinate, the allegations do not come within the ambit of the exceptions for holding inquiry in the exercise of quasi judicial power by the applicant. Accordingly, the respondents' action for proceeding against the applicant in a minor penalty is contrary in law.”

The Union of India/Income Tax Department challenged the order of the PB, New Delhi before the Hon'ble High Court, New Delhi in WP (C) No. 131/2008 which was dismissed on 08-08-2008. Thereafter, they have carried the matter to Hon'ble Apex Court in Special Leave to Appeal (Civil) Nos.11273/2009 which was dismissed on 27-07-2009. The issues raised before the PB, New Delhi in earlier OA is not only same and similar the decisions based on which the PB, New Delhi reached the conclusion have also been relied by the Applicant in the instant OA.


Having regard the situation and discussions made herein above, we find force in the submission of the Learned

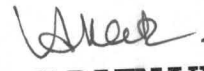
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Counsel for the Applicant that the charge sheet under Annexure-A/1 is not sustainable/maintainable in the eyes of law. The charge sheet under Annexure-A/1 dated 29.04.2009 stands quashed. In view of the quashing of the charge all other orders passed consequent to the charge sheet under Annexure-A/1 is/are hereby annulled. The Respondents are directed that if they have withheld the retirement dues of the applicant for the purpose of the present charge sheet, there is no justification to continue withholding the retirement dues any more in view of the quashing of the charge sheet and the same should be released forthwith.

In the result, this OA stands allowed to the extent stated above. There shall be no order as to costs.


(C.R. MOHAPATRA)
Member(Admn)


(A.K. PATNAIK)
Member(Judl.)