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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.546 OF 2010

Cuttack this the 10th day of October, 2012

CORAM

THE HON'BLE MR.C.R.MOHAPATRA, MEMBER (ADMN.)

And

THE HON'BLE MR.A.K.PATNAIK, MEMBER (JUDL.)

.....

Shri Durga Prasad Kar, aged about 61 years, Son of late Bidyadhar Kar, Chief Commissioner of Income Tax (Retd), at present residing at Radhika, 1540, Jagamara (East), Bhubaneswar, Dist-Khurda, Orissa, PIN-751 030

.....Applicant

By the Advocates: M/s.J.M.Pattnaik, C.Panigrahi, D.Ku.Mallik,
A.P.Mishra & M.Samal, Counsel.

-Versus-

1. Union of India represented through its Secretary (Revenue), Ministry of Finance, Department of Revenue, Central Secretariat, New Delhi-110 001
2. The Under Secretary to Government of India, Ministry of Finance, Department of Revenue, central Secretariat, New Delhi-110 001
3. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi-110 001
4. 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
5. Shri B.S.Negi, CDI-cum-Inquiring Officer, CVC, Satarkta Bhawan, INA Complex, New Delhi-23
6. The Chief Commissioner of Income Tax, Orissa Region, Ayakar Bhawan, Bhubaneswar, Dist-Khurda

...Respondents

By the Advocates:Mr.U.B.Mohapatra, SSC

...

O R D E R

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

Applicant an IRS Officer of 1973 batch while working as

Chie Commissioner of Income Tax, retired from service w.e.f. 30-04-

2009 on reaching the age of superannuation of 60 years. He has filed this

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Original Application U/s.19 of the Administrative Tribunals Act, 1985 seeking to quash the Memorandum of charge issued to him under Rule 14 of CCS(CC&A) Rules, 1965 in Annexure-A/3 (No.C-14011/52/2006-V&L dated 18.02.2009) and all other consequential orders passed thereon.

2. Respondents filed their counter objecting to the prayer of the Applicant and according to the Respondents no illegality was committed in issuing the charge sheet and especially when the charge sheet does not adversely affect any of the rights of the Applicant no interference is warranted at this stage. Hence, the Respondents have prayed for dismissal of this OA.

3. Mr. Patnaik, Learned Counsel appearing for the Applicant drew our attention to the Office order No. 205/2005 dated 19th July, 2005 in which the Ministry of Finance Department of Revenue have specifically ordered that in so far as Group A Officers are concerned the charge memo/appointment of IO and PO/sanction of prosecution can only be issued with the approval of Finance Minister which has not been done in the case of the Applicant. Hence by placing reliance on the information obtained by the Applicant under RTI Act, 2005 vis-à-vis on the orders of the Principal Bench dated 5th February, 2009 in OA No. 800 of 2008 (Shri B.V.Gopinath Vrs UOI and others), upheld by the Hon'ble High Court of Delhi in WP (C) No. 10452/2009 dated 28th July, 2009; dated 18th December, 2008 in OA Nos. 1434/2008 (S.K.Srivastava Vrs

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UOI and others) upheld by the Hon'ble High Court of Delhi in WP (C) No. 13223/2009 dated 18.11.2009 and order dated 26th August, 2011 in OA Nos. 3732 of 2010 (S.Ramu V The Revenue Secretary) has contended that as charge memo in the instant case has been issued without approval of the Finance Minister, the charge Memo under Annexure-A/3 and consequential orders issued pursuant to the charge Memo are liable to be set aside.


4. On instruction Mr.U.B.Mohapatra, Learned Senior Standing Counsel appearing for the Respondents has fairly submitted that while sanction for prosecution for the offences punishable u/s.13 (1)(e) r/w 13(2) of the Prevention of Corruption Act, 1988 and drawing up major penalty proceedings against the Applicant was obtained from the Finance Minister, no such approval of the FM was obtained to the Charge Memo and nomination of IO&PO. In this connection, Mr.Mohapatra, Learned SSC appearing for the Respondents has produced Xerox copies of the note sheet in F.No.DGIT (VIG)/EZ/CBI/15/05 for the perusal of this Tribunal which is kept on record.

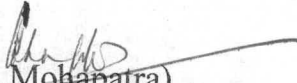
5. Having considered the rival submissions of the parties we have gone through the records produced before us so as to ascertain whether any approval for issuance of the charge memo under Annexure-A/3 was accorded by the competent authority. We notice that even though the competent authority has approved initiation of proceedings against the applicant, the charge memo was not approved by the Finance Minister.

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The cases relied on by Learned Counsel for the Applicant pertain to IRS Gr. A Officer of the Income Tax Department and they were issued the Charge Memo without the approval of the Finance Minister. We do not have any reason to differ with the orders of the Coordinate Bench. In view of the doctrine of precedent and the decision of the Apex Court in **Sub Inspector Rooplal and another V Lt. Governor through Chief Secretary, Delhi and Others** (2000) 1 SCC 644 we are bound by the decision of the Coordinate Bench. As in the instant case the charge Memo under Annexure-A/3 has not been issued with the approval of the competent authority viz; Finance Minister, in terms of Office Order No. 205/2005 dated 19th July, 2005, by applying the principles laid down in the aforesaid decisions, the Charge Memo under Annexure-A/3 and consequently all other orders issued subsequently pursuant to the Charge Memo are hereby quashed/set aside. Resultantly this OA is allowed to the extent stated above. There shall be no order as to costs.


(A.K. Patnaik)
Member (Judicial)


(C.R. Mohapatra)
Member (Admn.)