

(VB)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 490/1995

Date of Order : 30/03/1999.

A.M. Lunia, I.R.S., S/o Shri U.M. Lunia, designation and office in which employed - Assistant Commissioner, Income-Tax Special Circle 2, Jodhpur. Retired on 30.9.95. Office address - Asstt. Commissioner of Income-Tax, Special Circle 2, Jodhpur.

..Applicant.

Versus

1. Union of India, through the Secretary, finance, Government of India, Ministry of Finance, Deptt. of Revenue, (North Block) Central Secretariate, New Delhi.
2. The Chairman, Central Board of Direct Taxes, Central Secretariate, (North Block), New-Delhi.
3. The Chief Commissioner of Income Tax, Central Revenue-Building, Jaipur.
4. The Commissioner of Income-Tax, Income-Tax Deptt., Jodhpur.
5. The Chairman, Union Public Service Commission, New Delhi.

..Respondents.

Mr. B.C. Mehta, Counsel for the applicant.

Mr. M.L. Kala, Adv., Brief holder for
Mr. U.S. Bhargava, Counsel for respondents No. 2 to 4.
None present for respondent No. 1.

CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.
Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. GOPAL SINGH :

Applicant, A.M. Lunia, has filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 19.10.1994 at Annexure A/1, letter dated 20.9.1995 issued by the Director (Vigilance and Litigation), Government of India, New Delhi. Vide order dated 19.10.94, the disciplinary authority has imposed the penalty of Censure on the applicant and vide order dated 20th September, 95, the revision petition filed by the applicant has been dismissed.

Gopal Singh

2. Applicant's case is that after selection by the Union Public Service Commission, the applicant was appointed as Income Tax Officer in Class II and joined the services in the year 1970. That the applicant was promoted as Income Tax Officer/Assistant Commissioner of Income Tax in group A services in 1982 on ad hoc basis and his services were regularised consequent upon selection by the UPSC in the year 1984. That the applicant has functioned as Income Tax Officer, Special Circle, Udaipur during the year 1980-85. That one Shri B.L. Boliya lodged a false complaint against the applicant on 30.11.1984 before the Superintendent of Police, Special Police, Establishment, Jaipur. Levying various allegations, including possession of assets disproportionate to his known sources of income. This complaint was investigated by the C.B.I. and it was held that no case of abuse of official position by the petitioner is made out for want of sufficient evidence. The case was referred to the department for departmental action against the applicant. Consequent thereon, the disciplinary authority issued the charge sheet dated 23.3.1987 to the applicant mentioning following charges against the applicant :-

"That Shri A.M. Lunia while working as Income Tax Officer, Special Circle, Udaipur during the period from 1981 to 1982, failed to maintain absolute integrity, devotion to duty and committed gross misconduct in as much as :

Shri A.M. Lunia, the then Income-tax Officer, Special Circle, Udaipur now ITO 'A' ward, Pali, while working as such during the year 1981-82 by abuse of his official position pressurised his assessee Shri Mathura Lal Tak, who constructed his house at Udaipur in the name of Smt. Shakuntala Lunia wife of Shri Lunia and when he (Shri Mathura Lal Tak) asked for payment of the amount spent on the construction of the house, a survey under section 133-A of the Income-Tax Act, was conducted at his premises on 13.11.1981 and an account book alongwith other documents were seized during the said survey. But when it was learnt that the said account book is containing incriminating entries about the expenditure incurred by the firm during the construction of his house, Shri Lunia returned the cash book to Shri Mathura Lal Tak and a new seizure memo was prepared.

Thus Shri A.M. Lunia contravened Rule 3 of the Central Civil Services (Conduct) Rules."

In his inquiry report, the inquiry officer has held that none of the charges levelled against the applicant has been proved. The inquiry officer has also observed in his report that it would have been proper for him (applicant) to discharge Shri Bolia from the construction of the house even though the house belongs to Mrs. Lunia

Lunia

who had an independent source of income. In view of this, the charge against Shri Lunia is held established only to the extent of impropriety of allowing Shri Bolia to continue with the construction work beyond 13.11.1981 till November-December, 1982. It is the contention of the applicant that the above observations of the inquiry officer were uncalled for since this act of omission or commission on the part of the applicant was not included as a charge against the applicant in charge sheet, issued to him.

3. Notices were issued to the respondents and they have filed their reply contesting the stand of the applicant.

4. We have heard the learned counsel for the parties and perused the records of the case carefully.

5. It is seen from the records that the complaint lodged by Shri B.L. Bolia with the CBI was investigated by them and it was held that no case of abuse of official position by the petitioner is made out for want of sufficient evidence. Even the charges levelled against the applicant in the charge-sheet, dated 19.10.1994, were not held as proved against the applicant. The concluding remarks of the inquiry officer mentioned above were beyond the scope of the charges levelled against the applicant. These remarks have no nexus with the charges levelled against the applicant. In its advice, the UPSC has inter alia observed as under :-

"9. The Commission further observes that whilst it is clear that Sh. Lunia's defence is both plausible and credible. It is also clear that as an Income Tax Officer, Shri Lunia has been imprudent. As the Inquiry Officer has pointed out, when he came to know in November 1981 that the same Shri Bolia a relative of his wife who was helping his wife to build a house, was also the accountant of Shri Takwan assessee, he should forthwith have dispensed with the services of Shri Bolia instead of doing so 12 months later. The Commission agree with the Inquiry Officer's conclusion of Sh. Lunia's culpability. However, the Commission find no evidence on record of failure to maintain absolute integrity or lack of devotion to duty or gross misconduct as alleged in the charge.

10. In the light of their findings as above and after taking into consideration all other relevant to the case the commission consider that ends of justice would be met with

Capitalising



imposition of the penalty of 'censure' on Sh. A.M. Lunia. They advise accordingly."

The Commission has very clearly stated that they had no evidence on record of failure to maintain absolute integrity or lack of devotion to duty or gross misconduct as alleged in the charge. Thus, the applicant was absolved of all the charges levelled against him. The Commission, however, in their wisdom, have observed that ends of justice would be met with imposition of the penalty of Censure on the applicant. We do not find any justification for this type of advice by the UPSC. Based on this advice of the UPSC, the penalty of censure has been imposed upon the applicant. It has already been mentioned above that the allegations made against the applicant were not held proved by the CBI or the Inquiry Officer. However, in their wisdom, the disciplinary authority on advice of the UPSC has imposed the said penalty upon the applicant. We are firmly of the view that the penalty imposed has no basis and deserves to be set aside.

6. The OA is accordingly disposed of with the following observations :-

7. The respondent's letter dated 19.10.1994 imposing the penalty of censure on the applicant is set aside. The applicant would be entitled to all the benefits including promotion considering this penalty as non-est.

8. The parties are left to bear their own costs.

(GOPAL SINGH)
(GOPAL SINGH)

MEMBER (A)

30/3/99
(A.K. MISRA)
MEMBER (J)

SM/JRM

Recd /  14/4/99

Recd
14/4/99

Part II and III destroyed
in my presence on 3/4/99
under the supervision of
Section Officer () as per
order dated 16/3/99

Section Officer (Record) 