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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR.

O.A.No.256/2003

October 5, 2004

CORAM :

HON'BLE MR. KULDIP SINGH, Vice Chairman

HON'BLE MR. G.R.PATWARDHAN, Administrative Member

Suresh Chandra Ajmera S/o Shri Kaser Lal Ji, aged about 60 years, R/op 13-A, Umaid Bhawan Road, near Circuit House, official Post Rtd. Inspector, Income Tax Department, Jodhpur.

Applicant

By : Mr.Kamal Dave, : Advocate for the applicant.

Versus

1. Union of India through the Secretary,
Government of India,
Ministry of Finance,
Department of Revenue,
New Delhi.
2. Chief Commissioner of Income Tax,
New Central Revenue building,
Statue Circle,
Jaipur.
3. Commissioner of Income Tax (I),
Aya Kar Bhawan,
Paota - C Road,
Jodhpur.
4. Central Board of Direct Taxes,
Through its Chairman,
North Block,
Central Secretariat,
New Delhi.



Respondents

by : Mr.Vinit Mathur, Advocate for the respondents.

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ORDER(ORAL)**PER KULDIP SINGH, VICE CHAIRMAN**

The applicant is aggrieved of order dated 8/14.2.2002 (Annexure A-1) vide which his representation for opening a sealed cover for promotion to the post of Income Tax Officer, has been rejected. The facts in brief as alleged by the applicant are that while the applicant was working as Income Tax Inspector, was served with a charge sheet in the year 1986 which culminated into an order of dismissal from service in the year 1993. The applicant then filed an O.A before this Tribunal vide O.A.No.26 of 1995 which was allowed vide order dated 31st August, 2000 and the impugned order of dismissal from service as well as order passed by the disciplinary authority and appellate authority were quashed. After the O.A. was allowed the applicant was reinstated. He joined the department on 26th September 2001 and thereafter on completion of 60 years of age on superannuation, he retired on 31st August, 2002.



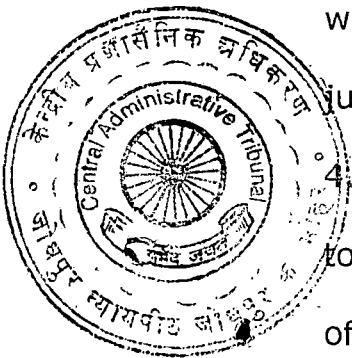
2. While he was facing a departmental enquiry, certain promotions had taken place during that period in his department. His case was put in sealed cover. The applicant joined the department after his O.A. was allowed by this Tribunal. The applicant made a representation for opening of the sealed cover for his promotion to the post of Income Tax Officer in view of the judgement of this Court but the same was turned down by the impugned order. The applicant preferred an appeal

also against the impugned order dated 8/14.2.2002 through proper channel but the prayer of the applicant contained in appeal was rejected on the ground that he was not granted the complete exoneration as is apparent from the observations made by the Tribunal in its concluding paras 71 to 73 of the judgement.

3. The Tribunal had only observed that the findings of guilt in respect of the charges are perverse because of procedural irregularity / lapses and lacunic evidence which persuaded the Court to allow the O.A. holding that the applicant cannot be granted back wages for the period of dismissal but he deserves to be reinstated in service. When the O.A. itself was allowed so the Tribunal only directed that the applicant be reinstated without any back wages for the entire period. It would not be justified to keep on to permit the enquiry further.

4. Thus, the applicant has no case calling upon respondents to open the sealed cover and giving promotion to him to the post of Income Tax Officer. The O.A. has been dismissed.

5. The learned counsel for the applicant extensively read from the judgement passed by this Tribunal particularly paragraph 24 of the judgement wherein it has been observed that the prerecorded statement cannot be relied upon even if the witnesses have stated that the statements were given by them unless the facts essential enough to prove the charge, have been stated before the inquiry officer. In this case, this essential



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aspect while recording the statements of the witnesses, has been given a go-bye. Shri Madan Gopal Vaidya has stated in his statement in reply to the question of the Presenting Officer that he has gone through the statement Annex. A/41, and whatever is stated in it, is correct. The witness did not repeat the facts contained in his statement, which formed the basis of the charge. The purpose of examining the witness is to testify the truthfulness of the allegations made by him against the delinquent either in the previous statement or in the complaint. But, this was not done in the instant case, therefore, it cannot be argued by the respondents that the witness could have been effectively cross examined by the applicant as he was in possession of a copy of the pre-recorded statement of the witness. Similarly, the learned counsel for the applicant referred to certain paragraphs of the judgement to say that in view of certain observations, the applicant should have deemed to have been completely exonerated.



6. Opposing the same, the learned counsel for the respondents submitted that this Tribunal should interpret the judgement keeping in view the overall judgement given by this Tribunal and not only with reference to observations made in para 71 and para 72 which are the operative portion of the judgement that should be taken into consideration and the concluding paragraphs categorically show that the applicant had not been completely exonerated rather the tribunal had

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observed "in our opinion, no useful purpose would be served in ordering reinquiry relating to these charges after lapse of such a long time.. For this reason, we do not consider it fit to remand the case for reinquiry. Since the findings of the disciplinary authority have been quashed by us mainly on procedural irregularities and technicalities in respect of charges no. 1 and 6 he therefore, the applicant cannot be granted back wages for the period of dismissal but he deserves to be reinstated in service

(Emphasis supplied)

7. Similarly the learned counsel for the respondents submitted that the Tribunal while allowing the O.A also specifically ordered that the applicant should not be paid back wages. Had the tribunal exonerated the applicant completely then there was no reason to deny him the back wages. The tribunal was certain that they were quashing the order of the disciplinary authority on the technical grounds that are why the Tribunal had not allowed the back wages. So it is not a case of complete exoneration at all.

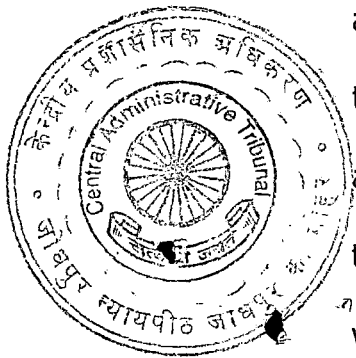


8. In our view the contentions raised by the learned counsel for the applicant has no merits because the applicant has called upon to interpret the judgement given by this Tribunal and to hold that the tribunal had in fact completely exonerated the applicant. In this regard we may mention that it is a common knowledge that the Tribunal exercises the power only under the Doctrine of Judicial Review which comes under the Article 226 of

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the Constitution of India and while exercising its powers the tribunal is not required to reappreciate the evidence at all and that is why probably the tribunal has not allowed the O.A of the applicant completely and have taken care to see whether principles of natural justice have been violated or not whether the applicant had been given proper opportunity to defend himself and while making observations on the acceptance of pre recorded statements of witnesses as evidence. The tribunal observed that this was not a proper procedure. The tribunal may not have quashed the order of the disciplinary authority on reappreciating facts because the tribunal does not exercise the power of the Appellate Court.

9. By his arguments the learned counsel for the applicant is asking us to interpret the judgement given by the Tribunal and to hold on facts that the applicant is completely exonerated. We are unable to find any such findings having been recorded by this Tribunal when the earlier O.A was decided and this Tribunal will certainly not like to interpret the judgement given by the Tribunal earlier and sit over an superior forum and will go only by the concluding paragraphs wherein it is specifically recorded that the impugned order had been quashed only on procedural lapses on the part of the Inquiry Officer and the Disciplinary Authority.



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10. Hence in view of the above discussion we are of the considered opinion that the O.A. has no merits and stands dismissed. No costs.



(G.R. Patwardhan)
Administrative Member

(Kuldip Singh)
Vice Chairman.

Lalit.

Reid

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Part II and III destroyed
in my presence on 30/10/13
under the supervision of
section officer (1) as per
order dated 18/10/13

J.R. Ghor
Section officer (Record) 30.10.2013