

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR**

3b

ORIGINAL APPLICATION NO. 117/2006

Date of Order: 31.03.2011

CORAM:

**HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER
HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER**

G.P. Singhal S/o Late Shri D.P. Singhal, aged about 56 years, R/o 96 Staff Quarter, Vidhya Bhawan, Saheli Marg, Udaipur.

Official Address: Inspector Income Tax, Ward (1) (1) Udaipur in the office of I.T.O. Ward No. (1) (1), 6 New Fatehpura, Udaipur.

...Applicant.

Mr. Kamal Dave, counsel for applicant.

VERSUS

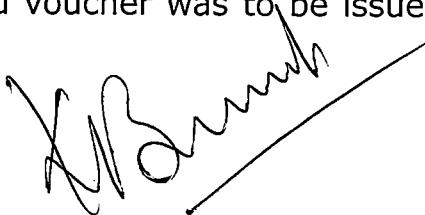
1. The Union of India through the Secretary, Ministry of Finance, Department of Revenue, Government of India, New Delhi.
2. Chief Commissioner Income Tax, New Central Revenue Building, Statue Circle, C-Scheme, Jaipur.
3. Chief Commissioner Income Tax, 6 New Fatehpura, Udaipur.
4. Commissioner Income Tax, 16, Mumal Tower, Udaipur.

... Respondents.

Mr. Varun Gupta, counsel for respondents.

**ORDER
(Per Dr. K.B. Suresh, Judicial Member)**

The applicant challenges a departmental enquiry, which now he is facing on the basis of some allegations made against him in 1995, which related to preparation of refund vouchers and the delivery of the same. It would appear that on two instances to the same person two refund vouchers were sent wherein only one refund voucher was to be issued. There were



instances of alleged laxity wherein documentations were not kept properly and according to the applicant, on this basis, adverse entries were recorded in his ACR in the year 1996-97.

He apparently appealed against the said decisions and according to him the said adverse entries were expunged. The stand taken by the respondents in the reply is to the effect that even though allegations of a normal nature were accepted and expunged, it could not be considered as a full expunction of the allegations against the applicant.

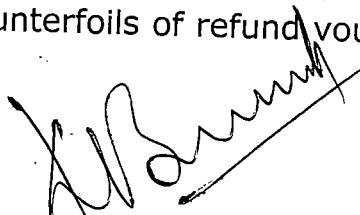
2. A full list of do and done attributed to the applicant has been produced and we have gone through the same. On going through it, laxity in service seems to be indicated but the case of the applicant is that he was not responsible for that, but there were two named others and the concerned Income Tax Officer who was directly in-charge of the section. He was apparently the Head Clerk at that time and according to him all vouchers below Rs. 5,000/- will not come to him at all, and, therefore, he is not responsible for the other vouchers, which were under the sole responsibility of others. In fact the said Income Tax Officer is facing enquiry initiated in 2002 for the same allegations, therefore, he claims that (i) the long lapse of years have rendered the charges ineffective (ii) the matter was once considered and disposed of, and, therefore, cannot be reopened (iii) in any case, this is an abuse of process of administrative power (iv) allegations in its entirety are of a minor nature as available from the Articles of charges. Therefore, the basic question is only, is there any limitation for a charge to be raised



against an employee. In Section 14 (3) of CCS (CCA) Rules, ~~1965~~ 1965, stipulates as under: -

- (1). Cases in which there is a reasonable ground to believe that a penal offence has been committed by a Govt. Servant but the evidence forthcoming is not sufficient for prosecution in a Court of law e.g.
 - (a). Possession of disproportionate assets.
 - (b) Obtaining or attempting to obtain illegal gratification.
 - (c). Misappropriation of Govt. Property, money or stores.
 - (d). Obtaining or attempting to obtain illegal gratification or consideration.
- (2). Falsification of Govt. records.
- (3). Gross irregularity or negligence in the discharge of official duty with a dishonest motive.
- (4). Misuse of official position or power for personal gain.
- (5). Disclosure of secret or confidential information.
- (6). False claims of Govt. like T.A. claims etc.

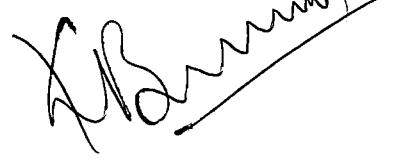
3. Apparently, going through the charges, the charges do not relate to any of the clauses shown above. The issuance of two refunds vouchers for the same person is said to be a mistake, which was corrected immediately. The long list given in Article-1 relates to (i) in 2301 cases refund orders were created but caging of refund vouchers was done in only 1228 cases, (ii) in 2652 cases where refund vouchers were meant for service but service of refund vouchers marked only in respect of 874 cases and (iii) on checking of counterfoils of refund voucher books, the



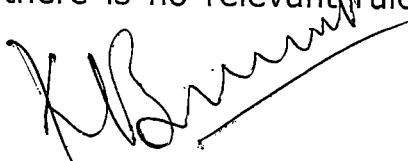
date directing of refund orders were not found mentioned in appropriate columns and left blank in 382 cases.

4. After hearing both the learned counsels for the parties, a short contributory and cumulative responsibility seems to be placed on the shoulders of the applicant as well, as he was also engaged in that particular office, even though laxity may be attributed to that particular office. It is not clear whether the applicant himself can be personally held to be responsible as his case is that Anil Bambani and Dhagla Ram were also posted and were in-charge of the said Ward. There is no allegation that the Government had lost out any fund because of the said laxity and as stated earlier none of the stipulations of Rule 14 (3) of CCS (CCA) Rule, 1965 seems to be available in this respect. There does not seem to be any habitual laxity in the duty ascribed to the applicant. It would also ^{be} seen that I.T.O. Shri K.G. Heda is facing an enquiry for these very lapses from 2002 onwards. The case of the applicant is that only for amounts more than Rs. 5,000/- Head Clerk is responsible for the refund orders, and for all the other orders the Tax Assistant is the concerned person. This is the case in that, in fact, adverse entries are related to the same incident and it was expunged. As a result of expunction of the adverse entries, on 25.06.2001, he was promoted to the post of Income Tax Inspector also.

5. For the cumulative consideration of the issue, it would appear that the charges are related to two minor omissions in the working of a Govt. servant than the serious issues relating to moral turpitude. While, it is true that general public may have suffered due to delay in grant of refund vouchers in time, it

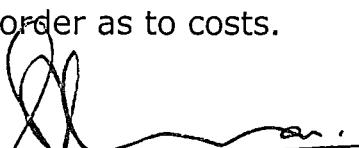


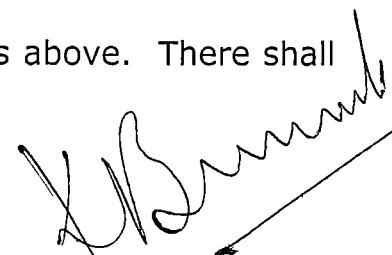
would not be possible at this juncture to ascertain fully the staff strength at the relevant time and the quantum of duty to be allocated to each. In other words, after a gap of about 11 years, issuance of a charge-sheet seems to be a prejudicial issue for an employee. Regard being had to normal human behaviour, obviously, it will not be possible for anybody to remember even the correct sequence of events. This prejudicial effect even obtains to the defence of the employee and it cannot be compensated in any way. Thus, delay, it would seem, had caused unmerited prejudice to an employee. Had it been a serious offence then we could have considered the effect of offence on society and the needs for deterrent action, but as we noted earlier the charges also appear to be minor one relating to laxity in office working, and that too explained away by the applicant, and for which no proper reply is forthcoming from the respondents. The respondents in paragraph 4.11 of the reply attempt that certain remarks were expunged from the ACR of the applicant, but that will not absolve him from the departmental enquiry. This is also seems to be not correct. The respondents would submit that the reviewing officer had opined that and even though it was not communicated to him that the applicant had to be remarked "inadequate" against the column "technical ability-knowledge of procedure and rules". Therefore, that is a sum and substance of allegations against him, may be his lack of knowledge of procedure may have resulted into him a measure of laxity to advent of a departmental enquiry after 11 years, which will cause such prejudice to the defence as cannot be remedied under any circumstances. The basic ground of the respondents seems to be that there is no relevant rule on the



subject of limitation that how and when the departmental enquiry may be initiated. They would submit that whenever they notice that some wrong have been committed they can order a departmental enquiry. The pendency of the departmental enquiry against an employee results in a peculiar pattern of prejudice attached to it, the defence of applicant is considerably diminished because of efflux of time occurred in office of the respondents. Therefore, we hold that the departmental enquiry, now posed, is based on stale material, which were apparently dealt in 1996-97 itself and obviously closed, and, therefore, it was in the knowledge of the respondents at that time itself, and since then nothing prevented them to take action at the relevant time. The action at present must be considered to be improper in nexus of time, taken in conjunction with nature of charges, the amount of prejudice attached to the pendency of the enquiry against him, and the result that can be achieved through conducting the enquiry at this stage, we balanced each other and found that it would prove that the continuation of enquiry is an abuse of process and statutory power. It is trite law that power cannot be allowed to be misused.

6. For the cumulative grounds stated above, the charge-sheet dated 09.01.2006 (Annexure A/1) is hereby quashed and set aside. The Original Application is allowed as above. There shall be no order as to costs.

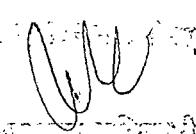

(SUDHIR KUMAR)
ADMINISTRATIVE MEMBER


(DR. K.B. SURESH)
JUDICIAL MEMBER

दिनांक १५/१६ रोपणालुसार

मैत्री भवन, नारायणपुर २९-६-६६

को ५०० रुपये का अधिकरण



कैन्द्रीय रोपणालुसार
जोधपुर नारायणपीठ, जोधपुर