CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 554 of 2013

Tuesday this the 31st day of May, 2016

CORAM

Hon'ble Mr. Justice N.K.Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member

V.A. Narayanan,
Joint Commissioner of Income Tax (Retd)
Vengolayil House, K.S.H.B.Colony
Pallikutty, Vengallur PO
Thodupuzha-685608.

...Applicant

(By Advocate Mr. KMV Pandalai)

Versus

1 Union of India, represented by the Secretary to Government of India, Department of Revenue, Ministry of Finance, New Delhi-110 011.

2 The Central Board of Direct Taxes, Department of Revenue, North Block, New Delhi-110 011 represented by its Chairman.

3 Union Public Service Commission, Dholpur House, Shahjahan Road, New Delhi-110069 represented by its Chairman.

4 The Under Secretary, Government of India, Ministry of Finance, Department of Revenue Central Board of Direct Taxes, North Block, New Delhi-110011/

5 The Central Vigilance Commission, Satarkta Bhawan, GPO Complex, Block-A, INA, New Delhi-110023. Represented by its Director.

.....Respondents

(By Advocate Mr. Anil Ravi, ACGSC)

This application having been finally heard on 20.5.2016, the Tribunal on 31.05.2016 delivered the following

ORDER

Per: Justice N.K.Balakrishnan, Judicial Member

The applicant who was working as Joint Commissioner of Income Tax retired from service on 30.4.2005. Annexure A1 charge was framed against him on 19.4.2005 which was dispatched from the office on 21.4.2005 to which reply was submitted by the applicant. Inquiry was conducted in the matter. Advice of the UPSC was sought in the matter. Accepting the inquiry report and following the advice of the UPSC the Disciplinary Authority ordered as per Annexure A6 that penalty of withholding of 10% of the monthly pension otherwise admissible to the charged officer (applicant herein) be imposed for a period of two years. That order is challenged by the applicant in this OA. He seeks quashment of Annexures A4, and A6 orders and for a further declaration that the charge framed against him has not been proved and so the punishment imposed on him is unsustainable. A consequential direction to the respondents to refund the amount recovered pursuant to Annexure A6 order is also sought. The applicant contends that Annexure A6 order was passed without scrutiny of the real facts and and there was no appreciation of the evidence and circumstances.

2. The first charge is that the applicant had failed to assess the

undisclosed income being amounts earned from money lending activity outside the books in the asssessment of the firm M/s Mahalakshmi Finance, by ignoring the evidence gathered at the time of search conducted in the premises of the firm and that he failed to leave a comprehensive handing over note to his successor for pursuing the investigation and framing assessments to tax the undisclosed income in the hands of the individuals viz., Shri DN Chinnasamy, his wife and daughters-in-law. According to the applicant it is unsustainable. The assessment of undisclosed income made by the applicant in the case of individual partners was subsequently upheld by the appellate authority. That decision was accepted by the respondents. Therefore, the first part of the charge is unsustainable, it is pleaded. The applicant had in fact given Annexure 2 handing over note containing the details of all search and seizure effected in respect of M/s Mahalakshmi Finance, DN Chinamswamy Groups of cases etc. The applicant had handed over charge of his office to another officer of equivalent status. Annexure 2 handing over note was not marked by the Inquiry Officer. The handing over note was prepared in a routine matter and the successor officer was supposed to take follow up action in the pending files handed over to him. The applicant was not supposed to make direction to his successor officer to do anything in a particular way.

3. The second charge is relating to the investigation in regard to the

pronotes worth Rs. 8 lakhs and short term loan of Rs.11 lakhs found at the time of search in the business premises of DN Chinnaswamy. Those amounts do not pertain to M/s Mahalaxmi Finance. They pertain to Chit business run by DN Chinnasamy. The appraisal report prepared by the authority who conducted the search had not made any statement in the said report that those two sums were to be considered in the hands of M/s Mahalaxmi Finance. The case of chit business was not within the applicant's jurisdiction and hence he was not authorized to conduct any investigation with regard to the chit business. No case of chit business was assigned to the applicant. Without specific assignment of cases under Section 127 of the IT Act an authority under the said Act is unauthorized to make any sort of inquiries, investigation or assessment in such cases. The second charge is thus unfounded. Hence the applicant seeks the reliefs as stated above.

4. Respondents resisted the application refuting the averments raised in the Original Application. The contention that the chit business is not within his jurisdiction was not accepted by the Inquiry Officer as no documentary evidence was produced to show that he has recorded such observation in his order or brought to the notice of the superior officers. Applicant was silent about the unaccounted short term loan of Rs. 11 lakhs. Applicant had taken belated action at the fag end of March, 1995 and passed

orders on certain assessments without making inquiry suggested in the appraiser report. Thus the Inquiry Officer after appreciating the evidence and circumstances held that Article II of the Charge is proved. The disciplinary authority accepted the finding of Inquiry Officer and the matter was referred to Central Vigilance Commission (CVC) for second stage advice. The CVC accepted the report and advised imposition of suitable major penalty. The inquiry report along with the advice of the CVC was made available to the charged officer. The charged officer was asked to submit his representation if any. He submitted his representation dated 25.12.2007 which was examined by the disciplinary authority.

5. The Disciplinary Authority held that Article I of the charge is partly proved and Article II of the charge is proved. Matter was referred to the UPSC. UPSC examined the entire evidence on the basis of case records. They concurred with the view of the disciplinary authority and advised for imposition of penalty. UPSC agreed with the view of the disciplinary authority and thus the penalty of withholding of 10% of monthly pension otherwise admissible to the charged officer for a period of two years was imposed upon the charged officer.

6. The advice of the UPSC was examined and found that the tentative view of the disciplinary authority was acceptable to the UPSC and accordingly the advice of the UPSC was accepted by the disciplinary

authority and the penalty was imposed as stated earlier. Inquiry was conducted consistent with the principles of natural justice. The penalty which can lawfully be imposed was imposed on the applicant on the proved misconduct. Since due procedure was followed, no interference is called for and hence the respondents contend that the application is liable to be dismissed.

7. Point for consideration is whether the finding entered by the disciplinary authority and the penalty imposed on the applicant are liable to be quashed on any of the grounds urged by the applicant?

8. We have heard the learned counsel appearing for both sides and have also gone through the pleadings and documents produced by the parties.

9. It is vehemently argued by the learned counsel for the applicant that the finding entered by the inquiry officer which was accepted by the disciplinary authority and also by the UPSC are totally unsustainable. Procedure for imposing major penalty was followed in this case. The applicant could not point out any illegality in the procedure followed by the authorities.

10. The main thrust of the argument advanced on behalf of the applicant is pertaining to the charge and the evidence led in support of the charge. According to the applicant the charges are totally unsustainable and

as such the proceedings should have been dropped. Further it is also contended that there was undue delay in the initiation and completion of the inquiry and so serious prejudice was caused to the applicant. .

11. Annexure A1 is the articles of charge accompanied by the statement of imputations. Charge No.1 is as follows:

> *"Sri V.A.Narayanan, while functioning as Asstt. Commissioner of Income tax, Company Circle, Salem, has committed gross irregularities in completion of assessments in the case of M/s Mahalakshmi Finance for Assessment Years 88-89 to 94-95, belonging to Chinnasamy group of cases in which there was a search u/s 132 of the IT act. Sri V.A.Narayanan failed to asses the undisclosed income, being amounts earned from money lending activity outside the books, in the assessment of the firm M/s Mahalakshmi Finance, by ignoring the evidence gathered at the time of search conducted in the premises of the firm. He merely accepted the assessee's statement, which was not supported by any material evidence, without proper verification that the amount earned from money lending belonged to Sri DN Chinnasamy, his wife and two daughters-in-law. These individuals did not offer the said income in their individual returns, filed after completion of the assessments in the firm's case by Sri V.A.Narayanan. In spite of this, Sri V.A.Narayann failed to leave a comprehensive handing over note to his successor for pursuing the investigation and framing assessment to tax the undisclosed income in the hands of the individuals viz., Sri D.N.Chinnasamy, his wife and daughters-in law."*

12. In the imputation attached to the articles of charge it is stated that a search had taken place in the premises of DN Chinnaswamy Group of Companies Dharmapuri from 25.8.1993 to 28.8.1993. It was concluded on 13.9.1993. M/s Mahalakshmi Finance, one among the said group was stated

to be a firm of 13 partners including Shri DN Chinnaswamy and his son Manivannan. Seven business activities of that firm have been shown in Annexure A1. It was stated that during the course of search in the premises of M/s Mahalakshmi Finance, apart from cash small note books containing unaccounted transactions of the firm (M/s Mahalakshmi Finance) were found. Those note books were seized. It is stated that those note books, the details of which are stated in Annexure A1, contained details of advances made by the firm which were outside the regular account. On the day of the search Chinnaswamy denied any knowledge about the small note books and the entries of transactions made therein. It was also stated that Chinnaswamy and Managing Partner Kuppuswamy were aware of the unaccounted transactions in money lending. That was the statement given by Subramanian the Accountant of that firm. The total unaccounted advances as on the date of search was worked out to Rs. 18. 96 lakhs, the details whereof were given therein.

13. Though subsequently Chinnaswamy gave another version that was not accepted by the inquiry officer since it was found to be the result of an afterthought. Anyway, it is not necessary to delve deep into those aspects. But these aspects have been stated here, only in view of the strenuous arguments advanced by the learned counsel for the applicant that there is absolutely no material to support the charge.

14. Annexure A3 is the written representation submitted by the applicant. Annexure A4 is the Inquiry Report. As stated earlier due procedure was followed in the conduct of the inquiry. The evidence adduced in support of the charge levelled against the applicant is seen discussed in detail. It was found that the first charge (Article I) was partly proved and that the second charge (Article II) was held to have been fully proved. With respect to the appraisal report of the officer regarding examination of the seized material relating to M/s Mahalakshmi Finance at Para 13 to 18, it was held that the appraising officer has not concluded that the unaccounted income has to be assessed against M/s Mahalashmi Finance while recommending line of investigation. It was also stated that while recommending line of investigation the appraisal Report has stated that the unaccounted money-lending transaction in the name of M/s Mahalakshmi Finance was stated to be belonging to only four members of the assessee family and it should be analyzed year wise and the interest for each year should be considered for assessment. However, ultimately it was said that there was no malafide intention on the part of the charged officer (applicant) and so from the available records of the inquiry it was found that the undisclosed income in the hands of the four persons has to be assessed rather than, of the firm (M/s/ Mahalakshmi Finance). It was thus held that the charge that the undisclosed income in the hands of four persons has to

be assessed rather than that of the firm M/s Mahalaskhmi Finance was not proved. This has been pointed out by the respondents to contend that the inquiry officer has conducted the inquiry in a dispassionate manner and considered the entire evidence and circumstances brought out in the inquiry. With regard to the charge relating to offering the unaccounted income in their individual returns filed after the completion of assessment in firm's case, is concerned, the allegation was held to be partly true. That was done particularly relying on the defence documents produced by the applicant which showed that DN Chinnaswamy had filed Income Tax Returns for various years on 26.11.1996 which established that the returns were filed by the individuals after the completion of the assessment in the firm's case by the charged officer.

15. The main contention raised by the applicant was that there is no prescribed format of handing over note and so the allegation that the handing over note did not contain the suggestion for pursuing investigation as alleged by the respondents is unacceptable. The inquiry officer found that even though no prescribed format of handing over note was produced, it is the interest of the State which has to be protected and it is expected that efforts on the officer's own initiative should have been taken. It was stated that it would have been desirable if the charged officer had pointed out specific actions to be taken in the investigations and assessments relating to

the four individuals in the handing over note. Annexure A2 is the handing over note which contains list relating to so many documents, panchanams, mahazer etc. which were handed over but it does not contain details of the status of the case in question. According to the prosecution the applicant being a responsible officer should have made a note or suggestion as to what should be the further action taken in the matter as that was expected of by him to protect the interest of the State/Department. The plea that there is no prescribed format is only a ground invented by the officer to wriggle out of the liability, the prosecution contends. Holding that there was inaction or laches on the part of the applicant as stated above, charge No.1 was held to be partly proved.

16. It is not a case where the penalty imposed on the applicant is not in respect of the partly proved charge No.1 alone. Had that been the only finding, then it could have been argued that the penalty imposed on the applicant is disproportionate. It is pertinent to note that it is not a case where there was no substance in the charge or imputations made against the applicant so as to contend that the initiation of the inquiry itself was bad.

17. The second charge (Article II) reads as follows:

> *"Sri V.A.Narayanan, while functioning as Asstt. Commissioner of Income tax, Company Circle, Salem, has committed gross irregularities in completion of assessments in the case of M/s Mahalakshmi Finance for Assessment Years 88-89 to 94-95, by his failure to investigate pro notes worth Rs. 8 lakhs and short term loans of Rs. 11 lakhs*

found at the time of search, unaccounted for by the firm, and to bring the same to assessment even though special mention was made of these in the appraisal Report. Besides, he also failed to commence investigation of the issues discussed in the appraisal Report relating to the group cases from November, 93 till March, 95 as the assessments were taken up for hearing on 21.3.95 and were completed on 29.3.95.

Thus by aforesaid acts of omission and commission, Shri V.A.Narayanan displayed lack of integrity, failed to maintain devotion to duty and acted in a manner unbecoming of a government servant and thus contravened the Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules."

18. The charge was that the applicant committed gross irregularities in completion of assessment in the case of Mahalakshmi Finance for the AY 1988-89 to 1994-95. There was failure on his part to investigate about pro notes worth Rs. 8 lakhs and short term loan of Rs. 11 lakhs found at the time of search, unaccounted for by the firm, and to bring the same to assessment even though special mention was made about the same in the appraisal Report. The further allegation is that the applicant failed to commence investigation of the issues discussed in the appraisal Report relating to the group cases from Nov. 1993 to March, 1995 as the assessments were taken for hearing on 21.3.1995 and were completed on 29.3.1995. The prosecution contends that there were unaccounted short term loans amounting to Rs. 11 lakh as per the seized materials. Certain pro-notes were seized during the search. It was stated that seized small note books

showed the details of unaccounted money lending transactions amounting to Rs. 18,96 lakhs. The details of the same were not mentioned in the account books of the firm. The allegation is that the charged officer completely ignored the short term loan of Rs. 11 lakhs and pro note loan of Rs. 8 lakhs. The applicant contends that the short term loan of Rs. 11 lakh and the transaction based on pro notes worth Rs. 8 lakhs was concerned with the Chit business run by the assessee DN Chinnaswamy. According to the applicant the case of chit business was not brought within his jurisdiction and he was not authorized to conduct investigation with regard to the chit business. According to him, at no point of time the cases of chit business were assigned to him. Therefore, since there was no specific assignment of cases under Section 127 of the Income Tax Act he was unauthorized to make any sort of inquiries, investigations or assessment in such cases, he further contended. According to the applicant the transactions pertaining to the aforesaid two sums (Rs 8 lakhs and 11 lakhs) are not matters concerning M/s Mahalakshmi Finance at all and so those sums were not considered in that assessment. The applicant contends that the chit business was not within his jurisdiction and hence there was no necessity for him to make any investigation. Respondents contend that admittedly the applicant had jurisdiction over the case of Mahalakshmi Finance. But the applicant says that what all investigation was necessary for making assessment was done

by him. Thus according to the applicant since those two transactions had no connection with M/s Mahalakshmi Finance he did not take cognizance of the same. It is also contended that there was no revenue loss or lapse attributable to the act of applicant and no action was also taken against him for loss if any as provided under Section 263 or 147 of the Income Tax Act. This contention has been strongly resisted by the respondents pointing out that para 13 of the appraisal report (which was marked as Ext.S-1 in the inquiry) stated that M/s Mahalskhmi Finance was a firm consisting of 13 partners in which DN Chinnaswamy and his son Manivannan were partners and the rest were outsiders. Para 19 of the Report describes the procedure to be followed and the inquiry to be made while making the assessment relating to pro note advance. The fact that 'pro notes' were seized and there were note books showing the unaccounted transactions are not in dispute. It was found that those note books contained transactions relating to M/s Mahalshmi Finance. According to the prosecution the charged officer/applicant was expected to take action as suggested in the appraisal Report. Though he contended that the chit business is not within his jurisdiction no document was produced to substantiate the same. It was also held that the applicant could not produce any evidence or document to prove that he had ever recorded such observation in his orders or bought to the notice of his superiors. Having found unaccounted transactions for a

total sum of more than 18 lakhs it was incumbent on the applicant to have at least brought to the notice of his superiors, if as a matter of fact, he had no jurisdiction to deal further in the matter. That was not done. The further fact is that though these were alloted to the applicant in October, 1993 he took action only at the end of March, 1995. That was also taken into account to hold that so far as charge No.,2 is concerned, it was proved against the applicant.

19. It is important to note that this Tribunal while considering a petition under Section 19 of the Act cannot take the role of an appellate authority to hold whether the findings on each of those points is established or not. That is the function of the inquiry officer. There is a detailed discussion of each and every aspect of the matter. It is also pertinent to note that the inquiry Report was forwarded to the UPSC. UPSC also had a detailed deliberation on the Report submitted to find whether the finding entered or whether the penalty tentatively suggested was correct. UPSC after considering the entire matter agreed with the finding of the Inquiry Officer and thus the suggestion made by the disciplinary authority was accepted. The Central Vigilance Commission had also considered this aspect and found favour with the view taken by the disciplinary authority.

20. As stated earlier on going through the records it is clear that the the inquiry was conducted consistent with the principles of natural justice

and as per the procedure prescribed. Due opportunity was given to the applicant to present his case. There is a detailed discussion of the evidence adduced by the prosecution to sustain the charge. No malafides can be attributed to the Inquiry Officer or to the Disciplinary Authority. The Tribunal cannot substitute its own view and enter a different finding on the evidence adduced. This Tribunal is not acting as an appellate forum. It was contended by the applicant that because of the inquiry pending he was denied promotion. But since ultimately inquiry culminated in the imposition of penalty, the issue as to whether the applicant is entitled to get promotion is not something which can be gone into this Original Application. The inquiry report together with the suggestion of imposition of punishment was sent to the UPSC and only after getting advice of the UPSC the penalty was imposed on the applicant. The learned counsel for the applicant has pointed out certain observations made by the UPSC which according to the applicant would sustain his case. It is a case where the inquiry report was considered in detail and accepted by the Disciplinary authority. In other words, it is not a case where the officer concerned had not considered the contentions raised by the applicant against the charges levelled against him.

21. We are reminded of the fact that judicial review by the Tribunal is not akin to adjudication on merit by re-appreciating the evidence as an

appellate authority. The Court/Tribunal is denuded of the power to re-appreciate the evidence and to come to its own conclusion on the proof of a particular charge. The scope of judicial review is limited to the process of making the decision and not against the decision itself and in such a situation the Court cannot arrive on its own independent finding (see the decisions of the Hon'ble Supreme Court in ***High Court of Judicature at Bombay through its Registrar*** v. ***Udaysingh S/o. Ganpatrao Naik Nimbalkar & Ors. – AIR 1997 SC 2286, Govt. of A.P. & Ors.*** v. ***Mohd. Nasrullah Khan – AIR 2006 SC 1214*** & ***Union of India & Ors.*** v. ***Manab Kumar Guha - 2011 (11) SCC 535***).

22. Since it is not a case where there was no evidence at all or that the order suffers from the vice of perversity or illegality, the contention that the finding entered by the Inquiry Officer and accepted by the Disciplinary Authority is unsustainable lacks merit. Even if it is possible for the Tribunal to take another view, that is not permissible under law. The Tribunal cannot substitute its own decision to that of the decision rendered by the Disciplinary Authority. (See also the decision of the Hon'ble Supreme Court in ***P.C.Kakkar's case 2003 (4) SCC 64).*** It is also trite law that technicalities and irregularities even if there is any, which do not occasion failure of justice are not allowed to defeat the ends of justice. (See the deciison of Hon'ble Supreme Court in ***S.K. Singh*** v. ***Central Bank***

of India & Ors. - ***1996 (6) SCC 415***, ***Aligarh Muslim University & Ors.*** v. ***Mansoor Ali Khan*** - ***2000 (7) SCC 529*** and ***State of U.P.*** v. ***Harendra Arora & Anr.*** - ***AIR 2001 SC 2319***).

23. It is also axiomatic that unlike in a criminal case where the proceedings are regulated by the provision of the Evidence Act and other statute, in a disciplinary proceedings all that is required is natural justice by ensuring fairness and reasonable opportunity to the delinquent. There is no prohibition either in the rules or fairness or natural justice governing the disciplinary inquiry or elsewhere, preventing the Inquiry Officer or the Disciplinary Authority from relying on even hearsay evidence.

24. The next question that arises for consideration is whether the penalty imposed on the applicant is shockingly disproportionate. Normally court cannot substitute its own conclusion or penalty, in the exercise of the power of judicial review. But if the penalty imposed by the disciplinary authority, shocks the conscience of the court, it would, in appropriate cases, mould the relief either by directing the Authority to reconsider the penalty imposed and in exceptional and rare cases in order to shorten the litigation the court itself may impose appropriate punishment with cogent reasons in support thereof (see the decision of the Hon'ble Supreme Court in ***BC Chaturvedi Vs. Union of India and others - AIR 1996 SC 484*** which was followed by the Hon'ble Supreme Court in ***S.R.Tewari Vs. Union of India***

and another – 2013 (6) SCC 602). In short judicial intervention is possible only if the punishment awarded by the Disciplinary Authority does not commensurate with the gravity of the charges. The scope of judicial review as to the quantum of punishment is permissible only if it is found to be shocking to the conscience of the court. Here, the penalty imposed on the applicant is withholding of 10% of the monthly pension otherwise admissible to the charged officer only for a period of two years. Since the withholding of 10% of monthly pension is only for a period of two years and since it has no recurring effect the contention that the penalty imposed is to be interfered with also cannot be sustained. Viewed in the factual matrix relating to the charge levelled against the applicant and evidence adduced and finding entered against the applicant in respect of Charge No.2, we do not find that the penalty imposed on the applicant is shockingly disproportionate so as to justify the Tribunal's intervention in the matter. No illegality is found in the procedure followed by the authorities. As such we find no reason to interfere with the finding entered or the penalty imposed on the applicant. The O.A is hence dismissed. No order as to costs.

(Mrs. P.Gopinath)
Administrative Member

(N. K. Balakrishnan)
Judicial Member

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