

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No.542/2007

Reserved on 16.04.2014. J.Ch.
Pronounced on 21st May 2014.

Hon'ble Mr. Navneet Kumar, Member (J)

Hon'ble Ms. Jayati Chandra, Member (A)

Ashutosh Prasad, I.R.S. aged about 60 years son of Shri Ashtakhuja Prasad, Commissioner of Income Tax (Retd.), 17, Gokhley Marg, Lucknow-226001 (Uttar Pradesh).

-Applicant.

By Advocate: Sri P.K. Srivastava.

Versus.

1. Union of India, through the Finance Secretary, Government of India, Ministry of Finance, Secretariat Building, North Block, New Delhi-110001.
2. The Revenue Secretary, Government of India, Ministry of Finance, Secretariat Building, North Block, New Delhi-110001.
3. The Chairman, Central Board of Direct Taxes, Secretariat Building, North Block, New Delhi - 110001.
4. The Central Vigilance Commission, Through its Chairman, Satarkta Bhawan, Block 'A', General Pool Office, Complex, INA, New Delhi.

-Respondents

By Advocate: Sri Pankaj Awasthi for Sri R. Mishra.

ORDER

Pre Ms. Jayati Chandra, Member (A).

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 with the following relief(s):-

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“(i). That Hon’ble Tribunal may kindly be pleased to quash the impugned proceedings contained in the Office Memorandum dated 29.11.2007 (including letter dated 06.12.07) contained in Annexure -1 to this O.A. holding that such proceedings are without jurisdiction and , therefore bad in law and accordingly direction the opposite parties not to proceed in any manner against the petitioner and treating him as if no such proceedings were ever initiated against him
-And-

(ii). To issue any other order or direction as this Hon’ble Tribunal deems fit and proper in the circumstances of the case alongwith costs of the O.A.”

2. The facts relevant to the case are that the applicant joined the Indian Revenue Service in 1972 and retired as Commissioner of Income Tax on 30.11.2007. While he was posted as Commissioner of Income Tax (OSD) at Kolkata he was sent a letter dated 5/7.1.2004 by Deputy Director of Income Tax (Vigilance) for his comments on certain irregularities detected in a vigilance inspection of 10 cases decided by him in the year 2000-2001 (Annexure-2) in his capacity as Commissioner of Income Tax (Appeals). A reminder was issued on 4.5.2007 (Annexure-3). As the earlier letter dated 5/7.1.2004 was never received by him. Again a copy of the same was sent to him by letter dated 9.5.2007 (Annexure 4). By his letter dated 16.5.2007 (Annexure-5) the applicant pointed out that the initial letter of 5/7.1.2004 seeking his comment had not be received by him till date and even now the details of the case on which his comments were desired had not been enclosed with the covering letter. Finally, the entire details were forwarded to him by the respondents by their letter dated 26.09.2007 (Annexure-6), enclosing the report of the vigilance inspection (Annexure-6 and Annexure-7).

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3. He replied to the same by his letter dated 5.10.2007 (Annexure-8) in which he raised two objections;_

(i). the validity of the said inspection made into his working in a quasi-judicial capacity in the year 2000-01 while functioning as Commissioner of Income Tax (Appeals) in Cuttack Orissa.

(ii). The appropriateness of a junior officer (Shri F.M. Mohanty belonging to 1979 batch of the IRS) looking into the conduct by the way of inspection of a senior officer (himself belonging to the 1972 batch of IRS).

4. A reference was made to Central Vigilance Commission (CVC) by the respondents. The CVC by their letter dated 23.11.2007 (Annexure-9) advised the respondents to initiate major penalty proceedings against the appellant. The respondents issued a charge sheet dated 29.11.2007 but the same was sent to him under the covering letter dated 6.12.2007 (Annexure-1) addressed to himself as CIT (OSD), Kolkata Retd. and sent to his retiral address at Lucknow.

5. By means of this O.A., the applicant has challenged the impugned charge sheet as (i) the same was served upon him on 6.12.2007 where he was no longer a Govt. employee under Rule-3 of the CCS (CCA) Rules 1965 having retired on 30.11.2007. A charge sheet under Rule-14 of the CCS (CCA) Rules 1965 is applicable only to a person who is still a government employee.

(ii). The charges pertain to the decisions taken by him in 10 cases of appeals disposed of by him as a quasi-judicial officer i.e. Commissioner Income Tax A(Appeals) in the year 2000-01. These decisions could be looked into

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only by the way of appeal by the Hon'ble High Court and Hon'ble Supreme Court.

(iii). His conduct had been looked into by a junior officer acting as an inspecting body.

6. The respondents have denied the averments of the applicant through their counter reply. They have defended their action in terms of the authority vested in the vigilance wing of the department which can enquire into the action and conduct of officers serving in the department. An authorization had been made by the Competent Authority to the inspecting officer to inspect the cases on which the charge sheet had been drawn up. Although it based on the inspection report, the competent disciplinary authority has taken a decision to initiate a disciplinary action. In this case the decision to look into the conduct of the applicant while functioning as a quasi-judicial authority (Commissioner of Income Tax (Appeals) is covered under the ruling of the Hon'ble Supreme Court in Union of India Vs. K.K. Dhavan 1993 ABTC-1028 in which it has been held the following:-

"..... Thus, we conclude that the disciplinary action can be taken in the following cases

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty; (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-;

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(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

7. Initially the comments of the applicant was sought from 2004 on wards, but in the continued absence of reply, and in view of the retrial date of the applicant, a decision in consultation with CVC was taken to initiate proceeding under Rule 14 of CCS (CCA) Rules and he was charged by charge sheet dated 29.11.2007.

8. In the instant case no disciplinary case has been finalized yet and this OA is premature. Further under Rule 9 of the CCS (Pension) Rules, it has been provided that any disciplinary action initiated under Rule 14 of the CCS (CCA) Rules, 1965 while in service would be deemed to continue after his retirement. The relevant portion of the Rule reads as follows:-

"Rule 9 (2) (a) The departmental proceedings referred to in sub-rule (1), if instituted while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service."

9. In this case the Memorandum of charges was issued on 29.11.2007 while the officer was still in service. The relevant date for the purpose of Rule 9 (2) of the CCS (Pension) Rule is the date of issue of charge sheet and not the date of its service. The Memorandum of charges was dispatched by Registered Post on 29.11.2007 while the

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applicant was in service and that in itself may be deemed as service upon the officer.

10. They have placed reliance upon the ruling of the Hon'ble Supreme Court passed in ***Delhi Development Authority Vs. H.C. Khurana 1993 (3) SCC 196*** by which the question "what is the stage when it can be said that a decision has been taken to initiate disciplinary proceedings." has been answered. The question in this instant case has been answered in para-9 of the judgment in following terms:-

"The delay, if any, in service of the charge sheet to the government servant, after it has been framed and dispatched, does not have the effect of delaying initiation of the disciplinary proceedings, inasmuch as information to the government servant of the charges framed against him, by service of the charge sheet, is not a part of the decision making process of the authorities for initiating the disciplinary proceedings."

11. They have also placed reliance on ***Govt. of Andhra Pradesh & Others Vs. Ch. Gandhi 2013 (5) SCC 111*** para-19 and 20 of which reads as follows:-

"19. Be it noted, in the said case, the decision rendered in Union of India and others v. K.V. Jankiraman and others[2] was explained by stating thus: - "The word 'issued' used in this context in Jankiraman it is urged by learned counsel for the respondent, means service on the employee. We are unable to read Jankiraman in this manner. The context in which the word 'issued' has been used, merely means that the decision to initiate disciplinary proceedings is taken and translated into action by despatch of the charge-sheet leaving no doubt that the decision had been taken. The contrary view would defeat the object by enabling the government servant, if so inclined, to evade service and thereby frustrate the decision and get promotion in spite of that decision."

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20. In Union of India and others v. Sangram Keshari Nayak[3], it has been held that a departmental proceeding is ordinarily said to be initiated when a charge-sheet is issued. In Coal India Ltd. and others v. Saroj Kumar Mishra[4], similar view was reiterated. In view of the aforesaid pronouncements, there is not an iota of doubt that the disciplinary proceeding was initiated under the unamended Rules."

12. The applicant has filed his Rejoinder reiterating the pleadings in the OA and raising the issue for the first time regarding the absence of approval of the Minister-in-charge being the competent authority to approve initiation of an officer of his seniority. In the course of hearing, he has placed reliance upon ***M.D. U.P. Warehouse Corporation Vs. Vinay Narain Vajpayee AIR 1980 SC 840*** in which the Hon'ble Supreme Court has held that a regular department enquiry takes place only after the charge sheet is drawn up and served upon the delinquent and the letter explanation is obtained."

13. We have heard the learned counsel for the parties and perused the record.

14. The very short issue that requires to be adjudication in this case is can a charge sheet issued to a government employee prior to his retirement but served upon him after his retirement, deemed to be departmental proceedings "initiated" while he was in service as is required under Rule 9 (2) (a) of the CCS (Pension) Rules?

15. Rule 14 (4) of the CCS (CCA) Rules reads as follows:-

"The Disciplinary Authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of

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misconduct or misbehavior and a list of documents and witnesses by which each article or charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defense and state whether he desires to be heard in person."

16. Rule 9 (2) (a) of CCS (Pension) Rules provides for continuation of departmental proceeding referred to in sub-rule (1),

*".....if **instituted** while the Government servant was in service whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant, be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:*

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b). The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment,-

(i). shall not be instituted save with the sanction of the President.

(ii). Shall not be in respect of nay event which took place more than four years before such institution , and

(iii). Shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order or dismissal from service could be made in relation to the Government servant during his service."

17. The respondents placing reliance on **Delhi Development Authority Vs. H.C. Khurana reported in 1993 (3) SCC-196** and **Government of Andhra Pradesh & Others vs. Ch. Gandhi reported in 2013 (5) SCC-111** have held that the Memorandum dated 29.11.2007 is deemed to have "instituted" upon the applicant within the meaning of Rule 9 (2) of CCS (Pension) Rules. They have stated that the Hon'ble Apex Court in **Delhi Development Authority Vs. H.C. Khurana (1993) SCC**

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-196 has held that 'in the context of sealed cover procedure as incorporated in DOPT O.M. No.22011/2/86 -Estt. (A) dated 14.09.1992 which had contained as express provision in cases of government servant in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate a disciplinary proceeding (as per O.M. dated 12.1.1988) since awarded by O.M. dated 14.09.1992 to "government servant in respect of whom a charge sheet has been issued."

18. However, this view has been considerably modified in a later judgment. The **Hon'ble Apex Court in U.O.I. & Others Vs. Dinanath Shataram Karekar & Others (AIR 1998 (SCC) 2722** has held the following:-

".....Where the disciplinary proceedings are intended to be initiated by issuing a charge-sheet, its actual service is essential as the person to whom the charge-sheet is issued is required to submit his reply and, thereafter, to participate in the disciplinary proceedings. So also, when the show-cause notice is issued, the employee is called upon to submit his reply to the action proposed to be taken against him. Since in both the situations, the employee is given an opportunity to submit his reply, the theory of "Communication" cannot be invoked and "Actual Service" must be proved and established." It has already been found that neither the charge sheet nor the show cause notice was ever served upon the original respondent, Dinanath Shantaram Karekar. Consequently, the entire proceedings were vitiated."

A similarity is noticed in this case too as the memorandum of charges dated 29.11.2007 was not served upon the applicant before his retirement. In fact the memorandum was not directly addressed to the applicant but was addressed to him through the CCIT (CCA), Kolkata, who dispatched /issued the same under his covering letter dated 06.12.2007.

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19. In so far as the ruling cited vide Government of **Andhra Pradesh & Others Vs. Ch. Gandhi (Supra)** is concerned, the same was delivered in the context of whether a punishment could be imposed in accordance with amended rules or under the unamended rules. The relevant portion reads as follows:-

"10Thus, the only aspect that requires to be dwelled upon is whether the punishment could be imposed in accordance with the amended Rules or under the unamended Rules."

More-over the case dealt with a serving officer on whom no disciplinary action was being conducted under the CCS (Pension) Rules.

20. It is also observed that the impugned chargesheet arose out of an inspection carried out in 2000-2001. It took the respondents nearly four years to seek comments from the applicant by their letter dated 5/7.2.2004, and another three years to issue a reminder on 4.5.2007. Thereafter, certain clerical and avoidable omission, such as not annexing the copy of the inspection report, allowed for further delay, whereby the date of retirement of the applicant came very close. The respondents in their Counter Reply have stated that in view of the retirement date on 30.11.2007 a decision was taken to issue the chargesheet on 29.11.2007. Even then the same was required to be served through CCIT (CCA), Kolkata who took his own time.

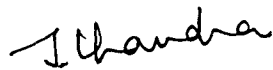
21. This appears to be an act to facilitate the applicant. Such laxity on the part of the respondents is not desirable at all if they were serious in their intentions. Now the applicant has opportunity to seek for and be

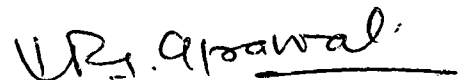
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accorded the legal protection available to him as a retired employee.

22. Thus applying the ratio of directive as laid down in **U.O.I. Vs. Dinanath Shantaram Karekar (supra)** we find that the chargesheet was not communicated to the applicant, much less received by him before the date of his retirement on 30.11.2012, and therefore, cannot be taken as departmental proceedings instituted against the government servant as is mandated under Rule 9(2) (a) of CCS (Pension) Rules.

23. In the light of the discussions made above, the O.A. succeeds. The departmental proceeding under Rule 14 of CCS (CCA) Rules as contemplated by Inquiry Officer is quashed. No costs.


(Ms. Jayati Chandra)
Member -A


(Navneet Kumar)
Member-J

Amit/Girish/-