

(16)

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

O.A. No. 198  
T.A. No. 194/87

DATE OF DECISION 8.8.90

P.Krishnamacharyuly Petitioner

None appears Advocate for the Petitioner(s)

Versus

Union of India and another Respondent

Miss H.R. Saxena Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. G.Sreedharan Nair, Vice Chairman.

The Hon'ble Mr. Hon'ble Sri I.K.Rasgotra, Member(Admn).

1. Whether Reporters of local papers may be allowed to see the Judgement? X
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? X
4. Whether it needs to be circulated to other Benches of the Tribunal? X

MGIPRRND-12 CAT/86-3-12-86-15,000

(G.Sreedharan Nair)  
Vice Chairman.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :NEW BOMBAY BENCH  
NAGPUR.

TR 194/87.

P.Krishnamacharyulu	...	<u>Applicant.</u>
versus		
Union of India and another	...	<u>Respondents.</u>

P R E S E N T :

The Hon'ble Shri G.Sreedharan Nair, Vice Chairman.

The Hon'ble Shri I.K.Rasgotra, Member(Admn).

For the applicant- None appears.  
Sareen,  
For the respondents- Miss N.R./a, Advocate.

Date of hearing - 6.8.90

Date of Judgment & Order - 8.8.90.

**JUDGMENT & ORDER :**

G.Sreedharan Nair, Vice Chairman :

This relates to Writ Petition No.2179 of 1980 on the file of the High Court of Bombay, which has been received on transfer.

2. The applicant while working as ~~the~~ Income-tax Officer was proceeded against under Rule 16 of the CCS (CC&A) Rules by the issue of a Memorandum of Charges dated 15.11.1976. The charge was that he failed to maintain devotion to duty and thereby contravened Clause (ii) of sub-rule (1) of Rule 3 of the CCS(Conduct) Rules. The imputation related to the completion of the Income-tax assessments of one Surajprasad Baba Raghunathdas, an assessee, under sub-section (1) of section 143 of the Income-tax Act. It related to the period <sup>1964-65 to</sup> 1972-73 ~~to 1974-75~~. The applicant denied the charge. Thereafter, on 22.3.1977, the 2nd respondent the Commissioner of Income-tax, issued another Memorandum of Charges making the same imputation and proposing to hold enquiry under Rule 16 of the Rules. An enquiry was conducted. The Inquiry Officer reported that the charge is not established. However, the Disciplinary Authority by his order dated 17.11.1978 held that the charge of failure

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to maintain proper devotion to duty is proved and imposed upon the applicant the penalty of withholding of increments for a period of three years without cumulative effect. The appeal preferred by the applicant before the President of India was rejected by the Memorandum dated 8.5.1980 communicated to the applicant.

3. The applicant prays for quashing the order imposing the penalty. It is urged that the accusation made against the applicant was totally unwarranted. It is pointed out that the assessment was done in the particular case in accordance with the spot-assessment and summary assessment schemes. It is urged that when the Inquiry Officer on a consideration of the evidence reported that the charge is not established, before the Disciplinary Authority arrived at a different conclusion, the applicant should have been afforded an opportunity of being heard, and the denial to do so is violative of the basic principle of natural justice. There is also the plea that the Disciplinary Authority failed to record any reason while disagreeing with the findings recorded by the Inquiry Officer, and both the orders of the Disciplinary Authority as well as of the Appellate Authority are mechanical and non-speaking orders.

4. The respondents have filed reply traversing the various grounds urged in the application.

5. When this matter was taken up for final hearing, the applicant was not present. From the records we were <sup>able</sup> ~~above~~ to notice that the applicant had already sent a letter stating that the matter may be disposed of on merits after perusing the records. Accordingly, we have heard the counsel of the respondents and have

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perused the records. We are of the view that the applicant is to succeed.

6. The Central Board of Direct Taxes, for short, the Board, issued a Bulletin in September, 1971 (Annexure-A), introducing a new procedure for making regular assessment under the Income-tax Act in view of the amendment of section 143 of the Act enabling the Income-tax Officers to make a regular assessment without requiring the presence of the assessee or the production of any evidence in support of the return, and without being satisfied that the return is correct and complete in all respects. By the aforesaid Bulletin, it was pointed out that such summary assessment under sub-section (1) of section 143 need not, however, be made in every case in which return of income is received, and it was pointed out that in the 9(nine) categories of cases enumerated therein, the detailed procedure under sub-sections (2) and (3) of section 143 should invariably be followed.

7. Subsequently, the Board evolved a Scheme for encouraging new assesseees in the Small Income Group to furnish the returns of income voluntarily, under which it was provided that no penalty <sup>will be</sup> levied in the case of a person not hitherto assessed if the return of income is filed voluntarily prior to 1.1.1973 and the income as declared or as assessed does not exceed Rs. 15,000/-. It was provided that new cases where the returned income does not exceed Rs. 15,000/-, and <sup>the</sup> capital invested does not exceed Rs. 25,000/- should ordinarily be completed under sub-section (1) of section 143 of the Act. A copy of this scheme is at Annexure-B.

8. Surajprasad Baba Raghunath Das, hereinafter, <sup>referred to as</sup> the assessee, mentioned in the Memorandum of Charges, filed his

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return for the assessment years 1964-65 to 1972-73 under the aforesaid Scheme. According to the applicant, as the case clearly fell within the scope of the instructions under the Scheme, the assessment ~~had~~<sup>and was</sup> to be completed under sub-section (1) of section 143 of the Act, ~~it~~ was on that basis he completed the assessment and for that purpose he had obtained the necessary approval of the Commissioner of Income-tax under section 148 of the Act. When the Memorandum of Charges was issued, the applicant filed a detailed reply highlighting that the case is completely covered by the Scheme framed by ~~the~~ Board and that the assessments ~~had~~ to be made only in accordance with the instructions contained therein. The Inquiry Officer held that as the assessments were completed under the spot-assessment scheme, the ~~charge~~ levelled against the applicant cannot be sustained. Besides, the various points urged by the Presenting Officer were considered seriatim in the light of the evidence, and the conclusion was arrived at that the Presenting Officer failed to prove any of the charges. In the course of the Inquiry, one Shri D.Rama Rao, I.R.S., Appellate Assistant Commissioner of Income-tax was examined as a witness on behalf of the applicant. While cross-examined by the Presenting Officer, it has been brought out from him that considering the tempo with which the spot <sup>assessment</sup> scheme was being implemented, the Income-tax Officers were making all-out efforts to make the Scheme a success, and that according to him, the applicant prima facie acted in consonance with the time and spirit with which such assessments were being completed.

9. No doubt, it is open to the Disciplinary Authority to differ from the conclusion arrived at by the Inquiry Officer. However, in such cases it behoves the Disciplinary Authority to apprise the evidence that was tendered in the course of the enquiry and to explicitly state the reasons for arriving at the



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conclusion that the truth of the imputation is established. On going through the orders of the Disciplinary Authority, we are not satisfied that it can stand the aforesaid test. The order is rather cryptic and in the following terms :-

" The spot Assessment Scheme was for expeditious disposal of small income cases. The assessee in the present case submitted nine returns for the assessment years 1964-65 to 1972-73, all showing uniform assessable income of Rs. 14,000/-. The investment in the first year was exactly Rs. 25,000/-. There were similar investments in subsequent years accumulating eventually to Rs. 1.93 lakhs on 31st March, 1972. This was certainly not a case where the only duty of the I.T.O. was to see whether it fell within the Assessment Scheme. There was apparent material on record which needed examination. Even though the charged officer considered that the case was covered by the " Spot Assessment Scheme " he was not precluded from looking into prima facie questionable whether assessee could have at all purchased any serviceable trucks for Rs. 11,000.00 and Rs. 16,000/- only in a condition so as to derive substantial income from them. The charged officer failed to do so. He thus failed to examine the case in its proper perspective. The charge of failure to maintain proper devotion to duty is thus proved."

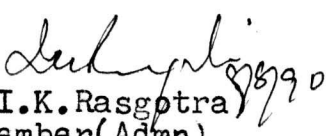
Evidently, the Disciplinary Authority held that the case was covered by the Spot Assessment Scheme. But it was on the short ground that the applicant was not precluded from looking into the question whether the assessee could have purchased the two trucks so as to derive substantial income from them, <sup>he</sup> That <sup>was</sup> conclusion arrived at that the applicant failed to examine the case in its proper perspective. Even accepting the approach of the Disciplinary Authority that the case could have been viewed in a different perspective, the inference of failure on the part of the applicant to maintain devotion to duty cannot reasonably be drawn, and as such, the finding of the Disciplinary Authority is not sustainable in law.

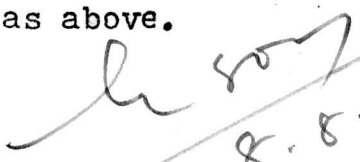
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10. It is seen that the appeal preferred by the applicant was disposed of merely on the strength of the findings of the Union Public Service Commission. It is only on the ground that " the appellant has not presented any new material to rebut the findings of the Disciplinary Authority and they are therefore to satisfy that the charge of failure to maintain proper devotion to duty is proved against the appellant" that the Commission found against the applicant. We cannot but observe that the vital points urged by the applicant in the Memorandum of Appeal were not considered by the Appellate Authority.

11. In view of the foregoing, the order of the 2nd respondent dated 17.11.1978 imposing upon the applicant the penalty of withholding of increments for a period of three years without cumulative effect, as confirmed by the order of the Appellate Authority dated 30.1.1980, is hereby quashed. The applicant shall be allowed the consequential benefits within a period of three months from the date of receipt of the copy of this order.

12. The application is disposed of as above.

  
( I.K. Rasgotra )  
Member(Admn)

  
8.8.1990  
( G.Sreedharan Nair )  
Vice Chairman

S.P.Singh/  
8.8.90.