

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 591/87

Transfer Application No: ---

DATE OF DECISION 28-10-93

Ramchand Hassaram Shahaney Petitioner

Mr. G. K. Masand Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Mr. P. M. Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, V.C.

The Hon'ble Shri N.K. Verma, Member(A)

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

M.S. Deshpande
 (M.S. DESHPANDE)
 VC

NS/

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.591/87

Ramchand Hassaram Shahaney,
 Qr.No.297, Block No.21,
 Sector III, Kane Nagar,
 Antop Hill P.O.
 Bombay - 400 037.

.. Applicant

-versus-

1. Union of India

2. Commissioner of Income-tax,
 Bombay City-I,
 Aayakar Bhavan,
 M.K.Road,
 Bombay - 400 020.

3. The Estate Manager,
 Govt.of India,
 101, M.K.Road, 3rd Floor,
 Bombay - 400 020. .. Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande
 Vice-Chairman

Hon'ble Shri N.K.Verma, Member(A)

Appearances:

1. Mr.G.K.Masand
 Advocate for the
 Applicant.

2. Mr.P.M.Pradhan
 Counsel for the
 Respondents.

ORAL JUDGMENT:
 (Per M.S.Deshpande, V.C.)

Date: 28-10-93

The applicant challenges the order
 of compulsory retirement passed against him as a
 result of the findings recorded against him in a
 departmental enquiry.

2. The applicant was posted on 5-7-1979
 in the DDI Unit-I headed by Shri C.Perinaygam, Dy.
 Director of Inspection Unit-I. On 13-7-1979 he was
 assigned to carry out inspection and collecting
 information u/s. 133A of the Income Tax Act about
 the names and address of purchasers of office premises

in Dalamal Towers at Nariman Point constructed by M/s. Dalamal & Sons Investment Co. Accordingly applicant attended Dalamal's office in the company of his Stenographer, Raman, to copy out the names and addresses of the purchasers of the premises.

3. The articles of charge framed against the applicant were that while functioning as Income-tax Inspector during July and August, 1979 he had committed gross misconduct and failed to maintain absolute integrity, devotion inasmuch as he demanded during the month of July, 1979 an amount of Rs.50,000/- from Shri Kripalani who was Manager of M/s. Dalamal & Sons for submitting a report favourable to the firm and few days ^{later} ~~/repeated~~ the demand from Shri Nari Dalamal a partner of M/s. Dalamal & Sons. There are other charges with which we are not concerned because all the authorities namely the Inquiry Officer, Disciplinary Authority and Appellate Authority held that other charges ~~were not proved~~.

4. The department's case was that applicant inspected books and accounts of M/s. Dalamal & Sons Investment Co. for about five or six days and thereafter told Shri Kripalani that he was about to submit his report to the Income Tax Department and that he is in a position to make a favourable report and therefore in a commanding position and for this he should be paid Rs.50,000/-. Shri Kripalani told that Dalamals have never paid any illegal gratification and their transactions were clean, and therefore, there ~~was~~ no question of making any payment. Shri Kripalani also told that Dalamals would also not agree to this payment. He also spoke about it to Shri Nari Dalamal and ^{at} the instance of the applicant Dalamal

agreed to meet him. So the applicant was taken to Dalamal's Chamber at about 3 P.M.. Applicant handed over his typed report which was read out loudly. Dalamal questioned the applicant while reading the report and the applicant confirmed his demand that he wanted Rs.50,000/- and ^{that} further amount of Rs.1 lakh should be paid to Shri Perinaygam, After Dalamal declined to pay the amount the matter was discussed with Shri F.E.Merchant, legal advisor for Dalamal and Sons and they approached Shri D'Souza, Commissioner of Income Tax and apprised him of the applicant's demand. ^{When} Mr.D'Souza asked whether M/s.Dalamals were agreeable to make a report to the C.B.I. Shri Kripalani declined to make a written report. About 8 to 10 days later the applicant sought a meeting with Shri Kripalani at Hotel Balwas where he told Shri Kripalani that he was the cause of his transfer and he could ruin the company. The matter was reported to Shri Merchant and they approached Mr.D'Souza. Shri Nari Dalamal had left for Lagos by this time. Mr.Merchant and Mr.Kripalani asked Mr.D'Souza to ^{seize} ~~see~~ the report the applicant possessed and photo copy of the assessment order relating to M/s.Dalamal and Sons. ~~but~~ Mr.D'Souza ~~said~~ that this could not be done. The premises of Dalamal & Sons were raided on 29th and 30th September, of 1980 and it is contended that several irregularities ~~running into crores were~~ ^{then} ~~the~~ noticed. The matter was taken over by C.B.I. and the statement of witness ~~es~~ came to be recorded. A departmental ~~enquiry~~ was thereafter instituted at which the cassette was produced and the voices ^{who} of the persons/participated in the discussion in Dalamal's office came to be identified and that included the voice of the applicant also.

5. After recording the evidence the Inquiry Officer came to the conclusion that though the evidence of Shri Kripalani suffered from several infirmities, there was credible evidence of the witnesses to show that the voice of the person who made the demand of Rs.50,000/- was that of the applicant and on that basis, observing that there was enough corroboration gave a finding that charge article no.1 was proved against the applicant. When the matter came up before the Disciplinary Authority after ~~hearing~~ the applicant he reached ~~to~~ the conclusion that the evidence of Shri Kripalani was wholly reliable and that it corroborated the tape recorded conversion and he therefore accepted the finding of the Inquiry Officer ~~he~~. After issuing a notice to the applicant ~~he~~ imposed the penalty of compulsory retirement. The Appellate Authority took the same view and dismissed the appeal.

6. Shri G.K.Masand, learned counsel for the applicant took us ~~to~~ the entire evidence and urged that once the Inquiry Officer had found that Shri Kripalani was not a witness of truth and that his evidence was not reliable, that assessment ~~fixing~~ could not have been upset by ~~other~~ higher authorities. The Appellate Authority has given cogent reasons ~~after discussing~~ in detail why it was accepting Kripalani's version. The authorities also found that voice of the applicant had been identified by the persons who ~~were~~ acquainted with ~~his~~ voice and the tape recorded conversation ~~could~~ therefore be taken into consideration. This is a case where there was evidence to show the demand ~~made~~ by the applicant for an amount of Rs.50,000/- There was

no dispute about the fact that the applicant was deputed for collecting information under the provisions of Income Tax Act and had been working in Dalamal's office from 13-7-1979 to 17-7-1979. With regard to the applicant's demand for bribe of Rs.50,000/- the direct evidence is that of Shri Kripalani. His statement was recorded on 16-9-1981 and several questions were put to him when he was examined by the Inquiry Officer. In answer to question No.15 Shri Kripalani stated that he left it to the Income Tax department to deal with the matter and take whatever action they deemed fit, and it was not necessary for him to consult Dalamal because he held the power of attorney for Nari Dalamal. It is true that Kripalani was not keen on having the matter referred to CBI or a trap being laid. In this context it is necessary to observe that M/s.Dalamal & Sons were engaged in building activity and action was being taken by the Income Tax authorities for ascertaining whether there were irregularities. Though the demand by the applicant for a bribe might have been spurned it was understandable that Kripalani may not have liked the matter to be precipitated. He was the Manager of the concern and must have been aware of the wrath he may incur from the income tax authorities if the matter were to be reported to the CBI or a trap was laid. Merely because Shri Kripalani was unwilling to have the matter to be taken to CBI it will not detract from what is stated about the applicant's demand for Rs.50,000/-

7. Shri Kripalani told Shri D'Souza the Commissioner of Income Tax about the demand. Mr. Merchant was also informed about it. Both

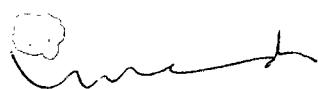
D'Souza and Perinayagam stated that they had been informed about the demand of bribe by the applicant. This is corroborated by Kripalani's version that he had informed them about the conversation made at Dalamal's Chamber. Thus there was no reason why the version of Mr.D'Souza and Mr.Perinayagam who are responsible officers of the department and had no animosity against the applicant could not have been accepted. In fact it was quite natural that Shri Kripalani, feeling aggrieved by the demand for such a huge amount of bribe, should have approached the departmental authorities. Shri D'Souza could not have taken the matter with the CBI at that stage since Shri Kripalani was unwilling to make a complaint. The action of Shri D'Souza directing the transfer of the applicant from the unit which was dealing with Dalamal matters is consistent with his having been apprised of what had occurred. It cannot therefore be said that Shri D'Souza did not act upon the grievance which Shri Kripalani had made to him.

8. In this context it is quite natural that the applicant who must have felt annoyed by the transfer should have called Kripalani to Hotel Balwas and threatened him with dire consequences. It was contended that the applicant could not have harassed Dalamal because he did not have any authority to order raids and to make the assessment of the company. The threat consisted not in the applicant's himself taking action but in his ability to tip off the authorities about what he had seen while inspecting the records of M/s.Dalamal & Sons.

It cannot be said that in the circumstances the threat was not real. If Kripalani's version about the demand was true, it was quite natural for him to have consulted Dalamal who was the senior partner about the demand made by the applicant and seek his guidance. It appears that Shri Kripalani was not aware of the taperecording that Shri Dalamal had arranged when the conversation was going on in his Chamber, but the fact that the conversation had been tape-recorded is supported by the version of Mr.D'Souza and Mr.C.Perinayagam and there was no reason in the circumstances not to accept the fact that tape recording of the conversation had been done.

9. How real the threat which emanated from the applicant was, is apparent from the fact that M/s.Dalamal & Sons had been raided in September, 1980. In the circumstances it is difficult for us to hold that the findings recorded by the departmental authorities were based on no evidence. There was evidence which could lead to those findings and we do not think that the findings which were recorded can be characterised as perverse.

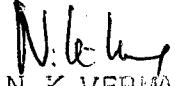
10. All the important aspects were considered by the appellate authority while accepting the version of Shri Kripalani. Shri G.K.Masand urged that the tape had not been sealed before it was produced at the enquiry and that the possibility of the tape being tampered with was not ruled out. In a departmental proceeding provisions of



to the evidence of Shri Kripalani.

12. There were two more submissions made by Shri G.K.Masand. One was that the maker of the cassette was not examined and the transcription was not done on the spot. In the circumstances of the case and the view we have taken, these factors do not assume any importance.

13. In the circumstances we do not think that the findings recorded at the enquiry were either based on no evidence or perverse. in the result we see no merit in this application and it is dismissed.


(N.K.VERMA)
Member(A)


(M.S.DESHPANDE)
Vice-Chairman

M