IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

(11)

O.A. NO: 639/87 199
T.A. NO: ----

DATE OF DECISION 8-10-92

S.A.Nadkarni — Petitioner

Mr.M.A.Mahalle — Advocate for the Petitioners

Versus

Union of India and ors. — Respondent

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

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice-Chairman

The Hon'ble Mr. M.Y.Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whethertheir Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

(S.K.DHAON)
VC

mbm* MD

(12)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A.639/87

S.A.Nadkarni,
Income Tax Officer
Group'A' Retired. .. Applicant

versus

1. Union of India
through
The Secretary,
Ministry of Finance
(Department of Revenue)
New Delhi.

2. The Secretary,
Union Public Service
Commission,
New Delhi.

3. Chief Commissioner of
Income Tax(Administration)
and the Commissioner of
Income Tax,
Bombay City - 1,
Bombay. .. Respondents

Coram: Hon'ble Shri Justice S.K.Dhaon,
Vice-Chairman.

Hon'ble Shri M.Y.Priolkar,
Member(A)

Appearances:

1. Mr.M.A.Mahalle
Advocate for the
Applicant.

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

JUDGMENT: Date: 8/10/92.
(Per S.K.Dhaon, Vice-Chairman)

The applicant who has retired as an Income Tax Officer challenges the legality of the order dt. 30th September,1986 passed by the President of India in the purported exercise of powers of Rule 9 of the Central Civil Services(Pension)Rules (hereinafter referred to as the Rules). The President has imposed the penalty of withholding the entire monthly pension admissible to the applicant on a permanent basis.

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2. During the years 1974-76(hereinafter referred to as the relevant time), the applicant was working as Income Tax Officer, Class II, Grade III, BSD(E),Bombay. Sometime in 1981 he was promoted to Class I on regular basis. On 29th October,1982 a chargesheet, which is the basis of the impugned order, was issued to him and he retired from service on the midnight of 31st October,1982. Obviously the chargesheet was given to him just two days before his retirement.

3. Two charges were levelled against the applicant. They were that during the relevant time he (a) made assessments in several cases in a dishonest and malafide manner and caused wrongful loss of revenue to the Government; and (b)displayed gross negligence as well as careless-ness in the discharge of his official duties. He,therefore, contravened Rule 3(1)(i) & (ii) of Central Civil Services(Conduct)Rules,1964. The statement of imputations of misconduct or misbehaviour in support of the aforementioned charges were related to eight cases disposed of by the applicant in a quasi-judicial manner during the relevant time.

4. An Inquiry Officer was appointed. He, on 15th September,1984, submitted his report running into no less than 29 pages. His findings were: the charge that the returns of income etc. filed in the said eight cases were not filed at the receipt counter as the same were not mentioned in the registers remained unsubstantiated. Absence of office copy of notice issued under section 143(2) of the Income Tax Act would not bring any infirmity in the assessment, in case it is evidenced that the tax payer concerned was heard,

as the 143(2) stage assessments made by the applicant are sound and suffer from no infirmity on account of absence of office copy of notice issued under section 143(2). Records were not properly documented and filed in the BSD Ward during the relevant time and even important documents like chalans for payment of tax and advice notes for refund etc. have not been filed in the relevant folders. In view of this, non-filing of office copies of notices under section 143(2) is not an exception. The job of filing these papers was admittedly that of the dealing asstt. concerned and whatever may have been the difficulties in keeping the records upto date, the failure on their part cannot be passed on to the shoulders of the applicant. Hence the absence of office copies of notices under Sec.143(2) in the cases exhibited would not lead to the adverse inference that the applicant dispensed with issue of such notices as he was acting in collusion with the tax payers concerned. Moreover even if the applicant was acting in collusion with the tax payers concerned, non-issue of or non-placing of notices under Section 143(2) in the relevant records would not in any view of the matter bestow any benefit either on the applicant or the tax payer concerned. A malafide act must have a motive. In the instant case there is no motive, not even effectively camouflaged.

5. In the case of Km.Shashikala B. Agarwala no evidence of malafide or dishonest intention is established against the applicant. The applicant has been careless in completing

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the assessment of Km.Shashikala B.Agarwala.

6. In the case of Smt.Sarla Balani there was no malafide intention or carelessness on the part of the applicant for completing the assessment.

7. In the case of Km.Meena B.Agarwal the assessee was a minor., She was a migrant from Burma. She was a marginal taxpayer. No detailed enquiry in her case was called for. Since the assessee was a minor, investment of capital was a plausible explanation. However, the applicant should have obtained the names of the parties to whom money was advanced and brought the same on record as also a copy of the declaration made at the time of the immigration. The charge that the applicant had shown favour to the assessee concerned and that he failed to make proper inquiries is not proved. However, negligence to some extent is established on account of the applicant's failure to bring on record details of parties to whom moneys were advanced over the years and also a copy of declaration of 1966.

8. In the case of Miss.Kavita D.Jethwani no collusion of the applicant was proved. Even though assessments were made by summary ITO in a summary ward and income returned in all the years was at the marginal level, the fact that capital accumulation was there, should have prompted the applicant to get more evidence on record before accepting the claim of the assessee about gifts received. The applicant should have brought on record the status of the parents of the minor assessee and asked for evidence from the Income Tax Practitioner to show that the assessee came from an affluent background in which her receiving Rs.30,000/- by way of gifts

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from friends and relations at the time of her naming ceremony was not unusual. The applicant failed to make due enquiry and merely accepted the version of the assessee, which was unsupported by any other evidence.

9. In the case of Shri Jaikishan B. Mehtani there is no evidence to connect the applicant with the ante-dating of the return even if they have been so ante-dated as alleged. There was no default on the part of the applicant in non-intimation of penalty under section 271(1)(a).

10. In the case of Miss.Hema R.Jethwani the charge of negligence and carelessness in completing her assessment is established against the applicant.

11. In the case of Km.Ashadevi B.Agarwal the assessment has been completed with the approval of the range IAC. He has written that the applicant could have done in this case by way of inquiry and investi ation regarding accrual of income once initial capital of Rs.20,000/- brought from Burma was accepted in terms of declaration.

12. In the case of Shri Binod Kumar B. Agarwal no malafide is established and subsequent events show that income had to be assessed in the hands in which it was returned. However, to certain extent the applicant had been negligent. On the allegations about non availability of notice under section 143(2) and ante-dating of returns no charge of malafide or collusion is established against the applicant. He summed up thus:

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"In view of above discussions and findings I hold that first component of article of Charge-I i.e. malafide and dishonest action resulting in loss of revenue is not proved. The second component of article of charge regarding negligence and carelessness is proved vide paras 19,26,32,36,38 and 40 of my report."

13. By memorandum dt. 19th July/2nd August, 1985 the applicant was informed that the President had disagreed with the Inquiry Officer's report and was of the opinion that both the component of charges against the applicant were fully proved for reasons given in the annexure to the memorandum. Applicant was also informed that the President had come to the provisional conclusion that a penalty of withholding of entire amount of pension and gratuity should be imposed on the applicant. Accordingly the applicant was given an opportunity of making a representation on the penalty proposed to be imposed upon him.

14. We have perused the annexure to the memorandum. The conclusions therein, in main, are these: The President disagreed with the Inquiry Officer's report on the question of the issue of notice under section 143(2). The applicant did not complete the assessments in a proper and regular manner by following the prescribed procedure. In the absence of the copies of the notices u/s.143(2) being in the case files, one does not know whether such notices were at all issued. If such notices were not issued, question arises how the assessees at all came to know that they were to be heard by

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applicant.
the [illegible]. The only alternative presumption would, applicant
therefore, be that the [illegible] either did not in fact
hear the parties concerned or their tax consultants applicant
appeared before the [illegible] either suo moto or being applicant
verbally summoned by the [illegible] and that no usual
enquiries were made, so as to oblige the
assessees with completion of assessments in an
irregular fashion. Since copies of the notices
in question are not on records, there is no
evidence to show that such notices were in fact
issued. Regarding the reported migration of some
of the assessees from Burma and their claim to
have brought some capital with them the IO has
accepted that the copies of such declarations are
not available on records and there is nothing to
suggest that the originals were seen by the applicant
while accepting the capital declared by the so
called migrants from Burma. The Investigating
Officer had considered the lapses on the part of
the applicant as merely those of negligence and
carelessness and not involving any dishonest
motive. By making assessment in the manner in
which he did in a large number of cases the
applicant in fact allowed the assessees to show
sizeable amounts of capital build up. A dishonest
motive is clearly implied in the conduct of the
applicant. Therefore, not merely has the charge of
completing assessments in a negligent and careless
manner been established but also the charge of
completing assessment in a malafide manner has
been established against the applicant.

15. On 27th September,1985 the applicant sent a detailed reply reiterating that he had sent notice u/s. 143(2). He extracted the following from the report of the Inquiry Officer:

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"(a) It is not disputed that notices for fixation of hearing in Scrutiny cases are put up in bunches by the personal clerk to the I.T.O and the I.T.O signs notices which are then required to be served on the Tax Payer". (Para 13 of the Inquiry Officer's report).

(b) it has been brought out in evidence that other documents from 143(2) notices, which are of greater importance to the assessment and collection of tax, have not been placed in the relevant assessment folder"(Para 15 of Inquiry Officer's report)

(c) DW 2, Shri S.J.Karnik who was I.A.C. at the relevant time stated that he remembered that they had made complaint about lack of space, lack of cupboards in B.S.D. ward located in Piramal Chambers as case papers and records could not be maintained as per prescribed procedure and used to lie about on tables or even on the floor (Page 16 of Inquiry Officer's report)

(d) From the above evidence it is obvious that records were not being properly documented and filed in B.S.D. Ward during the relevant times and even important documents like challans for payment of tax and advice notes for refund etc. have not been filed in the relevant folders. In view of this non filing of Office copies of Notices under Section 143(2) is not an exception" (Para 16 of the Inquiry Officer's report).

16. He explained that the second component of the charge which pertained to the assessment of the assessees, four in number, and who had migrated from Burma too remained unestablished against him.

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17. Sub Rule (1)of Rule 9 of the Rules provides inter-alia that the President reserves to himself the right of withholding or withdrawing a pension or part thereof, whether permanently or for a specified period, and of ordering recovery from a pension of the whole or part of any pecuniary loss caused to the Government, if, in any departmental or judicial proceedings, the pensioner is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement: Provided that the Union Public Service Commission shall be consulted before any final orders are passed: Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the amount of rupees sixty per mensem. In the instant case, the UPSC on 5th May'86 gave its concurrence to the report of the President that the punishment proposed by him (President) may be imposed upon the applicant. Sub rule (2)(a) of Rule 9 provides that "the departmental proceedings, 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." It is thus apparent that the disciplinary proceedings initiated against the applicant before his retirement were deemed to be taken under the Rules. However, the departmental proceedings were to be conducted in the same manner as in the case of a Govt. servant who continued in service. The manner of holding of enquiry in the case of a Govt. servant is laid down in detail in CCS(CCA)Rules.

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18. Sub rule(2) of Rule 15 posits that the disciplinary authority shall, if it disagrees with the findings of the inquiring authority on any article of charge, record its reasons for such disagreement and record its own findings on such charge if the evidence on record is sufficient for the purpose. The crucial words in the said sub rule, as relevant to the present controversy, are "record its reasons for such disagreement". It is clear from a reading of Rule 15 as a whole, including sub rule (2), that the reasons for disagreement with the findings of the inquiring authority should be found in the order of punishment passed by the disciplinary authority. Therefore, we have to find out whether any attempt has been made by the President to record any reason whatsoever for disagreement with the findings of the Inquiry Officer in the order passed on 30th September, 1986 namely the impugned order. We have gone through the order more than once but we find, in it, not even a whisper about the findings recorded by the Inquiry Officer. There is only a recital of the facts that the Inquiry Officer in his report had held that the charges levelled against the applicant had been partially proved but the President disagreed with the reasonings. No reason whatsoever has been given in the order for taking a view contrary to the one taken y the Inquiry Officer. On the face of it, there can be no two opinions that the requirements of the provision of sub rule (2) of Rule 15, as highlighted by us, have not been met in the impugned order. The President held the applicant guilty of grave misconduct.

19. To get over the difficulty, Shr Pradhan, learned counsel for the respondents, contended that Sub-rule(2) of Rule 15, as material to the present controversy, stands substantially

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complied with if we look into the contents of Annexure-1 to the memorandum aforementioned. There is no doubt that in the memorandum reasons have been given for disagreeing with the view of the Inquiry Officer on the crucial question whether notices under Section 143(2) had been issued by the applicant to the assessee. However, it is to be noted that the applicant in his reply on 27th September,1985 had given details as to why the case set up by him before the Inquiry Officer that he had sent the said notices should be accepted. In other words,the applicant made a strong plea,supported by facts, in the reply that the Inquiry Officer's report on the question of giving such notices should be accepted. In the impugned order no attempt has been made to consider the case set up by the applicant in the aforesaid reply submitted by him. It is to be noted that the President had issued the memorandum to the applicant in order to comply with the principles of natural justice. Annexure-1 to the memorandum had been obviously sent to the applicant to give a reasonable opportunity to the applicant to put forward his case. Apparently, the view expressed by the President in the memorandum as well as Annexure 1 to it were tentative in nature and the purpose of giving of an opportunity to the applicant was that the tentative opinion could be reviewed after considering the reply of the applicant and even a contrary view could be taken thereafter. The impugned order,therefore, also suffers from the infirmity that in it the punishing authority failed to consider the case set up by the applicant in his reply.

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20. The applicant had earned a pension, He acquired a legal right to receive pension after completing his tenure of service. He was not be given a bounty. By the impugned order the punishing authority purported to deprive the applicant of his valuable right. No doubt, the infaction of such a right is permissible under the rules. But whenever a challenge is made questioning the legality of an order passed, destroying or taking away such a right, a Court or Tribunal should be vigilant in satisfying itself that the order has been passed strictly in accordance with law. In the instant case, we are satisfied that the impugned order has been passed in violation of sub rule (2) of Rule 15 and therefore the same cannot be sustained.

21. Question still remains as to whether we should quash the impugned order and permit the punishing authority to pass a fresh order, after complying with the requirements of sub-rule (2) of Rule 15. The applicant retired from service way back in 1982. More than ten years have elapsed since his retirement. The charge relates to the events which occurred in the year 1974-75. Inquiry has been going on since 1982. We feel that the applicant has suffered enough. We, therefore, direct that the disciplinary proceedings against the applicant shall be dropped. We also direct that the applicant shall be paid the arrears of pension with effect from 1st November, 1982. We also direct that the applicant shall be paid his future pension month-by-month. The pension shall be computed

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as permissible under the rules. The arrears shall be paid to the applicant within a period of four months from the date of production of a certified copy of this order by the applicant before the relevant authority. The relevant authority shall commence the payment of regular pension to the applicant month-by-month after the expiry of a period of four months.

22. The order dt. 30th September,1986 passed by the President of India is quashed. The recommendation of the UPSC as contained in the communication dt. 5th March,1986 of the Deputy Secretary,UPSC to the Secretary, Govt. of India Ministry of Finance, Department of Revenue, New Delhi is also quashed.

23. There shall be no order as to costs.

(M.Y.PRIOLKAR)
Member(A)

(S.K.DHAON)
Vice-Chairman

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stayed by the H.C. in OLA 7200/93 on 28.4.93