

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.55/87.

Shri S.K.More,
599, Near Padmavati,
Sahakar Nagar,
Pune-411 009.

...Applicant.

V/s.

1. The Commisioner of Income-tax
(Appeals) Pune.
2. The Commisioner of Income-tax,
Pune.
3. The Central Board of
Direct Taxes, New Delhi.
4. The Union of India,
New Delhi.

...Respondents.

Coram: Hon'ble Member(A), Shri A.Johri,
Hon'ble Member(J), Shri M.B.Mujumdar.

ORAL JUDGMENT:

Dated: 24.2.1988.

(Per Shri M.B.Mujumdar, Member(J)).

The applicant, Shri S.K.More, has filed this application on 20th January, 1987 under section 19 of the Administrative Tribunal Act, 1985.

2. The essential facts for the purpose of this judgment are these: In 1968 the applicant was appointed as Upper Divison Clerk (UDC) in the Income-tax Office at Panvel. In 1969 he was transferred to Pune. From 1971 to 1975 he was working in the office of the tax recovery officer as well as Cashier for Establishment. By an order dt. 26.4.1975 he was suspended. Some time before that he was working as Inspector of Income-tax on probation. On 18.3.1983 a charge sheet containing 17 charges was served upon him. The charges are lengthy and hence we will give a summary of the charges as mentioned in the order of the Appellate Authoriy dt. 25.6.1987:

Article - I

Failure to enter 83 items of tax realisation

in cash book. Amount involved Rs.59,000/-.

Article-II

Failure to deposit tax realisations in Government account. Amount involved Rs.69,428/-

Article-III

Failure to deposit fully the tax realised from individual defaulters in the Government account. Amount involved Rs.16,104/-.

Article-IV

Inordinate delay in depositing tax realisation in Government account.

Article-V

Failure to show in cash book party-wise particulars of tax realised and deposited in the bank.

Article-VI

Preparation of false challans while depositing tax money in bank.

Article - VII

Preparation of bogus counter-foils of challans purporting to show the deposit of tax realisations in bank, when the amount was in fact not so deposited.

Article-VIII

Absence from Government duty without proper authorisation.

Article-IX

Failure to deposit canteen funds of Rs.12,753/- in the bank account.

Article-X

Issue of cheques of Rs.20,000/- from personal bank accounts towards the refund of canteen dues when there were no funds in the personal bank accounts.

Aticle-XI

False entries in cash book showing the disbursement of D.A. arrears when the amount in

fact was not disbursed.

Article-XII

Failure to obtain prior permission under Rule 19 before taking steps to file a civil suit against the official's superiors.

Article-XIII

Causing harrasment to senior officers by sending notice of damages of Rs.1 lakh through advocates.

Article-XIV

Placing himself under personal pecuniary obligation of a private person.

Article-XV

Filing of bogus civil complaints against members of the Canteen's Managing Committee.

Article-XVI

Failure to deposit in bank the demand drafts in favour of the T.R.O. received from tax defaulters.

Article - XVII

Failure to account for ^Rcheque books and pay-in slips of the T.R.O. office."

3. Shri Sunderrajan, Income-tax Officer was appointed as Inquiry Officer (I.O.) and Shri U.N.Lokhande, Assistant Director of Inspection was appointed as Presenting Officer. About 15 witnesses were examined before the Inquiry Officer. The applicant also examined himself as a witness in his defence. Voluminous documentary evidence was also placed before the Inquiry Officer. At the initial stage the applicant had asked for permission to engage a Lawyer in his defence, but that permission was rejected. At a later stage however, he was allowed to engage a Lawyer and he did engage Shri Ghanu, advocate to assist him. But he also could not be of any assistance to the ^Wapplicant because the adjournment asked by the applicant on the ground that the advocate had to appear for LL.M examination was not granted. Ultimately, the Inquiry Officer held that

charges Nos.3 to 7, 8, 10, 11, 16 and 17 were proved. He further held that charges Nos.1, 2 and 9 were partially proved, but Charges Nos. 12 to 14 and 15 were not proved. The Disciplinary Authority after considering all the evidence dis-agreed with some of the findings of the Inquiry Officer and held that all the charges except Charge No.14 were proved. Hence by his order dt. 11.4.1986 he awarded the penalty of dismissal from service to the applicant with immediate effect.

4. Against that order the applicant had preferred an Appeal on 9.5.1986. The Appellate Authority decided the appeal on 25.6.1987. ^{He} held that the applicant's request for permission to engage a Lawyer for his defence should not have been rejected by the Inquiry Officer. He pointed out that though permission was granted at a later stage it was ineffective and useless. In result, he passed the following order:

"The Inquiry report dated 29.11.1985 is partly set aside and the proceedings are hereby remitted to the inquiry officer with the direction that he shall now finalise the same after allowing an opportunity to Shri S.K.More to cross-examine, through his lawyer, such of the prosecution witnesses, as he may choose to. The inquiry officer shall resubmit his inquiry report after taking into account the evidence which is already on record. The inquiry officer shall be at liberty to record fresh findings on each of the Articles of charges after appraising the entire evidence. Thereafter the Disciplinary Authority shall pass a fresh order on the merits of the case. Nothing in this appeal order shall be deemed as a comment on the merits of the charges levelled against the appellant and both the inquiry officer and the disciplinary authority would be at liberty to record their findings afresh.

Since the inquiry report dated 29.1.1985 has been partly set aside, the order of dismissal dated 11.4.1986, based on that inquiry report is also set aside. The appellant shall be treated as on suspension with effect from the date on which the said dismissal order came into effect".

5. The complaints and allegations against the applicant were inquired into by ~~the~~ local police. After completing investigation, a charge sheet was submitted against the applicant in the Court of the Chief Judicial Magistrate at Pune and it was numbered as Criminal Case No.11825/76. The charge against the applicant was under section 408 of the IPC for committing Criminal Breach of Trust in respect of an amount of Rs.9,227.35 which was entrusted to him as a member of the Managing Committee of the departmental canteen of the Income-tax office. After recording evidence and hearing the arguments, the learned Chief Judicial Magistrate came to the conclusion that the amount was not entrusted to the applicant in his capacity as a public servant and hence he was not guilty of the offence of Criminal Breach of Trust punishable under section 408 of the IPC. He also held that the matter was of a civil nature. In result he acquitted the accused by his judgment dt. 31.7.1979. The state ~~had~~ preferred an appeal against that order, but we are told that it was not admitted.

6. The Police have also filed 6 criminal cases against the applicant in the Court of Special Judge at Pune. These cases are numbered as Special Cases Nos. 12, 13 and 15 to 18 of 1978. In all these cases charges are framed against the applicant under section 5(1)(c) read with section 5(2) of the Prevention of Corruption Act and Section 477(A) of the Indian Penal Code. The cases are still pending.

7. The applicant has prefered this application on 20th January, 1987 i.e. about 6 months prior to the decision of his appeal. However, after the appeal was decided the applicant has amended his application suitably. The main prayers are for quashing the order of dismissal passed by the Disciplinary Authority on 11.4.1986 and for quashing the suspension order dt. 26.4.1975. The other prayers are consequential in nature. After the appeal was decided the applicant has added one more prayer for quashing the direction of the Appellate Authority to treat the applicant as on suspension with effect from the date of dismissal from

service and for directing the respondents to reinstate him in service with full salary.

8. We may point out that the applicant has not made a prayer in the application for quashing the departmental proceedings which are going on against him. However, in ground No.19 in para 6 (which is different from the prayer clause) the applicant has stated that no useful purpose would be served by holding a fresh inquiry because cases on identical charges are going on against him in the Criminal Court.

9. The respondents have filed two written statements. We will refer to the contentions therein at the relevant stage.

10. We have heard Mr.D.V.Gangal, the learned Advocate for the applicant and Mr.P.M.Pradhan and Mr.S.R.Atre learned Advocates for the respondents. We have also gone through all the relevant records.

11. Mr. Gangal vehemently contended that the entire departmental enquiry should be quashed because in respect of some of the charges the applicant is acquitted by the Chief Judicial Magistrate, Pune, and regarding some other charges he is facing prosecution in the Court of the Special Judge at Pune. We may point out in this connection that in the criminal case before the Chief Judicial Magistrate the applicant was charged for criminal breach of trust of the amounts which were entrusted to him as a member of the Managing Committee of the Departmental Canteen of the Income Tax Office at Pune from 1.10.73 to 30.9.74. He, however, deposited the amount after 30th of September 1974. Mr. Gangal submitted that some of the charges viz., charges nos. 9, 10, 12, 13 and 15 are regarding the amounts involved in the criminal case. After going through the charges we find that only charge no. 9 for failure to deposit canteen funds in bank account is relating to the charge which was framed in the criminal case. Charges nos. 10, 12, 13 and 15 have nothing to do with the charge in the criminal case. After hearing Mr. P M Pradhan, the Learned Advocate for the Respondents, we are of the view that charge no. 9 deserves to be dropped because the applicant is acquitted by a competent Criminal Court practically of the same charge.

12. The other submission of Mr. Gangal in this respect was that some of the other charges which relate to misappropriation of the amounts and falsification of the accounts also deserve to be dropped because the applicant is facing six criminal cases before the Special Judge at Pune. He submitted that the applicant will suffer irreparable loss if the Departmental Inquiry is allowed to continue when the criminal cases are pending before the Special Judge. According to him when the applicant is being tried for the ~~same~~ charges by a competent Court, he should not be required to face similar charges in a departmental proceeding. In this connection, he further submitted the incident is of 1971 to 1973 while the charges in the Departmental Inquiry are framed in 1983 and due to this inordinate delay the applicant will not be able to defend his case in the Departmental Inquiry properly because he might have forgotten some facts.

13. We are not impressed by any of the above submissions. It may be noted that the applicant had filed three Writ Petitions in the High Court of Judicature at Bombay. The first was Writ Petition No. 2521/80 and in that petition the applicant had prayed for quashing the suspension order and the departmental proceedings. That petition was dismissed in-limine. The second Writ Petition was Writ Petition No. 1258/82. He had made the same prayers in that Writ Petition ~~also~~. It was withdrawn by him. As the order passed by the High Court is not produced before us we are not able to state the date on which it was withdrawn or under what circumstances it was withdrawn. However, it was not disputed that it was withdrawn. Mr. Gangal submitted that withdrawal of that writ petition will not come in the way of the applicant in filing the present application for the same reliefs. According to him, Section 19 of the Administrative Tribunals Act has given a special statutory remedy to the applicant to redress his grievance. In a recent judgment in Sarguja Transport Service V. State Transport Appellate Tribunal, Gwalior, AIR 1987, Supreme Court ~~Cases~~ 88, the Supreme Court has held as follows:

" The point for consideration is whether a petitioner after withdrawing a writ petition filed by him in the High Court under Art. 226

of the Constitution of India without the permission to institute a fresh petition can file a fresh writ petition in the High Court under that Article. On this point the decision in Daryao's case is of no assistance. But we are of the view that the principle underlying R.1 of O.XXIII of the Code should be extended in the interest of administration of justice to cases of withdrawal of writ petition also, not on the ground of res judicata but on the ground of public policy as explained above. It would also discourage the litigant from indulging in bench-hunting tactics. In any event there is no justifiable reason in such a case to permit a petitioner to invoke the extraordinary jurisdiction of the High Court under Art. 226 of the Constitution once again. While the withdrawal of a writ petition filed in High Court without permission to file a fresh writ petition may not bar other remedies like a suit or a petition under Art.32 of the Constitution since such withdrawal does not amount to res judicata, the remedy under Art. 226 of the Constitution should be deemed to have been abandoned by the petitioner in respect of the cause of action relied on in the writ petition when he withdraws it without such permission. In the instant case the High Court was right in holding that fresh writ petition was not maintainable before it in respect of the same subject-matter since the earlier writ petition had been withdrawn without permission to file a fresh petition."

14. In view of the above decision, we feel that the present petition for the same reliefs may not be maintainable. We are aware that this Tribunal is given jurisdiction which previously vested in the High Court under Article 226 of the Constitution as well as the jurisdiction which previously vested in the Civil Courts in connection with service matters of Central Government employees. The applicant had withdrawn his writ petition in 1982 without any permission to file a fresh petition

in respect of the same cause of action. The applicant did not file any suit in any court prior to the constitution of this Tribunal. However, he has come to this Tribunal in January 1987 ie., more than two years after the Tribunal was constituted. We are, therefore, inclined to hold that the applicant will not be entitled to claim the same reliefs in the application before us, which he had claimed in the High Court in Writ Petition No. 1258/82.

15. On merits also, we may point out that in the departmental enquiry which was started in 1983, the applicant did take part. He had cross examined the witnesses and he had also examined himself as a witness in his defence. Against the order of penalty he had preferred an appeal and the Appellate Authority has after setting aside the order of penalty remanded the case back to the Inquiry Officer with certain directions. Whatever defences are open to the applicant must have been disclosed by him while cross examining the witnesses examined by the Presenting Officer as well as in his own deposition. We are not, therefore, inclined to quash the departmental enquiry which is being held against the applicant.

16. We are, however, inclined to direct that the respondents shall try their best to complete the departmental enquiry within a reasonable period, say within six months. Of course as was urged by Mr. Pradhan for the respondents, the expeditious disposal of the enquiry is bound to depend upon the cooperation and conduct of the applicant.

17. Regarding quashing of the suspension order we feel that the applicant should not have been kept under suspension for such a long time. But we also cannot forget that six criminal cases regarding serious charges are still pending against the applicant. We also cannot be oblivious of the fact that the applicant was dismissed from service as a result of the Departmental Enquiry and though that order of dismissal is set aside by the Appellate Authority, the case is remitted back to the

Inquiry Officer with certain directions. Hence we are not inclined to quash the suspension order at this stage. The applicant had filed Writ Petition No. 2257/83 for enhancement of the subsistence allowance and after it was transferred to us we have allowed it on 24.10.1987 directing that the subsistence allowance should be increased to 75% with retrospective effect. In other words the applicant is at present getting subsistence allowance according to rules.

18. We, therefore, feel that it would be just and proper to direct the concerned authority to complete the departmental enquiry as far as possible within six months and in case the enquiry cannot be completed within that period to reconsider the order of suspension.

19. In result we pass the following order:

ORDER

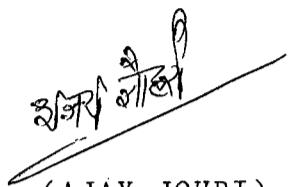
- i) Respondents shall drop Charge No. 9 from the Articles of charge served upon the applicant on 18.3.1983.
- ii) The respondents are hereby directed to complete the departmental enquiry which is being held against the applicant as far as possible within six months from receipt of a copy of this order.
- iii) If the respondents are unable to complete the departmental enquiry within six months from receipt of a copy of this order, the Disciplinary Authority should consider the question of revocation or continuation of the suspension. If the Disciplinary Authority finds that the applicant was responsible for not completing the departmental proceedings within six months period

then he may be continued under suspension,
otherwise the suspension order ~~may~~ ^{should} be
revoked.

20. With these directions the application is disposed of with no order as to costs.


(M.B. MUJUMDAR)

MEMBER (J)


(AJAY JOHRI)

MEMBER (A).