

26

CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No: 378/88

XXXXXXXXXXXXXXXXXXXX:

DATE OF DECISION 26.10.1993

Shri M.G.Sonawane Petitioner

Shri M.S.Ramamurthy Advocate for the Petitioners

Versus

Commissioner of Income Tax, Bombay Respondent

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

CORAM:

The Hon'ble Shri Justice M.S.Deshpande, Vice Chairman

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? NO
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? NO

  
(N.K.Verma)  
MEMBER (A)

  
(M.S.DESHPANDE)  
VICE CHAIRMAN

NS/

91  
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, BOMBAY

OA.NO. 378/88

Shri Madhusudan Gangadhar Sonawane ... Applicant  
V/S.

Commissioner of Income Tax,  
(Investigation), Bombay. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice M.S.Deshpande  
Hon'ble Member (A) Shri N.K.Verma

Appearance

Shri M.S.Ramamurthy  
Advocate  
for the Applicant

Shri P.M.Pradhan  
Advocate  
for the Respondents

ORAL JUDGEMENT

Dated: 26.10.1993

(PER: M.S.Deshpande, Vice Chairman)

The applicant questions the finding recorded by the disciplinary authority at the departmental enquiry and the punishment of removal imposed upon him. The applicant was appointed as a Income Tax Inspector with the Income Tax Department. He came to be suspended on 20.3.1981 in contemplation of departmental enquiry and a case in the criminal court. The charge-sheet containing 5 charges was given to the applicant on 28.4.1983 and they were that while he was paired with one Shri Taneja, they accepted Rs.5,000/- from one of the shopkeepers and did not fill up survey form and lodged it with the department, on 14.1.1981 they visited the shop of M/s. Wadilal P. Shah for Income-tax survey and demanded two table fans 'Cinni' one for each with a view to oblige him and did not put in the survey form within the time provided and that they also took Rs.150/- from one Shri N.M.Desai with a view

(2)

to favour him. In the enquiry held, the charges regarding acceptance of Rs.5,000/- and Rs.150/- <sup>were</sup> ~~had~~ not proved. It was found that the fans had been taken from Wadilal's shop and the survey forms which were to be lodged with the department were found in the applicant's house on 14.2.1981 along with other 184 documents. One of the ceiling fans was also found in the house of the applicant. The applicant was tried jointly with Taneja. The enquiry officer held that the charge regarding non-lodging of the survey form had been partially proved and <sup>also</sup> the charge related <sup>ing</sup> to the fan taken from Wadilal. The disciplinary authority while affirming the findings on the other charges held that the charges No. 2 & 5 regarding non-lodging the survey forms were wholly proved and also the charge Article No. 3 regarding taking away of the fan from Wadilal's shop. The disciplinary authority passed an order on 27.11.1986 removing the applicant from service. The applicant preferred an appeal before lodging the present original application before the <sup>which</sup> Tribunal ~~and it~~ came up for admission on 1.8.1988. No interim order was passed and it appears that no orders in terms of Section 19(4) saving the abatement of the departmental proceedings were passed. We were informed that in the meanwhile the appeal was proceeded with and was rejected.

2. Shri P.M.Pradhan, the learned counsel for the respondents urged that the applicant should have challenged the appellate order after it was passed. However, it is apparent that in view of the Section 19(4) of the Administrative Tribunals Act that proceeding abated. It is no doubt true that the Tribunal enquired on two or three occasions from Shri Pradhan regarding the progress <sup>of</sup> with the appeal but nowhere was it said that the appellate remedy was left open to the applicant. It was not therefore necessary to challenge the adverse appellate order.

3. Shri Ramamurthy, the learned counsel for the applicant urged that since there was a disagreement between the enquiry officer and the disciplinary authority regarding the findings, the disciplinary authority should have given an opportunity to the applicant to be heard before recording the adverse findings. Reliance was placed on the decision of the Supreme Court in 1969 S.L.R. 657, Narayan Misra vs. State of Orissa (S.C.). There, however, the disciplinary authority based his finding on two charges of which the applicant had been acquitted and the Supreme Court observed that :

"If the Conservator of Forests intended taking the charges on which he was acquitted into account, it was necessary that the attention of the appellant ought to have been drawn to this fact and his explanation, if any, called for. This does not appear to have been done. In other words, the Conservator of Forests used against him the charges of which he was acquitted without warning him that he was going to use them. This is against all principles of fair play and natural justice. If the Conservator of the Forests wanted to use them, he should have apprised him of his own attitude and given him an adequate opportunity. Since that opportunity was not given, the order of the Conservator of Forests modified by the State Government cannot be upheld."

4. We were taken through the orders passed by the enquiry officer and the disciplinary authority. The disciplinary authority considered the same evidence with regard to the non-submission of the survey forms before the Income-Tax officer and reached the finding that the survey forms had not been lodged and it resulted in contravention of the rules. This was also what the enquiry officer found, but vaguely recorded that the charges 2 & 5 were only partially proved. We see no difference in the findings of the two authorities and it appears to us that it was not necessary for the disciplinary authority to have sought the explanation of the applicant before recording his own finding.

5. Shri Pradhan, learned counsel for the respondents took us through the evidence which had a bearing on Charge Article No. 3. That finding was based on the evidence of Hasmukh Shah and Wadilal Shah as well as the admission of the applicant that there was a Cinni fan in his own house. The question here is not about the correctness of the finding. If the evidence of the witnesses were to be accepted, then no exception could be taken to the finding recorded by the disciplinary authority, but the submission of Shri Ramamurthy was that recording of the evidence was done in a most unusual manner which consisted of confronting the witness with the statements recorded by different authorities including the CBI and asking the deponent to confirm the statements. The statements were confirmed by the witnesses who were examined and then the applicant was asked to cross-examine those witnesses. This Tribunal had asked the respondents' advocate to produce the record of the disciplinary enquiry and the learned counsel for the respondents produced such of the record as was available. We requested Shri Pradhan to produce the statements of the witnesses which had been exhibited by the enquiry officer but those documents were not in the record that was produced before us. Shri Pradhan states that the records may have been mis-placed or may have been tacked with some other file. The net result is that the statements which were considered by the disciplinary authority are not part of the enquiry proceedings which had been produced before us.

6. We must make it clear that we are not finding fault with the procedure followed by the enquiry officer. Evidence Act would not apply to the departmental enquiries. All that we have to ascertain is whether the rules of natural justice were followed or not. What rules of natural justice would apply would depend on facts and circumstances of each case.

*[Handwritten signature]*

95

The requirement would be served if an opportunity is given to the delinquent to cross-examine the witnesses whose previously recorded statements are substituted at the enquiry for his examination-in-chief before the enquiry officer. Shri Pradhan urged that the applicant had an opportunity to cross-examine the witness and that he had availed of that opportunity. If that was the only requirement possibly no exception could be taken to the procedure followed by the enquiry officer.

7. In the present case, however, in the year 1984 the applicant made a request for furnishing certain documents to him. Records of previous statements of witnesses did not figure in the list of documents on which reliance was placed by the departmental authorities. Shri Pradhan urged that if the applicant required copies of previous statements, he could have made such a request but such a request had not been made and so no prejudice had been caused to the applicant. It is not possible for us to accept this statement. If the oral evidence of the witnesses were to have been recorded before the enquiry officer the delinquent would have known what the witnesses were stating and he would have also had an opportunity of observing their demeanour. If numerous statements recorded previously were merely shown to the witnesses and they were asked to confirm what they had said previously, unless copies of those statements were made available to the delinquent, he could not have had an effective opportunity to cross-examine the witnesses. We wanted to know, since Shri Ramamurthy's contention was that the proceedings were greatly weighted in favour of the department, what were the statements which were previously recorded. The copies should have been made available to the applicant before the enquiry was commenced. There is no

L.M.2

.. 6/-

gb

material to show that this was done. With regard to the manner of examining the witnesses the order-sheet shows that one Kulshretha was examined as a witness and the Presenting Officer produced three statements which were admitted by the witness and came to be exhibited. The applicant was then asked to cross-examine the witness. There is no mention in that order-sheet that copies of these statements were furnished to the applicant before the documents were put to the witness for getting the contents thereof confirmed by him. We must record our disapproval about the manner in which the statements came to be recorded by the enquiry officer. If the departmental authorities found that oral examination-in-chief should not be resorted to, atleast copies of these statements should have been furnished in advance to the delinquent in order to enable him to effectively deal with the material. Such an effective opportunity was denied to the applicant. Since it appears to us that the normal procedure of examining the witness orally <sup>in</sup> ~~by~~ examination-in-chief, <sup>was dispensed with</sup> the departmental authorities should have shown that they were alive to the requirements of principles of natural justice.

8. The department must show that it was informed of the rights of the delinquent and the fairness with which the enquiry ought to be conducted. This awareness is completely lacking in the present case.

9. Shri Pradhan urged that if we were to hold that the enquiry was not proper and if there is a lacuna in the enquiry, the respondents should be given an opportunity to start the enquiry de novo. We were informed that the applicant was proceeded against in the criminal court and

has been convicted and his appeal is pending before the High Court. The enquiry began with the charge-sheet dated 18.2.1982 and it would be highly inequitable to permit the respondents to start with the departmental enquiry afresh after a lapse of more than 10 years. The respondents <sup>would</sup> have the opportunity of proceeding against the applicant on the basis of the conviction recorded in the criminal case against the applicant and they can take such departmental action on the basis of the circumstances in which the conviction was rendered.

10. During the course of the arguments, Shri Ramamurthy placed a statement of the applicant before us. The statement shows that the applicant had been fully heard in the matter through his counsel Shri Ramamurthy who was appointed as amicus-curie and that he is willing to accept an order of reinstatement without backwages but with continuity of service for all other purposes, if the Tribunal be pleased to pass such an order and that he was placing the above matter on record willingly and voluntarily to enable the Tribunal to pass such orders as it pleases in the interest of justice. To this we have given our anxious consideration. Shri Pradhan urged that it would not be possible for the Tribunal to deal with the order of suspension which was passed on 20.3.1981 because it was in contemplation not only for the departmental enquiry but also for criminal proceedings under investigation. Shri Ramamurthy urged that since the enquiry ended with the order of removal, the suspension could not continue. In our view if we were to set aside the order of removal, the suspension would be revived as the criminal proceedings are still going on against the applicant.

gbs

11. In the result, we allow the application, quash the findings of guilty recorded against the applicant in the departmental proceedings and the order of removal passed against him. The consequence would be that the applicant will be deemed to be reinstated from the date of his removal from service subject to the order of suspension which will stand revived in view of the reinstatement we are ordering. The applicant will not be entitled to any backwages from 28.4.1983 to date but will be deemed to have been continued in service. Liberty to the respondents to take departmental proceedings against the applicant on the basis of the conviction by Criminal Court. No order as to costs.

N. k. Verma  
(N.K. VERMA)  
MEMBER (A)

(M.S. DESHPANDE)  
VICE CHAIRMAN

mrj.

C.P. No 60 Lakh  
submitted on  
29/4/94.

291

for me

Date: 29.4.94 C.P. 60/94

Mr. M. S. Ramaiah  
for the applicant.

No notice has been  
served on the respondents.

(1) Issue notice to the respondents  
on C.P.

s.o. to 11.7.94

N. K. Verma  
(N. K. Verma)  
M.A.,

(B. S. Hegde)  
M.B.B.S.

Notice issued (S)  
to Respondents  
on 15/6/94. 1994  
16/6/94.

Per Tribunal

Date: 11/7/94

Applicant in person / by

Advocate Respondent by

Counsel.

The matter adjourned to  
for Order

M. S. Ramaiah

S. S. Keswani

Dy. Registrar