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

ORIGINAL APPLICATION NO.369/88.

Shri S.V. Sawant,
101, 'Ajay', 1st Floor,
T.H. Kataria Marg,
Matunga (West),
BOMBAY - 400 016. .. Applicant.

V/s.

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 - I,
BOMBAY. .. Respondents.

Coram : Hon'ble Shri Justice U.C. Srivastava, Vice Chairman.
Hon'ble Shri M.Y. Priolkar, Member (A).

Appearances:

Mr.M.A. Mahalle, Advocate
for the applicant and
Mr.V.S. Masurkar, Advocate
for the Respondents.

ORAL JUDGMENT DATED: 9.8.1991.

I PER : Hon'ble Shri U.C. Srivastava, Vice Chairman I

The applicant started his service career on the lower post in the cadre rose upto the position of Income Tax Officer in the Income Tax Department has approached the Tribunal against the order of penalty passed under Rule 9 of C.C.S.(Pension) Rules 1972 by the President withholding his entire pension on permanent basis in respect of which

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charge sheet was issued only 4 days prior to his retirement. The applicant was promoted as Income Tax Officer Grade B on 4.2.1976 and attained the age of superannuation on 25.4.1985 on which date he retired from service. As Income Tax Officer B Grade being Junior Officer the applicant was posted as 8th Income Tax Officer 'E' Ward Bombay and was given summary charge a charge where only cases having small income are assessed and expectation is disposal of such cases expeditiously. As per averment of the applicant who was assigned other duties and cases at times disposed of thousands of such cases and could devote literally 5 to 6 minutes per assessment.

2. On 27.6.1984 the applicant was served with a charge sheet under Rule 14 of C.C.S.(C.C.A.) Rules, 1965 charging him of contravening Rule 3(1) and (2) of the C.C.S. Conduct Rules 1964 and the precisely three charges against him were that during the period 1977-80 (a) made assessment in several cases in dishonest and malafide manner and (b) caused wrongful loss of revenue to the Government and (c) displayed gross negligence as well as carelessness in discharging of his duties. In the charge sheet references to 8 assessments made by him were made three of 1977, one of 1978 and two of 1979 and remaining two of 1980. In the reply filed by the Department it has been stated it was not correct to say that 8 cases were picked out by the Commissioner of Income Tax but as a matter of fact during course of inspection

it was found out that applicant had completed 188 capital build up cases in all irregular manner and it is out of these cases 8 were picked up for detailed examination and in these cases it was found that serious irregularities were committed by the applicant. The irregularities so found according to the respondents were not in the nature of mere pieces of bad work or involving negligence but showed active involvement of the applicant in conniving with the Income Tax practitioner concerned in bestowing undue favours on the assessees concerned. Regarding loss of revenue it was said that it was not correct to say that there was no loss of revenue in cases of capital build up, the amount of loss of revenue is difficult to quantify as it depends as to how the fictitious capital is utilised by third parties for showing as loans which are actually bogus, however loss in inherent in capital build up cases and it is difficult to quantify the same.

3. An enquiry officer was appointed to make enquiry in respect of charges and the applicant filed his defence on 25.4.1985 denying the charges pleading withholding and non supply of some documents and that the charge of loss of revenue as its face of wrong when the department itself, which did not quantify it, was not able to guess it. It was only in one case out of 8 assessment was reopened by the Commissioner and later on after two years the assessment was completed exparte and again on the same day it was reopened and no further action has been taken to ascertain loss of revenue.

4. The enquiry officer after completing the enquiry submitted his report holding that charges against applicant were proved.

5. It was thereafter the provisional conclusion of proof was charges withholding of his pension was served upon him against which he filed representation which was rejected and the penalty proposed was maintained. Before imposing the penalty the Union Public Service Commission was also consulted. The Public Service Commission agreeing with the findings of the Enquiry Officer approved the penalty. In the penalty order it was observed "It has been established in the enquiry that Shri Sawant completed assessment in 8 cases mentioned in the charge sheet in a negligent and careless manner and that there are circumstances which suggest that these lapses are not merely the result of pressure of work or inexperience etc. The sequence of events in respect of all the above cases shows a common pattern in which returns for several years were filed together, all the assesses were new assesse wrong addresses were mentioned on such returns to bring them within the territorial jurisdiction of Shri Sawant regarding the source of capital or the disclosed income all the cases were represented by the same advocate, at some returns were not received through the normal channel and some assessment orders were anti dated. These circumstances clearly establishes that Shri Sawant had played an active role in completion of these assessments as a manner designed to confer undue benefit upon these assees. His plea that

these lapses were a result of time or knowledge is untenable. It is obvious that completion of several assessments in such a manner has caused loss of revenue for which Shri Sawant is responsible though the exact loss of revenue may not have been quantified".

6. Learned counsel for the applicant attacked the order on the variety of grounds. He contended that out of thousands only 8 petty cases were spotted out and loss of income was neither quantified nor any particular amount could be established malafide was not proved and there was no allegation of any personal and charges so established do not amount to misconduct or grave misconduct for which punishment could have been awarded and that quasi judicial order cannot be subjected to departmental enquiry order is violative of Article 21 of the Constitution of India, the enquiry is vitiated because of denial of reasonable apportunity to defend.

7. It has not been alleged or established that the punishment so awarded without following any procedure of law or that the rules regarding procedure so followed was not fair or reasonable there is no question of applicability of Article 21 of the Constitution of India. The contention of learned counsel that the enquiry is to be equated with criminal trial or under trial prisoners and the cases regarding criminal trial in which Article 21 of the Constitution of India was applied have no applicability

whatsoever to the instant case as delay in the matters of under trials or criminal case cannot be equated with, delay in holding departmental enquiries which at times can be held after. Knowledge of facts and investigation and does not affect liberty of a person.

8. Regarding 'misconduct' learned counsel contended that negligence and carelessness even if established in performance of duty would not amount to 'misconduct' so as to attract the extreme penalty. In this connection reference has been made to the case of Union of India Vs. J. Ahmad A.I.R. 1979 S.C. 1022. In the said case the facts of which were quite different, it was observed "It is however difficult to believe that lack of efficiency of attainment of highest standard in discharge of duties attached to public office would upso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgement in evaluating the duty or error of judgement in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability may indicate grossness of the negligence. But in any case failure to attain highest standard of efficiency in the performance of duty permitting an inference of negligence would not constitute misconduct nor for the purpose of Rule 3 of Conduct Rules would indicate lack of devotion of duty....".

9. The instance case findings as extracted above are not confined to negligence or deviation of duty but as it is

the so ascribed in substance to the applicant have elements of deliberateness, going out of way for some purpose or objective and resultant loss of revenue which it was bound to result notwithstanding the absence of assessment of quantum which requires full exercise and scrutiny. As such charge as established amounts to 'misconduct' and such the same goes much beyond the case of J. Ahmad (Supra) or that of A.L. Kalra A.I.R. 1984 S.C. 1361.

10. It was next contended that quasi judicial orders cannot be subject matter of Departmental action and in this connection reference has been made to the case of U.D. Tiwari Vs. Union of India (Civil Appeal No.799 of 1990) arising out of SLP (C) No.2635-36/891 decided by Hon'ble Supreme Court of India and the case of M.N. Qureshi Vs. Union of India 1988(9) A.T.C. 500 decided by Central Administrative Tribunal, Ahmedabad Bench and the case of Virendra Prasad Vs. Union of India 1988(3) SLJ 545 CAT in which it was held that errors in quasi judicial order can also be reviewed by higher authority In Qureshi's case the charge was that 52 assessments were completed without investigation and jurisdiction and same resulted in serious loss to revenue and benefit to assessees. But in the instant matter the assessments were made in exercise of summary jurisdiction. There was no lis and it was more of less exparte proceedings and department had no say in the matter so as to bring it in the realm of quasi judicial proceedings. The cases large in numbers were not cases of error of judgement but as the conduct and facts state the same

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soaked with deliberateness for save the tax which the assesses would have paid if the assessment would hawe been made with full and four scrutiny the prime requisite for passing assessment orders accepting the returns so submitted The assessment could undoubtedly be reopened but if detected on complaint or investigation if facts in this behalf come to the notice of Commissioner. As such the cases cited by the applicants are distinguishable and not applicable to instant case.

11. It was then contended that principles of natural justice were violated and reasonable opportunity to defend was not given. In this connection it was contended that although applicant asked for copies of 46 documents but some were withheld prejudicing his defence and no action was also taken in this behalf by the enquiry officer even though the same was brought to his notice. Even some of the prosecution documents were in complete. The documents which were asked for by the applicant were copies of circulars for showing work load, Office manual, Departmental Instruction and orders daily reconciliation statement, numbering machines, All inward registers, Progress reports, stock registers, stamp register, inspection notes, annual confidential report, list of black listed companies, complete record of assessees etc. The enquiry officer allowed all all the 46 documents except 10. last one not having been specified. For others also reasons were specified. Some of the circulars were not allowed as dates were not given, numbering machine was not considered necessary, ACR refused as in departmental enquiry same can not be made available two documents were not allowed nature was not specified. Records of proceedings under Section 263 in all

cases not allowed as the purpose could be served by other documents not allowed. No mistake in the order passed by the enquiry officer who assigned reasons could be pointed out. The incompleteness of any prosecution documents also was not brought to our notice. Thus all the relevant documents were allowed by the enquiry officer and their has been no denial of opportunity or prejudice to the applicant in his defence.

12. Learned counsel also attached the findings so arrived at by the Enquiry Officer which were accepted. The Enquiry Officer after discussing evidence in detail has arrived at the conclusions. The conclusions are based on evidence of course from the evidence certain inferances were drawn. The inference so drawn arises from the evidence and only when no other inference ~~xxx~~ could be possible. If favour was shown and wrong returns were accepted or due enquiry was not done which would have resulted in rejecting the return the natural conclusion would be that same has caused loss to revenue, the quantum which requires a fresh exercise. The findings so arrived at could not be said to be perverse and is based on evidence. Even if could be said that even some other conclusion was possible that would not make finding perverse or assailable in these proceedings. It may be that lesser punishment could have been given and after lapse of so many years entire pension should not have been withheld but the Tribunal has no jurisdiction to interfere in the quantum of punishment in view of what has been held by Hon'ble Supreme Court in Union of India Vs. Permanend

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> " We must unequivocally state that the jurisdiction of the Tribunal to interfere with the disciplinary matters or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the Inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an Act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter."

The grounds on which interference can be made being wanting in this case.

13. In view of what has been said above the application deserves to be dismissed. It is accordingly dismissed but there will be no order as to costs.

(M.Y. PRIOLKAR)
MEMBER (A).

(U.C. SRIVASTAVA)
VICE CHAIRMAN.