

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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T.A. No. 177/86

~~SECRET~~DATE OF DECISION 25.11.1987.

Shri R.S.Shah

Petitioner

Shri S.R.Atre

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri J.D.Desai.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. B.C.Gadgil, Vice-Chairman(J)

The Hon'ble Mr. B.C.Mathur, Vice-Chairman(A).

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not?
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?

*Beri**NO**R*

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

Tr. Application No.177/86.

Shri R.S.Shah,
7,Lekha, V.P.Road,
Andheri (West),
Bombay - 400 058.

... Applicant

V/s.

The Union of India, through
the Chief Commissioner of
Income Tax (Administration)
Bombay. Regional Office
at Ayakar Bhavan,
M.K.Road,
Bombay.400 020.

... Respondent.

Coram: Hon'ble Vice-Chairman(J),Shri B.C.Gadgil,
Hon'ble Vice-Chairman(A),Shri B.C.Mathur.

Oral Judgment:

(Per Shri B.C.Gadgil, Vice-Chairman(J)) Dt. 25.11.1987.

The Writ Petition No.1958 of the Bombay High Court of the file of the High Court of Judicature at Bombay is transferred to this Tribunal for decision. The applicant was an employee in the Income Tax Department. He joined service in 1945 as L.D.C. In due course he was promoted to various posts and in 1979 he was holding the post of Income Tax Officer B-III Ward, Bombay. The Income Tax Officer is given certain powers under sec.132(5) of the Income Tax Act. It is common knowledge that certain assets including money are seized and then the question arises as to whether those assets are the lawful assets forming part of the income properly taxed or not. Section 132(5) empowers the Income Tax Officer ^{to treat} ~~that~~ the assets so seized are the undisclosed income and then to order ^{that} those assets should not be returned ~~to the assessee.~~ Of course, ~~to the~~ Income Tax Officer has also a power to release the

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assets in favour of the concerned person if he would come to a conclusion that those assets are not such as are covered by that section.

2. An amount of Rs.20,000 were seized from the Bank Locker of one Shri K.C.Thakar. The question as to what order has to be passed in respect of this amount was required to be decided by the applicant. The seizure was made on 3.5.1979. The matter was assigned to the applicant on 21.6.1979 and on 31.7.1979 the applicant passed an order that the above mentioned assets of Rs.20,000 are not required to be retained by the department and that they are liable to be returned to ~~xxx~~ Shri K.C.Thakar. Of course, an amount of Rs.3,500 was retained ~~with respect~~ to cover the tax liability of K.C.Thakar not with respect to this amount, but with respect to the income of the earlier year.

3. A departmental inquiry was held against the applicant with respect to this proceeding. It was alleged that applicant abused his official position and showed favour to Shri K.C.Thakar by releasing the amount of Rs.16,320 out of the amount of Rs.20,000. An Enquiry Officer was appointed. He submitted a report and the appointing authority viz. the President accepted that report, held the applicant guilty of the mis-conduct and imposed a penalty of compulsory retirement. This order is at Ex.'G' to the petition. On the basis of this order the applicant stood compulsorily retired w.e.f. 30.4.1984. It is this order of penalty that is challenged before us.

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4. During the course of the argument Mr. Atre on instructions from the applicant who is present before us ~~today~~ today made a statement that the applicant does not wish to challenge the finding about the mis-conduct. Mr. Atre further contended that this application is restricted only with respect to the quantum of penalty. According to him compulsory retirement at the fag end of the service of the applicant was too harsh a penalty and that the said penalty may be modified. It was suggested that the applicant may be reinstated in service and that by way of penalty he should not be paid any salary from 1.5.1984 till his date of superannuation i.e. 30.11.1986. Mr. Atre also made some submissions regarding Leave Salary etc. Mr. J.D. Desai for the Respondents contended that this would not be a fit case for interfering with the quantum of penalty and that the penalty of compulsory retirement is just and proper.

5. After hearing the Learned Advocates on behalf of both the sides, we think that this is a fit case where we should interfere with the quantum of penalty. The applicant was in the Government employment for more than 35 years i.e. from 1945. He has risen from the rank of L.D.C. to the rank of Income Tax Officer Group 'A'. The impugned order was revised by the Commissioner and was set aside. The assessee went to the Income Tax Appellate Tribunal (the copy of the judgment of the Appellate Tribunal is at Ex. 'E'). The Tribunal allowed the appeal by holding that there is nothing to suggest that the order passed by the applicant was prejudicial, inasmuch as the department could make a regular assessment and during the course of such proceeding the matter can be finally decided. In view of these peculiar circumstances, we think that it would be in the fitness of things to take a lenient view. As stated



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earlier the applicant has rendered service from 1945 and in our opinion, the interest of justice will be met if we direct the reinstatement of the applicant and at the same time denying him the Salary and other emoluments for the intervening period as discussed in the final order. Hence we pass the following order.

O R D E R

1. The application is partly allowed.
2. The penalty of compulsory retirement is modified and in its place it is directed that the applicant should be reinstated in service. The date on which applicant would retire on superannuation is 30.11.86. The period from 1.5.1984 to 30.11.1986 should be treated as extraordinary leave without pay and the applicant would not be entitled to get any salary for this period. Similarly, the applicant would not be entitled to claim encashment of accumulated leave. However, the applicant would be entitled to pensionary benefits. While determining those benefits the applicant's pay on 30.11.1986 should be calculated by taking into account the increments which he would have acquired in regular course. Of course, this should be done in the background of the revised pay scales. These directions should be complied expeditiously, say within a period of 4 months from today. Parties to bear their own costs of this application.

B.C.Gadgil
(B.C.GADGIL)
VICE- CHAIRMAN (J)

B.C.Mathur
(B.C.MATHUR)
VICE- CHAIRMAN (A).