

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

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NEW BOMBAY BENCH.XXXXXX
T.A. NO. 45/86

198

DATE OF DECISION 19.7.1989

Shri A. Radhakrishnan

Petitioner

Shri M.A. Mahalle

Advocate for the Petitioner(s)

Versus

Union of India and others

Respondents

Shri R.C. Kotiankar for Sh.M.I. Advocate for the Respondents
Sethna.

CORAM :

The Hon'ble Mr. M.B. Mujumdar, Member (J)

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

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

(11)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH, NEW BOMBAY 400 614

Tr.A.No. 45/86

Shri A. Radhakrishnan
302-A Wing, Amarnath Apartments,
Dundavli Gaonthan Lane-3,
Mathuradas Vassanji Road,
Andheri (E), Bombay.

... Applicant

Vs.

1. The Union of India

2. Chief Commissioner (Administration)
and Commissioner of Income Tax
Bombay City - I, 3rd Floor,
Aayakar Bhavan, M.Karve Road,
Bombay.

3. Shri A.K.Garde
Commissioner for Departmental
Inquiry, Jamnagar House Hutmants,
Akbar Road, New Delhi.

... Respondents

CORAM: Hon'ble Member (J) Shri M.B.Mujumdar
Hon'ble Member (A) Shri M.Y.Priolkar

Appearances :

Mr. M.A.Mahalle
Advocate
for the Applicant

Mr.R.C.Kotiankar
(for Mr.M.I.Sethna)
Advocate
for the Respondents

ORAL JUDGMENT

Dated: 19.7.89

(PER: M.B.Mujumdar, Member (J))

The applicant had filed Writ Petition No. 1647 of 1985 in the High Court of Judicature at Bombay on 20.8.1985 and it is transferred to this Tribunal under Section 29 of the Administrative Tribunals Act, 1985.

2. The relevant facts for the purpose of this judgment are these :- The applicant was working as Income Tax Officer Group 'B' in Bombay. For some assessments made in 1979 and 1980 while he was functioning as Income Tax Officer, Bombay Suburban District (North) he was served with an article of

charge, statement of imputation of mis-conduct, etc., along with memorandum dated 12.4.1983. The article of charge read as under :

"Shri A.Radhakrishnan, I.T.O. Group B, while functioning as I.T.O., B.S.D.(North) Ward, Bombay during the period 1979 to 1980.

- (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 carelessness in the discharge of his official duties.

Shri A.Radhakrishnan thus contravened Rule 3(1) (i) & (ii) of the Central Civil Services (Conduct) Rules, 1964."

3. One Shri Ajay Singh, Commissioner of Departmental Inquiries under the Vigilance Commissioner was appointed as Inquiry Officer. Shri R.K.Srivastava, Income Tax Commissioner was appointed as Presenting Officer. The applicant appointed Mr. Hegde as his Defence Assistant. The Inquiry Officer in his report dated 27.6.1984 held that the charge against the applicant was not proved. A few days after the memorandum was served on the applicant, he was placed under suspension. But in view of the report of the Inquiry Officer that order was revoked on 13.9.1984.

4. The Disciplinary Authority i.e. the Commissioner of Income Tax, Bombay City 1 disagreed with the finding of the Inquiry Officer and directed that the case be remitted to Shri A.K.Garde, Commissioner for Departmental Inquiries, New Delhi for further inquiry and report. He has given exhaustive reasons in his 64 pages report. The Disciplinary Authority pointed out in his report that normally the case should have been remitted to the same Inquiry Officer who had given the first report, namely, Shri Ajay Singh, but that was not possible as the term of his deputation with the Central Vigilance Department had expired and he was reverted to his

parent department. At the request of the applicant, he was supplied with a copy of the Inquiry Officer's report exonerating him on 27.3.1985.

5. On 30.3.1985 the applicant sent a notice of voluntary retirement to the Chief Commissioner of Income Tax, Bombay requesting to relieve him of the official duties on 29.6.1985. As he did not receive an early reply, he sent a reminder on 1.7.1985 stating that he should be deemed to have retired on 29.6.1985 (A.N.) and hence formal orders should be passed so that some other Income Tax Officer may assume his charge. Thereafter, on 9.7.1985 the Chief Commissioner of Income Tax (ADMN) passed an order dated 9.7.1985 accepting the notice of voluntary retirement w.e.f. 29.6.1985 (A.N.). The new Inquiry Officer at the time of hearing on 2.4.1985 found some difficulty in deciding as to from which stage he should proceed with the inquiry. Hence he consulted the Disciplinary Authority as well as Deputy Director of Inspection (Vigilance) and assumed that the applicant had to be heard from the prosecution stage itself. The applicant protested against the inquiry officer consulting some officers by his letter dated 6.4.1985 and submitted that the proceedings held on 2.4.1985 were vitiated. But the Disciplinary Authority rejected the submission by his letter dated 9.5. 1985.

6. After the notice of voluntary retirement given by the applicant was accepted by the Commissioner of Income Tax, the applicant submitted a report ^{to} ~~of~~ the Inquiry Officer dated 18.7.1985 pointing out that after his retirement it was not proper to continue with the inquiry, especially when the second inquiry is going to be a *de novo* inquiry and hence he ~~would~~ will not attend the next hearing at Delhi on 2.6.1985. The Disciplinary Authority by letter dated 7.8.1985 however informed the applicant that though his notice of voluntary retirement

had been accepted, the disciplinary proceedings already instituted would continue and the inquiry proceedings would be concluded and necessary orders would be passed by the competent authority. Hence the applicant was advised to attend the hearing fixed at New Delhi from 21.8.1985 to 23.8.1985. Thereafter, on 20.8.1985 the applicant filed the present Writ Petition in the High Court. In the petition he has mainly challenged the order of the Disciplinary Authority dated 29.1.1985 (Ex.'K' pages 88 to 151 of the petition) and the letter of the Disciplinary Authority dated 7.8.1985 (Ex.Y-I, at page 260 of the petition). The other prayers in the petition are consequential.

7. On 26.8.1985 the High Court admitted the application and passed the interim order in terms of prayer (c) (i). The prayer (c) (i) is for staying the operation of the order dated 29.1.1985 and letter dated 7.8.1985 and the further inquiry proceedings. That stay is still in force.

8. The respondents have filed an affidavit of Shri T.S. Kasturi, Chief Commissioner (Administration) and Commissioner of Income Tax, Bombay City in reply to the petition.

9. We have heard Mr.M.A.Mahalle, learned advocate for the applicant and Mr. R.C.Kotiankar for Mr.M.I.Sethna, learned counsel for the respondents. We have also gone through the relevant record and we are of the view that the impugned order and letter are perfectly legal and valid though the view taken by the second inquiry officer that the inquiry should start from the stage of prosecution ^{is} ~~was~~ illegal.

10. By the impugned order dated 29.1.1985 the Disciplinary Authority has disagreed with the findings of the inquiry ^{and} officer has remitted the case to another inquiry officer,

namely, Shri A.K.Garde for further inquiry and report. This order is completely in consonance with Rule 15 (1) of the CCS (CCA) Rules, 1965. That sub-rule reads as follows :- "The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be."

11. It is true that ordinarily the disciplinary authority should have remitted the case to the same inquiring authority, but as pointed out by the disciplinary authority in the last paragraph of the order, the first inquiring officer Shri Ajay Singh's term of deputation with the Central Vigilance Department had expired and he was reverted to his parent department. In view of this position, we do not find anything wrong in the disciplinary authority remitting the case to another inquiring officer, namely, Shri A.K.Garde.

12. Then the impugned letter dated 7.8.1985 was in reply to the applicant's representation dated 18.7.1985 for not proceeding with the inquiry as his notice of voluntary retirement was accepted and he has retired w.e.f. 29.6.1985. By the reply dated 7.8.1985 the applicant was informed that as the disciplinary proceedings were initiated before his retirement, the same will be completed and concluded and necessary orders would be passed by the disciplinary authority. In our opinion, this view is consistent with the provisions of Rule 9 (2) (a) of the Central Civil Service (Pension) Rules, 1972. Rule 9 reads as under :-

"9. Right of President to withhold or withdraw pension

(1) 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).

(2) (a) The departmental proceedings referred to in sub-rule (1), 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:

Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, —

- (i) shall not be instituted save with the sanction of the President.
- (ii) shall not be in respect of any event which took place more than four years before such institution, and
- (iii) shall be conducted by such authority and in such place as the President may direct and in accordance with the procedure applicable to departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service."

(Sub-rules (3) to (6) are not quoted as they are not relevant in this case.)

No comments are necessary to conclude that the departmental proceedings which were initiated against the applicant by the memorandum dated 12.4.1983 can be continued and concluded even after voluntary retirement of the applicant on 29.6.1985, in view of under the provisions of Rule 9 (2)(a). Bearing the above provisions in view, we will deal with the points urged on behalf of the applicant.

mainly

13. Mr. Mahalle, learned advocate for the applicant urged the following ~~two~~ points before us :- (i) If the respondents desired to continue with the departmental proceedings, they should have placed the applicant under suspension before his retirement and should not have allowed him to retire, (ii) As no pecuniary loss was alleged to have been caused to the Government due to the misconduct of the applicant, the disciplinary proceedings could not be continued after his retirement; (iii) As the charge was regarding the assessment orders passed by the applicant, these orders cannot be subject matter of departmental proceedings.

14. In support of the second point Mr. Mahalle relied on S.B.Aswatha Narayan v. Chief Commissioner (Admn), II (1987) ATLT 392; S.Venkatachalam and another v. Chief Commissioner of Income Tax, 1988 (1) (CAT) 247 and M.N.Qureshi, OA. 475/88 decided by the Ahmedabad Bench on 30.8.1988 (un-reported). Though some of the observations in these judgments support Mr. Mahalle' contention, in our view, the point is no more in dispute in view of the judgment of the Full Bench of this Tribunal in Amrit Singh v. Union of India & others, OA.61/87 decided on 6.9.1988. Because of the conflicting decisions of some Benches of this Tribunal, the following two points were referred to a larger Bench :-

- "(i) Whether the Disciplinary proceedings can be continued against a Government servant even after his retirement under the CCS(Pension) Rules or the corresponding provisions of the Railway Pension Rules, even where the officer had not been suspended but allowed to retire during the pendency of the Disciplinary proceedings; and
- (ii) Whether the Disciplinary Proceedings as in (i) above can be continued or initiated after retirement even where there has been no pecuniary loss for the Government by the alleged misconduct of the Government servant on which the Disciplinary Proceedings are based."

After considering various authorities, the Full Bench has answered both the points in the affirmative. Hence, in our opinion, there is no force in the second point as well as the first point which was urged before us by Mr. Mahalle.

15. Regarding the 3rd point it is true that assessment orders which are passed by Income Tax Officers are quasi-judicial in nature and subject to review by the higher authority and the High Court and the Supreme Court. Hence, generally such orders should not be subject matter of departmental proceedings. But if the concerned authority feels that the orders were passed by following corrupt practices, there is no reason why a departmental inquiry against the officer concerned should be barred. In M.N. Qureshi v. Union of India and another, OA. 475/88 decided by the Ahmedabad Bench on 30.8.1988 (unreported), the charge against the applicant was that while functioning as Income Tax Officer in 1983 he had completed 53 assessment orders in cases of trusts over which he had no jurisdiction, without proper scrutiny and investigation and caused serious loss to revenue, and corresponding undue benefit to the assessee. This charge was struck down by the Ahmedabad Bench. But observations in para 10 show that if there would have been any imputation of any personal monetary gains or benefits or any corrupt practice, then the result would have been otherwise. In the present case, it is specifically alleged in the charge that the applicant had made assessments in several cases in a dishonest and malafide manner. We have gone through the allegations in the statement of misconduct attached to the charge as well as the order passed by the disciplinary authority and we are of the view that the charge against the applicant can be inquired into even after his retirement.

16. Lastly, Mr. Mahalle relied on the judgment of this Bench in Motiram Tejumal Gurbaxani v. The Chief Commissioner of Income Tax and others in OA. 8/89 decided on 5.4.1989. In that case the order of the disciplinary authority remitting the case back to the Inquiry Officer was set aside, mainly because by the order a different Inquiry Officer was appointed without indicating whether the previous Inquiry Officer was available for holding further inquiry or not and the order indicated that *de novo* inquiry was to be held. As this was contrary to the provisions, we had set aside the order of the disciplinary authority. It is true that the disciplinary authority in that case had disagreed ~~from~~ ^{with} the view taken by the inquiry officer and hence we had further directed that the disciplinary authority should give an opportunity to the applicant of making a representation against ~~his~~ proposal and after considering the representation, pass appropriate orders. We are not following that course in the present case, because there is no direction in the order of the disciplinary authority for holding *de novo* or fresh inquiry. ~~Moreover, Then~~ ^A though a different inquiry officer is appointed, satisfactory reasons are given by the disciplinary authority as to why he was doing so. Moreover, in our view when there is no ~~irregularity~~, other ~~illegality~~, it will not be even in the interest of the applicant to follow the same course in this case.

17. In our opinion the applicant was required to file this application because of the view taken by the inquiry officer in his note dated 2.4.1985. It appears from the note that the inquiry officer consulted the disciplinary authority before coming to the conclusion that the case should be heard from the prosecution stage itself. It is difficult to make out as to what he meant by the words "prosecution stage itself". It may mean that the witnesses were to be examined afresh. In our view, this was not what the disciplinary authority has directed in its order dated 29.1.1985.