

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 521/99

Date of Decision : 3-9-04.

C.U.Choure | Applicant

Advocate for the
Applicant.

VERSUS

Union of India & Ors. Respondents

Shri V.G.Rege Advocate for the Respondents

CORAM :

The Hon'ble Shri A.K. Agarwal, Vice Chairman

The Hon'ble Shri S.G.Deshmukh, Member (J)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

(A.K.AGARWAL)
VICE CHAIRMAN

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.521/99

Dated this the 3rd day of September 2004.

CORAM : Hon'ble Shri A.K.Agarwal, Vice Chairman

Hon'ble Shri S.G.Deshmukh, Member (J)

C.U.Choure,
R/at B-8, Maharaja Surajmal
Housing Society, Four Bunglows,
Off: Link Road, Andheri (W),
Mumbai.

...Applicant

By Advocate Shri P.A.Prabhakaran

vs.

1. Union of India
through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
3. The Chairman,
Union Public Service Commission,
Dholpur House, New Delhi.
4. Chief Commissioner of Income Tax
Pune, Aaykar Bhavan,
Sadhu Vaswani Marg,
Pune.
5. Chief Commissioner of Income Tax
Mumbai, Aaykar Bhawan,
M.K.Road, Mumbai.

...Respondents

By Advocate Shri V.G.Rege

88

O R D E R

{Per : Shri A.K.Agarwal, Vice Chairman}

The applicant Shri C.U.Choure has come up before this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 for quashing and setting aside order dated 3.8.1998 of respondents imposing a penalty of 20% cut in his pension for a period of three years.

2. The facts of the case in brief are as follows. The applicant joined the Indian Revenue Service (Income Tax) in 1963 and was promoted to the post of Commissioner of Income Tax in 1986. The applicant was issued a charge memo in 1993 and as a result, he was denied promotion as Chief Commissioner in 1994-95. The applicant filed OA.No.1054/95 which was disposed of by the Tribunal vide order dated 6.12.1995 directing the respondents to consider the applicant for the post of Chief Commissioner of Income Tax on an ad hoc basis in the light of O.M. dated 14.9.1992 and pass appropriate orders within a period of two months.

3. The learned counsel for the applicant has stated that the applicant retired from service on 31.3.1996 and the order imposing a penalty of 20% cut in pension was passed on 3.8.1998.

The learned counsel contended that under Rule 9 (1) of the CCS (Pension) Rules, 1972, an order can be passed only when the pensioner is found guilty of a grave misconduct. There is no mention right from the beginning of the enquiry against the applicant that his misconduct is of a grave nature. Secondly, under this Rule recovery from pension has to be limited to the quantum of any pecuniary loss caused to the Government. He said that there is not even a rough estimate about the pecuniary loss to the Government and as such the order of cut in pension is arbitrary and illegal and should be declared invalid. The learned counsel for the applicant has relied on the verdict of a Full Bench of CAT in Amrit Singh vs. Union of India & Ors. 1986-87 (F.B.J.) 227. He also cited an order of CAT Guwahati Bench - Ranadhir Chakraborty vs. Union of India & Ors. 1996 (33) ATC 601, wherein it was held that the misconduct proved against the applicant was not of grave nature. It has been also held in this order that pecuniary loss mentioned in the pension rules is not a separate ingredient but must be the result of grave misconduct or negligence. The learned counsel further stated that orders passed by the applicant in his capacity as Commissioner of Income Tax which have formed the basis of chargesheet are in no way of unusual nature and his predecessors had also been passing similar orders in the past.

4. The learned counsel for respondents mentioned that a glance at a chargesheet is sufficient to indicate the gravity of charges. The applicant has been charged with the action of reducing/waiving of penalty even when the conditions laid down in the Circular of CBDT were not complied with. He also granted

immunity from prosecutions for wilful concealment even when there was no such power in that particular section. In some cases, he reduced/ waived penalty for concealment even when there was no formal petition by the assessee. He said that out of the four charges levelled against the applicant, charges of Article I and Article II have been held as proved by the enquiry officer. The UPSC in its advice has also clearly stated that "it is apparent from the evidence on record that the extent of charges proved against the C.O. cast aspersion on his integrity more so in the case of M/s. Madan Group where malafide was apparent". Regarding the contention of the applicant that he was not shown necessary documents for his defence, the learned counsel for respondents drew our attention towards para 14 (b) of the written statement filed on behalf of the respondents. It is mentioned that "documents at Sl.No.126 & 127 of applicant letter dated 27.3.95 & 19.5.96 were confidential and not found to be relevant and hence denied to the applicant." It is further mentioned in this para that during the course of enquiry on 19.9.1995 the applicant had taken inspection of the concerned document and had given certificate to that effect.

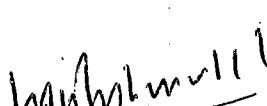
5. The learned counsel for the applicant mentioned that documents at Sl.No.126 and 127 which were not shown to the applicant were very relevant. The I.O. has observed as follows:-

"These two documents seems to be very relevant and will assist the undersigned in final disposal of this inquiry. The custodian of these documents is the CBDT, New Delhi itself."

The learned counsel said that in view of this the applicant was deprived of proper defence. Further, as per the report of the enquiry officer, out of four only two charges have been proved against the applicant. Therefore, the misconduct cannot be classified as of grave nature and action under Rule 9 of CCS (Pension) Rules is not justified.

6. We have heard both the counsels and have also gone through the material placed on record. As far as the contention of the learned counsel for the applicant regarding documents at Sl.No.126 and 127 is concerned, we notice that reference cited by the learned counsel is from letter dated 29.3.1996 addressed by applicant himself to the Secretary, Department of Revenue, Ministry of Finance, New Delhi. In the absence of any other documentary evidence, we are inclined to rely on the respondent that the concerned documents were denied to the applicant since they were considered not to be relevant. The applicant has also not mentioned the subject matter of these documents so as to justify their significance in the departmental enquiry. We, therefore, hold that on this count no prejudice has been caused to the applicant. As far as gravity of charges is concerned, they are definitely of a grave nature. This is further reinforced by the observations made by the UPSC that the charges proved cast aspersion on the integrity of the charged officer.

7. In the result, we find that the disciplinary action against the C.O. was initiated on significantly grave charges and the requisite procedure has been followed by the disciplinary authority. The penalty imposed is also in tune with the advice received from UPSC. The impugned order therefore, does not call for any intervention in judicial review. We, therefore, dismiss the OA. No order as to costs.


(S.G. DESHMUKH)

MEMBER (J)


(A.K. AGARWAL)

VICE CHAIRMAN

mrj.