

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO: 771.99

DATE OF DECISION: 7th January 2002.

Shri K.D. Deshpande Applicant.

Sshri P.A. Prabhakaran Advocate for
Applicant.

Verses

Union of India and others Respondents.

Shri. V.G. Rege. Advocate for
Respondents.

CORAM

Hon'ble Shri B.N. Bahadur, Member (A)

Hon'ble Shri S.L.Jain, Member(J)

(1) To be referred to the Reporter or not? *yes*

(2) Whether it needs to be circulated to No
other Benches of the Tribunal?

(3) Library. *yes*

Pls -
(S.L.Jain)
Member(J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO: 771/99

Monday the 7th day of JANUARY 2002

CORAM: Hon^{ble} Shri B.N. Bahadur, Member (A)

Hon^{ble} Shri S.L.Jain, Member (J)

K.D. Deshpande
Resident of
12 Pushkaraj Society
Dr. Babha Nagar
Kautha Ghat Road, Nashik.

By Advocate Shri P.A. Prabhakaran.

V/s

1. The Commissioner of
Income -Tax, Nashik
Central Revenue Building
Gadkari Chowk, Old Agra Road,
Nashik.
2. The Chief Commissioner of
Income -Tax Pune.
Aayakar Bhavan,
12 Sadhu Vaswani Marg.,
Pune.
3. The Chairman,
Central Board of Direct
Taxes, Department of Revenue,
Ministry of Finance, North Block,
New Delhi, representing the
Union of India.

...Respondents.

By Advocate Shri V.G. Rege.

O R D E R

{Per S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act 1985 to quash and cancel the suspension order dated 11.10.1989, Memorandum of charges, Enquiry Officer's report, the dismissal order, the order rejecting the appeal with a direction to the respondents to issue orders under

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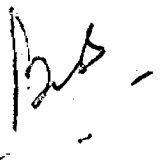
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FR 54 declaring that the period of suspension till the period of dismissal be treated as period of duty for all purposes including pay, pension, leave etc. with all benefits.

2. The applicant while working as Inspector of Income Tax on 5.8.1988, CBI, SPE, Mumbai searched the residence of the applicant and reported his findings for further action. On 11.10.1989, respondent No.1, the Commissioner of Income Tax, placed the applicant under suspension under Rule 10(1) of CCS (CCA) Rules 1965. On 12.10.1989 memorandum of charges under Rule 14 of the CCS (CCA) Rules 1965 was served on applicant. The applicant approached the Tribunal by OA 685/91 with a prayer that order of suspension may be deemed to have been revoked. The said OA was decided on 17.8.1995 with a direction that the proceedings shall be finalised within six months from the date of delivery of the certified copy of the order dated 17.8.1992. The Enquiry Officer submitted report dated 30.12.1992 by letter dated 3.3.1993. Respondent No.1 issued show cause notice to the applicant as to why major / minor penalty should not be imposed on the applicant (Annexure A - 2). The applicant replied to the show cause notice vide reply dated 9.3.1993.

3. By order No. NSK/D/110(NG-8)/1992-93/569 dated 12.3.1993, the respondent No.1 remitted the case back to the Enquiry Officer, DCIT, Mumbai. The suspension was revoked vide order dated 29.3.1993. The applicant resumed duty with effect from 1.4.1993, requesting that the scope of fresh inquiry may be specified and so also the time limit by which the Enquiry Officer should submit the report be specified (Exhibit A-6). The

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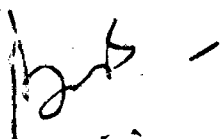
applicant was allowed to intimate his fresh defence assistance vide order dated 2.8.1995. The applicant reported the to respondent No.1 vide representation dated 9.8.1995 vide Exhibit A - 8 which was replied vide Memorandum dated 22.9.1995. The applicant applied for further documents vide Annexure A -9. The documents asked for by the applicant vide Exhibit A-9 dated 28.8.1995, the documents in respect of purchase of land and sale of 10 flats, the applicant's own cousin who had assisted his wife in the construction of the building on the family plot of land was dis-allowed. Regular hearings were held on 2 3 and 4 September 1996. The Disciplinary Authority, the respondent No.1 under the cover of letter No. NSK/D/110(NG-8)/96-97/589 dated 4.11.1996 furnished the applicant a copy of the report of the Enquiry Officer. The message contained in the said letter was to acknowledge it and send the enclosed acknowledgement slip in token of having received the report if inquiry.

4. The grievance of the applicant is that there was no indication of the treatment of the report proposed by the respondent No.1 as accepted, rejected, or modified and accepted, or any indication on the charges and / or penalties minor / or major proposed to be imposed or directing the applicant to make any submission thereon, for consideration of the Disciplinary Authority. Suddenly he received the order of Dismissal No. NSK/D/110(NG-8)/96-97/859 dated 16.1.1997. The applicant preferred an appeal against the said order. After hearing the applicant in person, the appeal was rejected. The applicant filed an application for Review / revision addressed to the

Chairman, Central Board of Direct Taxes, New Delhi in terms of Rule 29(1)(iv) of CCS (CCA) Rules 1965, which was returned by the respondent No.3 stating that as the Chairman is not the appropriate authority to whom the review / revision is to be addressed, it is being returned with the request that it may be addressed to the appropriate authority. The applicant resubmitted the application under Rule 29 as deemed application for Review / Revision through the Appellate Authority the respondent No.2, the Chief Commissioner of Income Tax by letter dated 30.4.1999 for action / consideration. It was again returned by the respondent No. 2 with a letter No. PN/CC/Vig./Rev.Appln./KKD/198 dated 7th June 1999 stating that the appropriate authority for revision is the President of India. The applicant claims that his action in preferring an application for review / revision addressed to the Chairman CBDT / Chief CIT under Rule 29 is correct. The action of Chief Commissioner of Income Tax, Pune and the Chairman, Central Board of Direct Taxes have only just avoided entertaining the applicant's application for a review or revision of the impugned order. Hence the applicant has filed this OA for the above stated reliefs.

5. The applicant applied for further documents vide application dated 28.8.1995. In our considered opinion that purchase of plot and sale of flats was not a disputed fact. As such refusal cannot be treated as denial of affording reasonable opportunity of being heard.

6. It is true that the Disciplinary Authority supplied copy of the Enquiry Officer's report dated 30.9.1996 vide letter dated 4.11.1996.

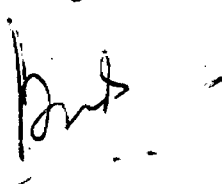


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7. The respondents failed to ask the applicant to make his grievance, if any in receipt of the Enquiry Officer's report in view of Mohd. Ramzan Khan's case. The grievance of the applicant should not be accepted mechanically to arrive to a conclusion that the applicant's case is prejudiced by it. If any prejudice is caused to the applicant, the case of the applicant is to be examined accordingly.

8. The learned counsel for the applicant relied on order of Revisional Authority dated 14.1.1999 and argued that the appellant was found in possession of assets on 5.8.1988 which were disproportionate to his known sources of income to the extent of Rs. 36,507/-. The check period was from 1.1.1973 to 5.8.1988. The learned counsel for the applicant relied on (1989) 11 ATC 537 M.K. Sarkar V/s Union of India and another decided by Principal Bench, New Delhi vide order dated 11.1.1989 and argued that possession of assets disproportionate to known sources of income - Criteria for determination of Disproportionality below 10 per cent of income deserves to be ignored. In the said case disproportionate assets reviewed and found to the extent of 2.5 per cent hence ignored. The principle laid down regarding 10% is based on the judgement of Apex Court reported in AIR 1977 SC 796 in the case of Krishnanand Agnihotri, (1973) 2 SLR 63 Nand Lal V/s Union of India and (1973) 1 SLR 1121 Hemanta Kumar Mohanty V/s State of Orissa. In the present case even the finding recorded by the Appellate Authority is accepted as it is, Disproportionate assets in possession of the applicant does not exceed 10%. Hence, the learned counsel for the applicant argued that Article of Charge I is not established against the applicant.

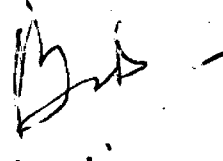
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9. He further argued that the respondents have taken into consideration the value of the flat neither the purchase price nor the value's report, the respondents failed to take into consideration the actual receipt of house rent and agriculture income.

10. The applicant failed to establish that the cost price of the flat at the time of his purchase was Rs. 70,000/-. Regarding income from house rent it is suffice to state that for the full period Rs. 3600/- were taken into consideration. It was an yearly income, the agricultural income due to inflation rises every year but no such consideration was made and arrived to a conclusion of disproportionate assets. We find some substance as such we are of the considered opinion that the respondents have erred to held the applicant guilty for the charge relating to Article of charge I. regarding disproportionate assests to the extent of Rs. 36,507/- and the proposition of law as stated above we are unable to agree with the findings of the Appellate Authority as such Article of charge I is not established against the applicant.

11. Article II, III and Article IV required to be dealt together. Article II relates to purchase of land measuring about 592 sqm in the name of his wife at Gangapur Road, Nasik, construction of a building named Prabhu Apartments thereon comprising of 11 flats and sale of the said 10 flats to different persons with a profit motive. Article III relates to purchase of plot of land in the name of his wife without prior intimation to the Department. Article IV relates to purchase of a Gopdrej Refrigerator, a colour T.V. and a Scooter. The applicant also



claims that the apartment after construction by his wife were sold by her and he has helped her in the said activity, being her husband, as duty bound to do so.

12. The respondents have stated that it is the applicant who was engaged in business. On perusal of page 36, 37, 38, 39 and 40 of the enquiry report (OA page 85 to 90) clearly makes that Smt. S.K. Deshpande - applicant's wife does not have any knowledge of construction of building, does not know the area of the plot on which Prabhu Apartment have been constructed the number of flats, name of suppliers of building material. The respondents claims that applicant has not filed any return of income tax after assessment year 1988 - 89 while the applicant has submitted the report showing the profit in respect of sale of all the above said flats. The respondents have arrived to the conclusion that it was the applicant who was engaged in construction of flats and sale of them. We are of the considered opinion that the respondents have committed no error in this respect.

13. The learned counsel for the applicant relied on (1987) 4 ATC 140 Biraja Prasad Misra V/s Union of India and others and argued that if any family member of Government employee is real owner, disposal or acquisition of property does not attract the rule 18(2) of CCS (CCS) Rule 1964. We agree to said proposition of law. In the present case Smt. S.K. Deshpande is having no source of income. The property is being purchased in her name only to avoid to intimate regarding purchaseto the respondents.

14. The learned counsel for the applicant argued that the penalty of dismissal should have been avoided. Had there been a case of purchase of Godrej Refrigerator, a colour T.V. and a Scooter, we might have considered the grievance of the applicant, but the present case is not only a case of benami purchase but also a case of benami transactions regarding purchase of the plot, construction of flats thereon and sale of these flats by the applicant.

15. The learned counsel for the applicant relied on (2001) 2 SCC 386 Om Kumar and others V/s Union of India, which laid down the proposition that in determining the quantum, role of administrative authority is primary and that of court is secondary, confined to see if discretion exercised by the administrative authority caused excessive infringement of rights. The principle laid down is that if no relevant fact omitted nor any irrelevant fact taken into account nor any illegality committed by the authority nor the punishment awarded was shockingly disproportionate, punishment awarded after considering all relevant material, no interference called for. Keeping the said principle in mind we are of the considered opinion that the applicant who was found guilty of indulging in business and benami transaction, The punishment awarded by the respondents is proportionate to the acts and omission of the applicant.

15. In the result we do not find any merit in the OA. It is liable to be dismissed and is dismissed accordingly with no order as to costs.

S.L.Jain
(S.L.Jain)
Member(J)

B.N.Bahadur
(B.N.Bahadur)
Member(A)

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