

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 38/2001

MONDAY, THE 27TH DAY OF AUGUST, 2001

CORAM: SHRI JUSTICE ASHOK AGARWAL. CHAIRMAN
SMT. SHANTA SHASTRY. MEMBER (A)

B.M. Choudhury,
Resident of 25-Belvedere
Bhulabhai Desai Road,
Mumbai-400 026.

... Applicant

By Advocate Shri P.A. Prabhakaran.

Versus

1. Union of India, through
The Secretary, Department of Revenue,
Ministry of Finance,
NorthBlock, New Delhi-110 001.
2. The Chairman,
Central Board of Direct Taxes,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi-110 001.
3. The Chief Commissioner of Income Tax,
Mumbai, 3rd Floor, Ayakar Bhavan,
Queens Road,
Mumbai-400 020. .. Respondents

By Advocate Shri V.G. Rege.

O R D E R (ORAL)

Smt. Shanta Shastri.

.. Member (A)

The applicant has assailed the memorandum dated
18th September, 2000 wherein disciplinary action is
proposed to be initiated against the applicant under

Rule 14 of the CCS (CCA) Rules, 1965. The applicant has prayed for quashing and setting aside the same.

2. A charge sheet has been issued to the applicant who is functioning as Commissioner of Income Tax City-X Mumbai. The applicant received a reference dated 7.1.97 from his subordinate Assessing Officer through his Deputy Commissioner. Directions were sought from the Assessing Officer as their supervising authority. The applicant's views were sought on the nature of a piece of land as to whether it was agricultural or otherwise. The applicant gave the view that the particular piece of land was to be treated as agricultural land. However, according to the respondents, the applicant's action in treating the said piece of land as agricultural land was to favour the assessee himself. The statement of imputations of misconduct in support of the articles of charge were framed against the applicant as at Annexure-2.

3. The applicant denied the charges vide his reply dated 10th October, 2000 with further submission on 1.12.2000 requesting to drop the charges. Thereafter, the respondents have appointed the inquiry officer and presenting officer to inquire into the charge levelled against the applicant.

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4. According to the applicant, the imputations of misconduct in Article-I to the charge memo is the reproduction of the view of another individual vested with the same or lower authority different from that of the applicant, it does not amount to any misconduct. The applicant has denied that he has conferred any undue benefit on the assessee concerned. The issue is already before the Income Tax appellate Tribunal. In the event, the Tribunal holds a view contrary to the decision of the CIT (A) in the detailed order, action can always be taken against the applicant. The issue involved is interpretation of law and therefore, the applicant feels that the issuing of a charge sheet is uncalled for. The applicant has relied on some judgments, which are as follows:-

1. (1988) 7 ATC 119 (hyd) A.V.S. Reddy Vs. State of A.P. Charge sheet - Service of - Judicial review at the stage of - Held permissible - further held, not necessary that employee should wait till conclusion of enquiry proceedings.
2. (1989) 9 ATC 369 (Cal) Bejoy Gopal Mukerjee Vs. Union of India Charge sheet - Scope of Judicial review of - Charges found baseless - Hence Charge - Sheet quashed and enquiry prohibited.
3. 1994 (4) Scale (page 480) Sunjarrao Bhikaji Nagarkar Vs. Union of India and Others. Paradoxically he, the applicant, is again vested with the authority to defend or even concede the appeal pending before Income Tax Appellate Tribunal even in this matter. No doubt the applicant won't handle the specific issue is another matter.

...4.



4. (1998) 37 ATC 257 - Joseph Suleman Vs. Union of India & Ors. Head Note B.
5. (1995) 29 ATC SCC 113 Transport Commissioner Madras 5 Vs. A.Radhakrishna Moorthy. charge Sheet held to be vague and quashed (C D and E)
6. (1991) 15 ATC 494 (All) Kamleshwar Prasad Srivastava Vs. Union of India Charge sheet scope in absence of prima facie evidence of negligence or recklessness departmental inquiry initiated merely for failure to act diligently and thereby causing loss to government held, illegal. Charge sheet quashed.

The applicant has also drawn our attention to the judgement of the Supreme Court in the case of ... UOI & Others 1999 SCC (L & S)1999. In this the Supreme Court held that a wrong interpretation of law cannot be a ground of misconduct. The applicant's action is bonafide exercise of the Administrative and Supervisory powers vested in them.

4. The applicant has also filed M.P. No.443/2001 for taking additional documents on record. One of them is the order of the Income Tax Appellate Tribunal, Mumbai Bench "B" in the matter of Smt. Manjula Patel in ITA No.4046/MUM/96 wherein the issue of the land in question being agricultural land or otherwise was raised. The Tribunal held the land to be Agricultural land considering the view taken by the present applicant. Therefore, the impugned charge memo needs to be quashed and set aside.


...5.


5. The learned counsel for the respondents submits that the department has moved an appeal before the High Court against the aforesaid order of the Tribunal and the same is pending decision and therefore, it would not be proper to set aside the impugned order at this stage. The learned counsel for the applicant, however stressed that he has only one and half years left for retirement and his promotion will be withheld till then, if the enquiry is to be proceeded with. The applicant states that the enquiry can be conducted even after his retirement if the respondents succeed in their appeal and therefore, the charge sheet can be set aside at this stage.

6. The respondents further argued that if the charge sheet is set aside at this stage and if the respondents succeed in their appeal against the ITAT order, it would be very difficult to initiate proceedings against the applicant after he had retired.

7. We have given careful consideration to the rival contentions and the pleadings. We find that the entire issue involved is about interpretation of law and the applicant's interpretation has been upheld by the ITAT and the order of the Income Tax Appellate Tribunal

will be in force till the respondents succeed in their appeal against the order of the Income Tax Appellate Tribunal. As such, the applicant needs to be given the benefit of the order of the ITAT dated 10.4.2001. We, therefore, quash and set aside the impugned memorandum dated 18th September, 2000 so also the orders of appointment of the Enquiry and Presenting Officers. The OA is allowed, in the result. No costs.


(SHANTA SHASTRY)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

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dt 27/8/01
~~order~~/Judgement despatched
to Applicant respondent(s)
on 06/9/01

