

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 457/2001
233/97

Date of Decision: 6.12.2001

Smt. R. Girdhar.

Applicant

Shri M.S. Ramamurthy.

Advocate for Applicant

Versus

Union of India & 2 others

.. Respondents

Shri V.G. Rege.

Advocate for Respondents

CORAM: HON'BLE SHRI JUSTICE BIRENDRA DIKSHIT. VICE
CHAIRMAN.
HON'BLE SMT. SHANTA SHASTRY. .. MEMBER (A)

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library ✓

Shanta
(SMT. SHANTA SHASTRY)
MEMBER (A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 457/2001

THIS THE 06 TH DAY OF DECEMBER, 2001

CORAM: SHRI JUSTICE BIRENDRA DIKSHIT. VICE CHAIRMAN
SMT. SHANTA SHASTRY . MEMBER (A)

Smt. R. Girdhar,
Indian Revenue Service (1969 Batch),
presently working as Commissioner
of Incometax, Aayakar Bhavan, M.K.
Road, Mumbai-400 020.

.. Applicant

By Advocate Shri M.S. Ramamurthy.

Versus

1. Union of India, through
the Secretary, Department
of Revenue, Ministry of
Finance, Government of India,
North Block,
New Delhi-110 001.
 2. The Chairman, Central Board of
Direct Taxes, Ministry of Finance,
Government of India, North Block,
New Delhi-110 001.
 3. The Chief Commissioner of
Income Tax, having his office in
Aayakar Bhavan, M.K. Road,
Churchgate,
Mumbai-400 020.
- ... Respondents

By Advocate Shri V.G. Rege.

O R D E R

Smt. Shanta Shastry. Member (A)

Departmental proceedings were initiated against
the applicant by issuing a charge sheet on 18th January,
1993. The articles of charges were as follows:

- (a) that this Hon'ble Tribunal be pleased to hold and declare that the charges as levelled in the chargesheet dated 18.01.1993 have not been proved in the enquiry and the appellant be held to have been exonerated in the enquiry.
- (b) that this Hon'ble Tribunal be pleased to hold and declare that the department/respondents have accepted the report of exoneration of the applicant and the unnecessary delay of more than four years in passing final orders on the proceedings is illegal and the respondents are liable to be restrained from proceeding further in the said matter;
- (c) that it be declared in view of the delay of five years in passing final orders on the report of enquiry received in 1996 the respondents cannot adopt the sealed cover procedure while considering the case of the applicant for promotion to the post of Chief Commissioner of Income Tax/ Director General of Income Tax;
- (d) that this Hon'ble Tribunal be pleased to declare that in view of the charges not having been proved and the delay of five years in passing final orders, the departmental proceedings be treated as closed/dropped.
- (e) that this Hon'ble Tribunal be pleased to direct the respondents not to adopt the sealed cover procedure in the matter of promotion of the applicant to the post of Chief Commissioner of Income Tax/ Director General of Income Tax and further direct that if found fit, the applicant should be promoted forthwith;
- (f) that such other and further order or orders be passed as the facts and circumstances of the case may require;
- (g) that costs of this Original Application be provided for.

The applicant has also prayed for an interim relief restraining the respondents from passing any orders on the enquiry report received in 1996.

2. Thereafter, the applicant replied to the charge sheet on 14.3.1993. The incident related to 31.12.1981. Therefore, the applicant challenged the charge sheet

before the Principal Bench of this Tribunal the same was not entertained/ intervened vide order dated 21.10.1994. It was further tested in High Court, but of no avail. Thereafter, on her denying the charges, regular enquiry was conducted and the Enquiry Officer submitted his report on 03.10.1996. The report was forwarded to the applicant on 07.5.1997. The applicant replied to the same on 20.5.1997. Till the applicant approached this Tribunal on 28th June, 2001 no order had been passed by the disciplinary authority on the report of the enquiry officer.

3. In the meantime, the applicant had also filed a writ petition No.1771/2001 in the High Court of Bombay. This writ petition was disposed of on 27th July, 2001. The High Court held that the interim prayer made by the applicant in the OA pending with the Tribunal is justified particularly in view of the strong reliance placed by the petitioner on the judgment of the Apex Court in the case of State of Punjab Vs. Chamanlal Goyal reported in 1995 (1) SCC 233 and directed that there will be an ad-interim order in terms of prayer clause 9 (a) of the OA pending with the Tribunal which will run till the interim application to the Tribunal is considered for appropriate relief. The respondents were directed to file their reply in the Tribunal well before the next date. It was also observed that the Tribunal is expected to decide the original application and in any case the interim application expeditiously.

4. The interim relief prayed for by the applicant in prayer clause (a) of para 9 of the OA is as follows: "that the respondents be restrained from passing any orders on the enquiry report received in 1996, Exhibit 'C' hereto".

5. Thereafter, it has been brought to the notice of this Tribunal at the beginning of the hearing that the respondents have passed the final order under Rule 15 of the CCS (CCA) Rules 1965 in this matter on 01st August, 2001. A copy of which is marked as Exhibit 'A' enclosed along with the affidavit filed by the respondents on 20th October, 2001. The respondents submit that although Hon'ble High Court of Bombay had restrained the respondents from passing any order on the enquiry report, the respondents were not actually aware of this order of the High Court at the time of issuing of the order of 01.8.2001 because the High Court order had been communicated to the Law Ministry and the respondent department namely Department of Revenue, Ministry of Finance, Central Board of Direct Taxes came to know about it much later. By that time they had already passed the final orders in the disciplinary proceedings. Further, the learned counsel for the respondents also argued that the restraint was only on passing the orders on the enquiry report and not on the disciplinary proceedings as a whole.

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6. The learned counsel for the applicant however, contended that it did not lie well in the mouth of the respondents to say that the orders were issued before they had any knowledge about the orders of the High Court. In fact, it has been recorded in the order passed by the High Court in para 3 of their order that "Mr. Pradhan appearing for the respondents on the other hand submits that the authorities should not be prevented from passing the order. On the other hand they should be directed to pass orders at the earliest so that the petitioner should know her fate one way or the other. In our view it is for the Tribunal to take a decision in the matter."

7. Certainly there was some gap in communication. The respondents' counsel should have been apprised of the position by the respondent department. The learned counsel for the applicant therefore pleads that this order dated 01st August, 2001 of the respondent department needs to be ignored in the light of the interim relief granted by the High Court.

8. The learned counsel further argued that even otherwise this order is void in that it is not issued by the President of India who is the Disciplinary Authority in this matter and therefore either it should be quashed at the out set or the applicant will have to bring it on record by way of an amendment to challenge the same.

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According to the applicant it is not necessary to bring it on record by way of an amendment as it is a void order.

9. It will only delay the matter further and the applicant is due for promotion to the post of Chief Commissioner of Income-tax. Actually the selection was held in February, 2001 and certain officers were promoted in May, 2001. The applicant's case has been kept in sealed cover. Further delay in the disposal of the OA would only delay the applicant's promotion.

10. The learned counsel for the applicant then argued on the merits of the report of the enquiry officer. The findings of the enquiry officer are that one of the allegation is substantiated as mentioned in para 7.9 of this report. Serious error of judgment is found in para 8.11 of this report. The learned counsel for the applicant took us through the relevant portions of the report of the enquiry officer and submitted that the enquiry officer has not established or proved the charges as framed against the applicant, instead, the enquiry officer has gone on to develop his own idea. The words used in the findings are that the charge is justified and not that it has been proved or established. There was no preponderance of probabilities when there is no evidence to hold the charges as proved. There is also no legal basis to impose any penalty. The departmental proceedings have

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taken unduly long period of nearly five years to be concluded after the receipt of the report of the enquiry officer in 1996. The delay is entirely of the department and the applicant is in no way responsible for the delay. Further, the enquiry is in respect of an incident of 31.12.1981 and has not been finalized even after 20 years, it comes in the way of applicant's promotion. The enquiry officer has not recorded any finding as far as the guilt of the applicant is concerned in respect of the charges levelled against her. He has instead recorded a finding on the allegation of not ensuring the continuous presence of a substitute, suitable officer in the control room. This is not the allegation levelled against the applicant in the charge issued and therefore, it follows that the charge against the applicant is held 'not proved' and the report has to be treated as a report of exoneration. The other charge has been held 'not proved'. If it is a report of exoneration, then the respondents cannot be permitted to keep the matter pending for more than four years after the applicant had given her reply on 20.5.1997. The disciplinary proceedings, therefore, need to be treated as closed or abandoned.

11. The enquiry report has been forwarded to the applicant without disagreement showing that the department accepted the report of the enquiry officer as it is. Since he did not hold the applicant guilty of the charge levelled against her in the chargesheet, the

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enquiry has to be treated as closed and therefore, the sealed cover should be opened. The entire effort of the respondents seems some how to hold the applicant guilty on some count or the other. The learned counsel for the applicant further relies on the judgment in the case of State of Punjab Vs. Chamanlal Goyal^{*} wherein it was held that "applying the balancing process the quashing of charges and the order appointing the enquiry officer, was not warranted in the facts and circumstances of the case. It was however, more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time it was directed that the respondents should consider forthwith for promotion without reference and without taking into consideration the charges of the pendency of enquiry and if found fit for promotion, should be promoted immediately. The promotion would however be subject to the conclusion of the enquiry. It was also held in para 10 of this judgment that if the delay in disciplinary proceedings is too long and unexplained, then such delay is likely to cause prejudice to the delinquent officer to defend himself and the enquiry has to be interdicted." According to the learned counsel for the applicant since the enquiry could not establish any charges and ^{not} the disagreement with the finding of the enquiry officer was communicated

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to the applicant while forwarding the enquiry report, the applicant should be deemed to have been exonerated fully in this matter.

12. However, now that the order of 01.8.2001 has been issued penalising the applicant with with-holding of increments for two years without cumulative effect, the applicant points out that the decision of the disciplinary authority is based fully on the advice given by the UPSC and a perusal of the order will go to show that even the UPSC has not come to any categorical conclusion, but has based its advice on presumption, inference and speculation and therefore such an order cannot be a legal order and if the disciplinary authority has accepted the advice of the UPSC which has held both the charges as proved, then the applicant should have been given an opportunity of studying the advice of the UPSC and to represent against the same, which has been denied to her. In this connection the applicant is relying on the judgment of the Tribunal in the case of Charanjit Singh Khurana Vs. Union of India 1994 (27) ATC 378 and the case of Amarnath^{Batabyal} Vs. Union of India 1996 (34) ATC 466 decided by this Bench of the Tribunal. In both these cases it was held that opinions of State Government, Central Vigilance Commission and UPSC must be supplied to the charged employee before disciplinary authority takes a decision to impose penalty on the charged employee. The applicant has been denied the opportunity to react to the advice of the

UPSC as well as the disagreement of the disciplinary authority finally in this matter and therefore the order is vitiated and needs to be quashed and set aside along with the enquiry report and the charge sheet.

13. The learned counsel for the respondents submits that although the order was issued on first August, 2001 the decision to impose the penalty had already been taken way back on 31st May, 2001. The learned counsel also tried to defend that there was no deliberate delay on the part of the respondents in finalising the disciplinary proceedings against the applicant. According to the learned counsel the process of examining the applicant's case was on, actively, however, due to the procedural requirements, the matter could not be finalised earlier. The advice of the UPSC had to be sought twice before taking the final decision, though belatedly, the disciplinary proceedings had to be closed by issuing the order dated 01.8.2001.

14. The learned counsel also took us through the findings of the enquiry officer and tried to show how enquiry officer had concluded that the charge No.1 was proved though the wording used by the enquiry officer was not a happy wording in keeping with the wording of the charge issued that the applicant was not present in the control room and she had not made any alternative arrangements for the continuous presence of some one else in her absence ~~has been proved~~. He tried to argue

that it was not considered necessary to give a notice to the applicant for disagreeing with the report of the enquiry officer, because the disciplinary authority had not disagreed with the enquiry officer's report, he had accepted the report. However, the learned counsel for the respondents could not say as to why the report of the UPSC was not given to the applicant. The learned counsel for the applicant submits that definite prejudice was caused to the applicant because the advice of the UPSC was not given to her. The applicant also vehemently voiced her frustration that had the respondents taken the decision on the applicant's reply given on 20.5.97 to the enquiry officer's report, by now the applicant could have undergone the punishment and would have become eligible for promotion. She has been denied this and the delay has been on the part of the respondents.

15. We have perused the relevant files and the notings relating to this case. It is to be seen that the report of the enquiry officer became available on 03.10.1996. It took almost eight months to give copy of this report to the applicant on 07.5.1987. The applicant has promptly replied on 20.5.1997. Even thereafter, the respondents took considerable time to refer the matter to the UPSC in May, 1998. The UPSC had given its advice, but again the respondents referred it back to the UPSC for reconsideration and the UPSC confirmed their earlier advice in March, 2001. It is

also interesting to note that right from beginning the respondent department held that the applicant's offence was not so grave as to punish her with any major penalty. The initial notings on the file to show a proposal to drop the enquiry proceedings. Thereafter, it changed to a warning, thereafter it was felt why not censure the applicant and a reference was made to the UPSC, who in turn advised harsh punishment of with-holding of two increments. Even then, the respondent department wanted to adopt a softer punishment of censure and therefore, a further reference was made to the UPSC to reconsider their advice and finally though the UPSC was not able to substantiate its stand, basing it on presumption and speculation, the disciplinary authority simply accepted the advice of the UPSC. The whole process shows that the matter was delayed inordinately to the disadvantage of the applicant. Thus, depriving the applicant of promotion when it was due. It also shows that the respondents did not consider the charge as so grave as to punish the applicant heavily.

16. We have gone through the report of the enquiry officer. We have to accept that we do not find any evidence which would show that the charges are established. As far as the first charge is concerned the applicant had taken the permission of the Commissioner of Incometax. The applicant had also asked Shri Behl to be in the control room in her absence on 31.12.1981 till the official viz. Shri Puri, sent for bringing the metal detector from Ludhiana came back to

Jalandhar and thereafter Shri Behl left the control room taking permission of the CIT on telephone. There is no evidence to contravene the submission made by the CIT that Shri Behl had obtained permission from the CIT to leave the control room, this was not disputed by the presenting officer either. In fact, there is a statement of Shri Behl at Exhibit S-23 wherein this has been brought out very clearly. The enquiry officer himself has recorded in para 7.4 accordingly. Even in para 7.5 of the report also the enquiry officer states that Shri Behl is no more and therefore, cannot either confirm or deny the submissions and the fact remains that there is no other relevant evidence which can fly in the face of the CO's contention that she had left the control room after obtaining permission from the CIT and after passing on the responsibility to Shri Behl. So in a sense the CO's action would appear to be in order in the circumstances. It is further recorded in para 7.7 "that therefore I have to agree with the CO's argument that no fruitful purpose would have been served even by passing on the telephone number of Shri Dewan to any officer of the raiding party including Shri Manchanda who was the ADI." Thereafter, the enquiry officer made an about turn stating that at the same time the information indicates that the CO has not made any arrangements for ensuring the service of another officer to be incharge of the control room till the entire search party returns after she left, as the charged officer should have done it as the control room is a

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vital centre for urgent communication. The enquiry officer also has held that to some extent the then CIT also was not right if he had allowed the CO to leave the control room without ensuring the manning of the control room by a suitable substitute in her place.

16. Coming to the UPSC advice it is seen from the order dated 01.8.2001 that the Commission had noted that the CO had admitted to be incharge of the control room and that she had left the control room with prior permission of CIT. However, there was no way to prove or to disprove the contention of the CO that she had obtained the permission because Shri Bhagat CIT had expired and the Commission thus presumed that even though Shri Bhagat the deceased CIT might have agreed to CO's leaving the control room at 10 PM, he would have certainly given clear instructions to ensure that senior officer to be continuously available in the control room as a suitable substitute of the departing officer so that till the materials and papers were properly taken over and accounted for in the control room and kept in safe custody. The commission have, therefore, doubted if the CO had really obtained the prior permission from the then CIT. She had also asked one Shri Behl to be in the control room in her place till one Shri Puri arrives from Ludhiana. it is also again stated by Shri Behl in his statement that he too left the control room after taking permission of the CIT on telephone. According to us once the applicant had taken the permission of the

CIT and had placed Shri Behl in her place, it cannot be said that she had not made any arrangements for continuous presence of suitable substitute officer in the control room. This reason does not appeal to us and we cannot accept it especially when there is no evidence to ^{support it} ~~show this~~, and the Commission has only presumed this and drawing ^h the inference. It is the same thing in regard to the second charge about opening the sealed trunks without calling for the independent witness. Here, again the wording is that "the commission did not believe that things were happening in her room on 1st January, 1982 without her knowledge or directions. The commission have felt that the circumstances do reveal that she must have been witness to whatever happened in her room and keeping in view the foregoing the commission concluded that the applicant committed far grave misconduct and therefore it warranted the harsh penalty than censure proposed by the disciplinary authority." Thus, it is to be seen that the UPSC had also not based its conclusion on any evidence on record and had merely presumed and believed, it did not even specify the circumstances which reveal that she must have been witness to what ever happened in her room. We, therefore, have to hold that there was no evidence for holding the applicant guilty of the charges as presumed or believed by the UPSC. Even the enquiry officer has not established the charges. Therefore, we have to hold that the order of the disciplinary authority though to be ignored, is still vitiated and

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void for the reasons already recorded above. Even otherwise the applicant is entitled to the copy of the report containing ~~copy of the~~⁴ advice of the UPSC. This has not been supplied to the applicant. On this ground also the order is vitiated⁵ since the disciplinary proceedings were prolonged and it took four years and eight months to pass the penalty order on the enquiry report. Under the circumstances we are not at all inclined to remit the case to the disciplinary authority to make available copy of the UPSC advice and then if the applicant replies, to pass appropriate orders. In our considered view there has been inordinate delay in deciding the case of the applicant. Whatever be the reason, even considering that the procedure had consumed lot of time, there are enough gaps which have not been explained. As rightly pointed^{out}_^ by the applicant the delay would vitiate the enquiry proceedings as it caused considerable damage to the applicant while depriving her of her promotion, definitely prejudice has been caused to her. On the ground of inordinate delay in passing the final orders on the enquiry report, ~~finding~~⁶ itself the enquiry needs to be set aside and dropped. On merits also we find it to be a case of no evidence. As regards the order dated 01.8.2001 imposing penalty on the applicant, in our view it is a void order as stated by the applicant. The judgments in the case of Batabyal and Khurana^(supra)_^ cited by the applicant have ruled clearly that not giving copy of the advice of the UPSC before finalising the punishment would vitiate such an order.

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We abide by the same as we are satisfied that the advice of UPSC being adverse and not being made available to the applicant, has caused damage to the applicant's case. The order of 01.8.2001 based solely on the advice of the UPSC has to be held as a void order. It has also to be ignored because it was communicated to the applicant only on 02.8.2001 i.e. after 27th July 2001 when the High Court of Bombay had already given interim relief to the applicant by restraining the respondents from passing any orders on the report of the enquiry officer. The aforesaid order is therefore, quashed and set aside. Therefore, both on merits as well as on the ground of delay we quash and set aside the enquiry officer's report as well as the charge sheet and direct the respondents to open the sealed cover as if no disciplinary proceedings had been initiated against the applicant. This may be done within a period of one month from the date of receipt of copy of this order. The enquiry be treated as dropped with all consequential benefits.

17. In the facts and circumstances of the case, the OA is allowed. We do not order any costs.

Shanta S.
(SMT. SHANTA SHASTRY)
MEMBER (A)

B. Birendra
(BIRENDRA DIKSHIT)
VICE CHAIRMAN.

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Central Administrative Tribunal
Mumbai Bench

CP No.13/2002 in
OA No.457/2001

Mumbai this the 14th day of June, 2002.

Hon'ble Mrs. Shanta Shastri, Member (Admnv)
Hon'ble Mr. Shanker Raju, Member (Judl.)

Smt. R. Girdhar

-Applicant

(By Advocate Shri Sai Kumar)

-Versus-

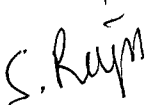
1. Dr. S. Narayan,
Secretary,
Deptt. of Revenue,
Ministry of Finance,
Govt. of India,
New Delhi-110001.
2. P.K. Sarma,
Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Govt. of India, North Block,
New Delhi-110001.
3. A. Mukhopadhyay,
Member (P&V),
Central Board of Direct Taxes,
Ministry of Finance,
Govt. of India,
North Block, New Delhi-110001.


-Respondents

(By Advocate Shri V.G. Rege)

ORDER (ORAL)
Mrs. Shanta Shastri, Member (A):

Learned counsel for the applicant informs us that the respondents have implemented the judgment of this Tribunal in OA-457/2001. Respondents after opening the sealed cover have appointed the applicant to officiate on regular basis to the grade of Chief Commissioner of Income Tax in the pay scale of Rs.22,400-525-24,500/- with effect from the date of promotion of her junior and until further orders with all consequential benefits. Her seniority has also been fixed and she has been posted as Chief Commissioner of Income Tax-IV, Chennai. We, therefore, discharge the contempt notices and drop the contempt proceedings and the CP is dismissed.


(Shanker Raju)
Member (J)


(Smt. Shanta Shastri)
Member (A)