

04

CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 659/91  
TAX NO.

198

DATE OF DECISION 31.3.92

Shri N.P. Jadhav

Petitioner

Shri M.A. Mahalle,

Advocate for the Petitioner(s)

Versus

Commissioner of Income - tax  
Pune.

Respondent

Shri P.M. Pradhan.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. Justice U.C. Srivastava, Vice Chairman.

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not? *Y*
3. Whether their Lordships wish to see the fair copy of the Judgement? *N*
4. Whether it needs to be circulated to other Benches of the Tribunal? *✓*

MGIPRRND-12 CAT/86-3-12-86-15,000

*U.C. Srivastava*  
Vice Chairman

(05)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY

Original Application No.659/91

Shri N.P.Jadhav  
Thane

...

Applicant

vs

Commissioner of Income-tax  
Pune and other. ....

Respondent

Coram: Hon'ble Mr. Justice U.C.Srivastava,  
Vice-Chairman

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

Appearance:

Shri M.A.Mahalle, Advocate  
for the applicant

Shri P.M.Pradhan,  
for the respondents.

Dated: 31-3-92

Judgement  
(Per: Mr. Justice U.C.Srivastava)

The applicant who was Inspector in the Income -Tax department, ~~He~~ was put under suspension on 27-12-1985 by the Order dated 27-12-85 by the Inspecting Assistant Commissioner of Income-tax, Thane RangeI, Thane. This order was cancelled by the Chief Commissioner of Income-tax on 23-9-87 on the ground that the Authority who passed the Suspension Order did not have jurisdiction to pass such order. The applicant was again suspended by Respondent No.1 by the order dated 28-9-1987 on the ground that ~~a~~ <sup>is</sup> criminal offence is under investigation. That/why the applicant approached ~~to~~ this Tribunal.

2. The charge against the applicant in the criminal court was that while functioning as Income-tax Inspector, Thane during the period from 1980 to 1985 he entered into criminal conspiracy with a private person Shri M.L.Mehta who was doing the business of Income-tax Consultant and used to prepare and fill up Income-tax

returns with the intention to cheat the Income-tax office and used to get issued refund order on the basis of fictitious TDS certificate attached with such fictitious returns in the names of fictitious persons. The said refund orders used to be encashed at the Allahabad Bank, Bhandup Branch and Greater Bombay Co-op Bank, Goregaon Branch and the amount was distributed amongst themselves. Applicant has challenged these charges/<sup>of</sup> his suspension under section 426, 468, 471. Ten fictitious returns in the names of above non-existent 10 parties for A.Y.1984-85 were handed over by Shri M.L. Mehta, as Income-tax Practitioner to Shri N.P.Jadhav which were entered in the Return Register on 30-3-85 and were given machine Nos. from 23872 to 23881. The ~~no~~ refund orders amounting to Rs.1,03,287/- were handed over to Shri M.L.Mehta in the presence of Shri H.V.Gaikar. In the month of July, 1985 Shri M.L.Mehta handed over another 10 fictitious returns to the applicant. The applicant gave these returns to Shri R.Y.Shinde for entering in Return Register. It was revealed from Sr. No. 16999 to 17008 that these cases were dealt by the applicant. The value of these cases were  $₹$ 1,20,421 and it was handed over by Shri N.P.Jadhav to Shri M.L.Mehta. Again set of 10 fictitious blank returns were given by Shri M.L.Mehta to Shri N.P.Jadhav for A.Y.1983-84. ~~Shri~~ The applicant instructed Shri J.M.Vishwani, UDC to fill the said returns. Thereafter the returns were sent to Shri R.Y.Shind. The charges were against the applicant that he was working ~~as~~ Income-tax officex ~~in~~ during the period and being a revenue official colluded with Shri M.L.Mehta an Income-tax practitioner, by aiding and abetting Shri Mehta in claiming bogus refunds from the Department.

3. On the other hand the applicant has a criminal acts with an intent to defraud revenue which casts serious aspersion on the applicant's integrity and devotion to duty.

4. The applicant has committed offence under Section 120-B read with Section 420 of the Indian Penal Code and Section 5(1)(d) read with Section 5(2) of Prevention of Corruption Act. Respondents counsel submitted that if charges made by the prosecuting agency in criminal case is perused, it would clearly go to show that the said charges have nothing to do with the charges which are incorporated in the memorandum of chargesheet dated 17th Jan.1991 issued by the Commissioner of Income tax, Pune.

5. Applicant's counsel cited the citation of Kedarnath Bahal AIR 1979- SC 220. and Miss Anita Kumari Sud vs Ministry communication 1989(1) SLG 369 CAT. But these citations <sup>are relevant in</sup> does not attract in the present case.

6. The instruction by the Govt. of India are in the nature of guidelines. and ~~are~~ In the circumstances of the fact of the case that these set of guidelines cannot be misconstrued or altered in this case. Learned counsel for respondent cited the case Kusheswar Dube vs Union of India- Supreme Court decision. In the above case disciplinary proceeding were initiated and ~~it was~~ at the same time criminal proceedings were going on, Under section 122 E 160 of IPC the prevention of corruption Act. The charge against the applicant was that he assisted the person for alleged fraud during the period 1-4-85 to 1-4-88 and he collected money out of his known sources of

his income. The criminal proceedings were started on the basis of the FIR. The criminal charge against the applicant was co-related to the legal factor.

Learned counsel for the respondent cited ATR 1692 P.280 decided by the Principal Bench. So far as department is concerned some related acts and omission by the applicant in the present case exists.

7. In view of the above, there is no case in this application and this application deserves to be dismissed. There will be no order as to costs.



(M.Y.Priolkar)  
Member(A)

(U.C.Srivastava)  
Vice-Chairman.