

(15)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 823/91

Date of Decision:

10/16/98

Mrs. Mumtaz M. Peerbhoy

.. Applicant

Shri P.A. Prabhakaran

.. Advocate for
Applicant

versus-

Union of India & Ors.

.. Respondent(s)

Shri S.S. Karkera for Shri P.M. Pradhan Advocate for
Respondent(s)

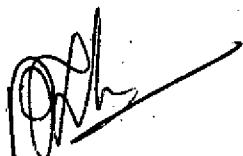
CORAM:

The Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

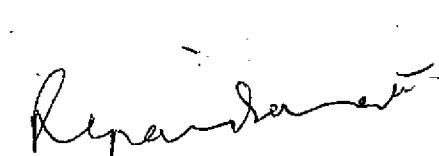
The Hon'ble Shri P.P. Srivastava, Member (A)

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

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


(P.P. SRIVASTAVA)

MEMBER (A)


(R.G. VAIDYANATHA)

VICE CHAIRMAN

(16)
BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 823/91

Present this the 20th day of January 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri P.P.Srivastava, Member (A)

Mrs. Mumtaz w/o Munwar Peerbhoy
R/o C-3, 'Shri Vallabh' Boat Club
Road, Pune-411 011.

By Advocate Shri P.A.Prabhakaran ... Applicant

V/S.

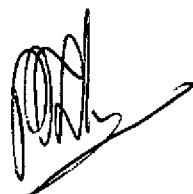
1. Union of India
represented by Under Secretary
to Govt. of India, Ministry
of Finance, Revenue Division,
New Delhi.
2. Chief Commissioner of Income Tax,
12, Sadhu Waswani Road,
'Ayekar Bhavan' Pune.
3. Commissioner of Income-Tax
'Praptikar Sadan', 60/61,
Erandawana, Pune.

By Advocate Shri S.S.Karkera ... Respondents
for Shri P.M.Pradhan, CGSC

ORDER

(Per: Shri P.P.Srivastava, Member (A))

The applicant joined Income Tax department
in 1965 as Lower Division Clerk and later on got
promoted as Upper Division Clerk in 1969. The
applicant later on was selected as Direct~~Inspector~~ Inspector
through open merit competition in 1977 and promoted
as Income Tax Officer, Group 'B' on 28.12.1987 and
she started working as Income Tax Officer P-Ward,
Thane and was working at P-Ward, Thane ^{from} 16.5.1988.
The applicant was promoted as Income Tax Officer
vide their letter dated 7.12.1987. In the promotion
order, it was mentioned that the promoted officer



would be on probation for a period of 2 years and the promotion ~~was~~ on temporary basis. The respondent administration reverted the applicant from the post of Income Tax Officer to that of Inspector vide their order dated 3.1.1990 on the basis that the performance of the officer during the probation was unsatisfactory and that she proved herself incompetent to hold the post of Income Tax Officer. The applicant thereafter submitted a representation against this order of reversion to the Chairman, Central Board of Direct Taxes by letter dated 11.1.1990 which is placed at Annexure-12. The appeal of the applicant was rejected by a non-speaking order dated 19.4.1990. Aggrieved by the order of reversion as well as rejection of the appeal by the respondents, the applicant has filed this OA. and has sought the relief that the order dated 3.1.1990 passed by the Chief Commissioner of Income Tax, Pune be set aside and that the letter dated 19.4.1990 passed by the Secretary, Ministry of Finance, Revenue Division be also set aside and that the applicant be given all the back wages and consequential reliefs as a result of quashing of the order.

2. The applicant has brought out that the reversion order is a punishment and is not an order of simplicitor reversion but in fact is a penal in nature as it casts stigma on her by imputing conduct unbecoming of an officer and that the applicant is incompetent to hold the charge of Income Tax Officer.



This order is casting stigma and was passed without giving an opportunity to the applicant of being heard and is in total violation of constitutional requirement under Article 311 of the Constitution. The learned counsel for the applicant has argued that the reading of the order makes it very clear that this is not an order of reversion simplicitor but it casts stigma on the applicant and the reading of the letter also makes it clear that it is punishment and therefore attracts provision of Article 311 according to which no reversion order ~~can be issued~~ without giving an opportunity to the applicant to explain the circumstances before passing a final order of reversion. The respondents on the other hand have brought out in their written statement denying the allegation that the order is penal in nature and it casts stigma on the applicant. They have brought out that the said order ~~was passed~~ because of the circumstances mentioned therein and it gives reasons for passing the order by which the applicant was ~~not~~ ^{found} fit to complete the probation satisfactorily. The respondents have also brought out that it was clearly mentioned in the appointment order that the applicant would be on probation for a period of two years and at the end of two years' period, it was considered by the respondent administration that the applicant is not fit to be continued as Income Tax Officer as the applicant has not completed the probation period satisfactorily. Since the order of reversion to the original post was as a consequence of order by which the applicant was considered as not completed

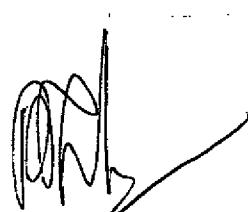


the probation period successfully, it is not a case of reversion under Article 311 but is a case of unsatisfactory completion of probation period. The 1d. counsel for the respondents has also argued that the provisions of Article 311 are not applicable

while considering the satisfactory completion of probation period.

3. On the other point that is concerning the order passed by the appellate order being a non-speaking order, the 1d. counsel for the respondents has argued that since the Ministry of Finance had agreed with the orders of the Chief Commissioner of Income Tax, Pune reverting the applicant due to unsatisfactory work during probation period, the Ministry was not required to pass any detailed order.

4. After hearing both the counsels, the issue which emerges in this case is if the order of the reversion dated 3-1-1990 is an order penal in nature and does it cast stigma on the applicant? The fact of giving the reasons in the order would make it 'casting any stigma' or not is a question which has been dealt with by the Hon'ble Supreme Court in their decision in *Maharashtra vs. V.R. Sabozi*, 1980 (1) S.C.R. 551, wherein the Hon'ble Supreme Court has held that :-



" Ordinarily and generally the rule laid down in most of the cases by this Court is that you have to look to the order on the face of it and find whether casts any stigma on the Govt. servant. In such a case there is no presumption that the order is arbitrary or mala fide unless a very strong case is made out and proved by the Govt. servant who challenges such an order. The Govt. is on the horns of the dilemma in such a situation. If the reasons are disclosed, then it is said that the order of the Govt. was passed by way of punishment. If it does not disclose the reasons, then the argument is that it is arbitrary and violative of Art. 16. What the Govt. is to do in such a situation? In my opinion, therefore, the correct and normal principle which can be culled out from the earlier decisions of this Court is the one which I have indicated above."

5. Thus, it will have to be decided whether the order is passed is arbitrary or malafide. As is well known, the question of malafide can only be accepted when the party against which the malafide has been alleged has been made a party in person and sufficient material is produced on record to show that the order is malafide in nature. In the present case, we find that although the applicant has alleged malafide, but he has not made any person as party by name against whom the malafide is alleged and therefore it will be difficult to assume and accept the charges of malafide alleged by the applicant against the Commissioner of Income Tax. The issue concerning mentioning of the fact that the employee is unsuitable for the post in the order of reversion has also come to be discussed by the Hon'ble Supreme Court in the case of R.S.Dhabha, 1969 (3) S.C.C. 603, wherein it was held that "the recital in an order of reversion that the Govt. servant was found unsuitable for the officiating post, did not amount to putting a stigma on him."



(D)

6. In view of the above proposition of the law that the mentioning of the fact that the employee is unsuitable for the post would not be a stigma ^{and} that giving reasons for coming to that conclusion could not therefore be considered stigma as it is essential in the public interest that the competent authority must have material to come to the conclusion that the person is unsuitable and mentioning of that material in the order would not make it as if the competent authority is casting a stigma on the employee. The issue came to be discussed by the Hon'ble Supreme Court in S.P. Vasudeva v. Haryana (1976) 2 S.C.R. 184, the Hon'ble Supreme Court considering the issue has held as under :-

" After all, if such an order gives no reasons the Courts will not normally interfere because ex facie there is nothing to show that the order was intended as a punishment. But if the superior official dealing with that case in order to satisfy himself whether the official concerned could be continued in service, makes enquiries or holds enquiries there is the risk of its being held that the enquiry was really intended for the purpose of punishment. Thus a bona fide attempt to decide whether the official concerned should be continued leads to this risk. There could be no greater punishment than discharge from service and it makes little difference to the Govt. servant whether he is simply discharged or discharged after an enquiry to find out his suitability. Therefore, if a simple discharge from service is upheld but a discharge after the superior official concerned satisfies himself about the official's fitness to be continued further in service is not upheld on the ground that the order was intended as a punishment it is a curious situation. After all no Govt. servant, a probationer or temporary, will be discharged or reverted, arbitrarily, without any rhyme or reason. If the reason is to be fathomed in all cases of discharge or reversion, it will be difficult to distinguish as to which action is discharge or reversion simpliciter and which is by way of punishment. The whole position in law is

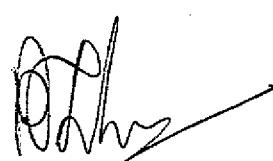
(29)

rather confusing. We think it is time that the whole question was considered *de novo* and it would be better for all concerned and avoid a lot of avoidable litigation if it should be held that the reversion of a probationer, from a higher to a lower post, or the ~~discharge~~ of the probationer, or the discharge from service of a temporary servant cannot be questioned except on the basis of *mala fides* in the making of the order. This Court will not be burdened with a lot of work of a kind about which the feeling of almost all the Judges has been that it is better that they do not come to this Court."

7. In view of the above discussion, we are of the view that the order of reversion dated 3.1.1990 passed by the administration cannot be considered penal in nature and does not cast any stigma on the applicant.

8. As far as the issue concerning the appellate order is concerned, the ld. counsel for the applicant has raised the issue that the appellate order is not a speaking order. We are of the view that in view of the fact that the appellate order confirms the original order of the reversion and agrees with the findings of the original order, it ~~is not obligatory~~ to give reasoned order ~~at~~ the appellate stage. We do not, therefore, see any force in this argument of learned counsel for the applicant.

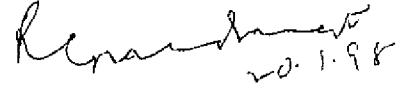
9. In the result, the applicant is not able to make out any case for interference by the Tribunal in ~~reversion~~ order dated 3.1.1990 passed by the respondents. The OA. is, therefore, dismissed. There will be no orders as to the cost.



(P.P. SRIVASTAVA)

MEMBER (A)

mrj.



R.G. Vaidyanatha
v.d. 1.98

(R.G. VAIDYANATHA)

VICE CHAIRMAN