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CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH

Original Application No. 45/92  
Transfer Application No.

Date of Decision : 23.03.1995

Krishna R.D. Malaviya

Petitioner

Mr. M.A. Mahalle

Advocate for the  
Petitioners

Versus

U.O.I. & Ors.

Respondents

Mr. K.D. Kelkar

Advocate for the  
respondents

C O R A M :

The Hon'ble Shri Justice M.S. Deshpande, V.C.

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

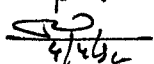
(1) To be referred to the Reporter or not ? —

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

  
Vice Chairman

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done corrected on 23/3/95.



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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESCOT ROAD, BOMBAY 1

O.A. NO.45/92

Krishna Rama Dayal Malaviya

..Applicant

V/s

Chief Commissioner of I.T. & Another

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, V.C.  
Hon.Shri P.P.Srivastava, Member(A)

Appearance:

Mr. M.A.Mahalle

Counsel for the applicant

Mr. K.D.Kelkar

Counsel for the respondents

ORAL JUDGMENT:

DATED: 23.3.95

(Per: M.S.Deshpande, Vice Chairman)

By this application the applicant challenges the charge sheet and the penalty of censure imposed on the applicant as a sequel to the chargesheet and as a consequence the holding up at the efficiency bar w.e.f. 1.8.1986. He has prayed for being allowed to cross efficiency bar with effect from 1.8.86 and a direction to the respondents to refix the pension of the applicant on the basis that the penalty was never imposed.

2. The applicant who was Inspector of Income Tax applied for permission to purchase a plot on 5.6.72 but as those papers were lost by the respondents he furnished a fresh copy on 4.12.82. The applicant was granted House Building Advance of Rs.40,875/- on 27.3.81 and the 3rd and final instalment came to be released on 25.1.82. A completion certificate was submitted to the respondents on 15.4.82. The applicant was promoted as Income Tax Officer (Group B) on 24.7.82 and was posted out of Nagpur to Yevotmal. The house had been constructed

at Nagpur. On 17.9.82 the applicant applied for raising loan from his relatives, but no loan was taken from the relations. Certain information was asked by the respondents and those certificates were furnished. The applicant also included the property which had been purchased in the annual statement regarding immovable property which had been furnished under the rules on 8.1.85. On 8.4.83 the respondent no.2 sought clarification from the applicant as to why the sanction of the department required under Rule 18(g) of CCS rules for constructing the ground floor had not been obtained prior to the construction as well as the valuation report of the ground floor and its estimated cost. On 21.6.83 the applicant requested the department to regularise the matter and furnished the necessary information including that he intended to take a loan from Nagpur Cooperative Housing Society amounting to Rs.37,600 for construction of the first floor and also sought permission to construct the first floor. No reply was sent to this communication and the time limit for objecting to the grant of permission for construction of the first floor expired by virtue of note No.2 stated below Rule 8 of CCS conduct rules. In October 83 the Nagpur Cooperative Housing Society granted to the applicant a sum of Rs.37,600/- for the construction of the first floor and the acquisition of property was intimated to the respondents by the applicant on 8.1.85. On 8.2.85 the applicant also communicated the details of the construction of the first floor and the source of the funds obtained for the construction. On 11.3.85 the respondent no.2 sent a letter informing the applicant that he had failed to obtain prior sanction under rule 18(2) of CCS(CCA) Rules for the ground floor construction and to give source of additional investment of Rs.8,000 and also of violation of rules as the prior sanction had not been obtained under rule 18(2) read with 16(4) of CCS(CCA) rules. The applicant was informed that he should submit a detailed explanation and send the statement of valuation and obtain ex-postfacto sanction of the Commissioner of Income Tax for the relevant lapses. This the applicant complied by his letter dated

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27.3.85. On 26.11.85 the applicant wrote to the Respondent no.2 in response to letter dated 25.9.85 that the applicant had taken a loan from Nagpur Cooperative Housing Society upon the security of the first floor of the house and also enclosed the copies of all relevant documents. Correspondence followed thereafter and finally on 10.1.91 the applicant was served with a chargesheet under Rule 16 of the CCS(CCA) Rules informing him of the contravention of Rules 18(2) and Rule 16(4) of CCS(CCA) Rules. The applicant sent his reply to the charge sheet on 14.1.91 demonstrating all the points which he had communicated with the respondents. But on 25.4.91 the respondent no.2 passed an order allowing the applicant to cross the Efficiency Bar only from 7.4.91 instead of 1.8.86. The applicant made a representation to the respondent no.1 in respect of withholding of the Efficiency Bar but that representation was rejected on 22.7.91. The applicant, therefore, approached this Tribunal for the aforesaid reliefs by filing the present application on 4.12.91.

3. A notice before admission was issued to the respondents and the respondents took time for filing the reply and the case came to be admitted on 13.8.92.

4. The first point raised on behalf of the respondents was that the applicant had not exhausted the departmental remedies by preferring an appeal against the penalty of censure which was imposed on him. We see no merit in this contention because a detailed representation was made by the applicant on 25.4.91, Annexure A-24, setting out the entire history of the transaction and also referring to the penalty of censure which came to be imposed upon him and urging that on the basis of the facts which had been disclosed that penalty could not have been imposed on him and the follow up action of withholding the Efficiency Bar could not have been taken. This came to be rejected by the order dated 22.7.91 in the following terms:

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"The C.I.T. Nagpur has followed the correct procedure in the matter. There is no provision for review of the CIT's decision as per CCS(CCA) Rules. As such there is no merit in the representation".

It is obvious that the respondents completely missed the provisions of Rule 23 of the CCS(CCA) rules which enabled the applicant to file an appeal against, firstly under clause (iii) against an order enhancing any penalty, imposed under Rule 11 and secondly against any order imposing any of the penalties specified in Rule 11 whether made by the disciplinary authority or by any appellate or revising authority and thirdly clause (iv) against an order which denies or varies to his disadvantage his pay, allowances, pension or other conditions of service as regulated by rules or by agreement. In any event by admission of the application on 13.8.92 all the departmental remedies which the applicant had been abated u/s. 19(iv) of the Administrative Tribunals Act, 1985. We, therefore, see no merit in the first objection raised on behalf of the respondents.

5. It appears that by the letter dated 11.3.85 the Commissioner of Income Tax sought to take action against the applicant for his failure to obtain prior sanction under Rule 18(2) for the construction of the ground floor, for not obtaining prior sanction for construction of the 1st floor under provision of Rules 18(2) and 16(4) and for taking loan of Rs. 35,000 from the Housing Society and also the additional source of Rs. 8,000. The Id. Counsel for the respondents stated that this letter was not pursued because the memorandum dated 10.1.91 was issued stating that a decision has been taken to impose only a minor penalty on the applicant for the violation of Rules 18(2) and 16 (4) of the C.C.S. (Conduct) Rules. The contention on behalf of the applicant was that no action could be taken under Rule 18(2) of the CCS(CCA) Rules, as Rule 18 of the Conduct Rules provides as follows:

*[Handwritten signature]*

"No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift, or otherwise in his own name or in the name of any member of his family: provided that the previous sanction of the prescribed authority shall be obtained by the Government servant if any such transaction is with a person having official dealings with him.

This proviso was substituted by the notification dated 7 March 1986. But there is no allegation in the present case that the transaction was with a person having official dealings with him. A time limit was prescribed for action to be taken under Rule 18 (2) and 18 (3) by which the Government of India, Department of Personnel & Training O.Ms. dated 7.7.88 and 30.12.88, and the time limit prescribed for 18(2) and 18(3) was 30 days. If the sanction was not granted within the prescribed period, the Applicant could presume that permission was granted by the competent authority in the absence of any communication from them. In the present case, however, it was clear that the Respondents had the knowledge and the Applicant had intimated the Respondents. This was all that was necessary under Rule 18(2). Even the learned counsel for the Respondents was not in a position to urge beyond referring to Rule 18(2) that this proviso can be said to have been violated by the Applicant.

6. Rule 16(4) says that no Government servant shall, save in the ordinary course of business with a Bank or a public limited company; either himself or through any member of his family or any other person acting on his behalf lend or borrow or deposit money as a principal or an Agent, to, or from, or with, any person or firm or private limited company within the local limits of his authority or with whom he is likely to have official dealings, or otherwise place him under any pecuniary obligation to such person, or firm or private limited company. Clearly therefore, Rule 16(4) of the Conduct Rules could not have been applied to the Applicant's case.

7. It was urged on behalf of the Respondents that the Applicant had violated the instructions contained in the Govt. of India O.M. dated 2.12.82 which provides that to create a second mortgage of the property already mortgaged to the President of India, prior permission of the Department has to be obtained. In the present case, it was the case of the Applicant that what had been mortgaged to the President was the plot and the ground floor construction on it when the ground floor was constructed. The mortgage was created in favour of the Co-operative Housing Society only in respect of the first floor for the loan taken. This position has not been traversed. It is well established that there can be duality of ownership of the plot and construction thereon. The mortgage to the Government is limited to the plot and the ground floor. The mortgage was not of the first floor to the Government and it could not be said in the circumstances that there was a second mortgage created on the floor for which permission of the Government was necessary.

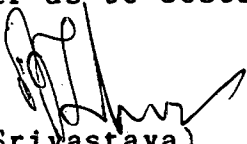
8. The applicant had set out all the details in his representation which he had made and if it were to have been properly considered the above position would have been clear to the authorities and it is obvious that there was a clear non-application of mind by the authorities to the material aspects of the present case.

9. In view of what we have said above, the punishment of censure could not have been imposed on the Applicant on the premise that he had committed misconduct for which a minor penalty enquiry could have been initiated. Since the holding of the Applicant's increment at the efficiency bar was only due to the penalty of censure imposed upon him, the action of the Respondents in withholding the E.B. of the Applicant cannot be sustained. We, therefore, quash the findings of guilty and the punishment of censure imposed on the Applicant and direct the Respondents to pay all the

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monetary benefits to the Applicant as if his E.B. had not been withheld. The pension of the Applicant upon such re-fixation and all the retiral benefits shall be paid to him on the basis of his pay that would be re-fixed immediately prior to his superannuation. All this shall be worked out and paid to the Applicant within four months from the date of communication of this order. No order as to costs.

  
(P.P. Srivastava)

Member (A)

  
(M.S. Deshpande)

Vice Chairman

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