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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A. NO: 79/92 199
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DATE OF DECISION 21.10.1992

Shri M.T.Gurbaxani Petitioner

Shri M.A.Mahalle Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri P.M.Pradhan Advocate for the Respondent(s)

CORAM:

The Hon'ble Mr. Justice S.K.Dhaon, Vice Chairman

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

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whethertheir Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No

(S.K.Dhaon)
Vice Chairman

mbm*

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, BOMBAY

OA.NO. 79/92

Shri Motiram Tejumal Gurbaxani ... Applicant

V/S.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri Justice S.K.Dhaon
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Shri M.A.Mahalle
Advocate
for the Applicant

Shri P.M.Pradhan
Advocate
for the Respondents

ORAL JUDGEMENT Dated: 21.10.1992

(PER: S.K.Dhaon, Vice Chairman)

The applicant, a retired Income Tax Officer is really aggrieved by the order dated 31.10.1991 passed by the Commissioner of Income-tax Bombay city-I directing that a fresh enquiry shall be held by a newly appointed enquiry officer.

2. The undisputed facts are these. The applicant was to retire from service on 31.12.1983. A charge-sheet was given to him on 28.12.1983. An Enquiry Officer, namely, one Shri A.K.Rastogi, hereinafter refer to as Shri Rastogi, was appointed. On 26.4.1985 Shri Rastogi submitted his report to the punishing authority opining therein that the charge of mis-conduct against the applicant had not been made out. On 23.6.1986 the punishing authority passed two orders. By the first order it came to the conclusion that he should remit the applicant's matter for a fresh or further enquiry by an officer other than Shri Rastogi. By the other order he appointed one Shri Naidu as the Enquiry Officer. On 28.1.1987 the punishing authority passed an order that a de-novo enquiry should be held.

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3. On 28.12.1988 the applicant preferred original application No. 8/89 in this Tribunal. He challenged, inter-alia, the orders dated 23.6.1986 and 28.1.1987 passed by the punishing authority. We may clarify that the order of dated 23.6.1986 which had been challenged by the applicant was the one by which the punishing authority had expressed the opinion that a case had been made out for remitting the matter to the enquiry officer for a fresh enquiry.

4. This Tribunal on 5.4.1989 disposed of the aforesaid original application of the applicant. It quashed the orders dated 23.6.1986 and 28.1.1987 passed by the punishing authority. It issued the following directions :-

(i) "We direct that if the Disciplinary Authority desires to differ from the findings of Commissioner of Departmental Enquiries report dtd. 26.4.1985 then he shall give an opportunity to the applicant of making a representation against his proposal. After considering the representation he may pass an appropriate order as he may deem fit."

(ii) "We further direct that in case the Disciplinary Authority proposes to have action under Rule 15(1) of the CCS(CCA) Rules, 1965 then he shall appoint the same Inquiry Officer, i.e. Mr.A.K.Rastogi. But if he finds that Mr.A.K.Rastogi will not be available for conducting the enquiry, then he will be at liberty to appoint any other person as Inquiry Officer."

5. The respondents did not take any action under the direction No. (i). However, they purported to act under direction No. (ii). On 28.8.1991 the Commissioner of Income-tax issued a communication to the applicant informing him that he felt that the enquiry held by Shri Rastogi was not properly held. He, therefore, proposes to hold a fresh enquiry. Accordingly, he called upon the applicant to make such representation as he desired against the said proposed enquiry within a specified time. On 31.10.1991, as already stated, the impugned order was passed.

6. In the impugned order the recitals, as material, are these. Enquiry proceedings have not been properly conducted by Shri Rastogi. It is proposed to have a fresh enquiry under Rule 14 read with Rule 15(1) of the CCS(CCA) Rules 1965 against the applicant. Since it is reported that Shri Rastogi has been reverted back to his parent department and, therefore, he is not available to conduct a fresh enquiry. Therefore, in the purported exercise of powers under sub-rule (2) of Rule 14 Smt. Banani Dasgupta, D.C.(Enquiry) Bombay is being appointed as Inquiry Authority to enquire into the charges framed against the applicant in place of Shri Rastogi.

7. We may now consider sub-rule (1) of Rule 15 which provides, inter-alia, that the disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

8. The submission made in the forefront by Shri Mahalle, learned counsel for the applicant is that by the impugned order the Commissioner of Income-tax directed that a fresh enquiry should be held and therefore the order runs counter to Rule 15(1) and is therefore void. There is no doubt that in the impugned order the expression used is 'fresh'. However, keeping in view the directions given by this Tribunal in OA.8/89 which have attained finality and keeping in view the terms of paragraph 2 of the impugned order wherein Rule 15(1) is recited and also keeping in view the order dated 28.8.1991 whereby the applicant was called upon to show cause against the proposal to hold a fresh enquiry and also having regard to the context and setting in which the aforesaid expression has been used in the

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impugned order, We are satisfied that the said expression has been rather loosely used. In fact, the expression which should have been used was 'further'. It is a settled law that in interpreting an order or a document the pith and substance and not its form must be seen. We, therefore, come to the conclusion that the impugned order has been passed within the four corners of Rule 15(1) in so far as the Commissioner purported to direct that a further enquiry should be held in the case of the applicant.

9. We may read Rule 15(1) again. In it the important words are that the disciplinary authority must not only have reasons in its possession but it must also record the same in writing before exercising his power under the said sub-rule. On the face of it, the order dated 31.10.1991 gives only one so-called reason, namely, that the enquiry proceedings have not been properly conducted. We must remember that the punishing authority while acting under Rule 15 is performing a quasi-judicial function. It is enjoined by the rules to record reasons in writing. The purpose being that it should pass orders on objective basis so that the legality of its order may be tested before an appropriate forum, if a necessity arises. Reasons form the basis or the foundation of an action. Reasons constitute a bridge between the material and the conclusion arrived at. As very aptly described in judicial decisions, reasons constitute the nexus between the material and the conclusion. Therefore, there can be no escape from the conclusion that the expression, as used in the impugned order, that the proceedings have not been properly conducted amount to no reasons in law. However, it appears that it is not the requirement of Rule 15 (1) that the reasons should be recorded in the order itself. The same may be recorded elsewhere.

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In the instant case, it appears, the real order is to be found in the file which has been produced before us by Shri P.M.Pradhan, the learned counsel for the respondents. It appears that the communication which was issued to the applicant in the form of the order is not complete. The complete order is to be found on the file and in it we find in paragraph 4 the following :"I have gone through the said report and the entire inquiry proceedings file of the Inquiry Officer. It is seen that the assessment record even though they were shown as documents relied upon by the prosecution in Annexure III to the Memorandum dated 28.12.1983 were not produced as Exhibits. I have, therefore, come to the conclusion that inquiry proceedings have not been properly conducted in the case of Shri M.T.Gurubaxani." We, therefore, come to the conclusion that reasons had been recorded by the Commissioner of Income-tax in his order dated 31.10.1991.

9-A. We now come to the question as to whether the reasons as recorded are really relevant or germane to the order passed. The only reason given is that the assessment orders were not produced as Exhibits before the Inquiry Officer.

10. The charge-memo given to the applicant contained two allegations. They were that during the period 1979 to 1980 the applicant made assessments in several cases in a dishonest and malafide manner and caused wrongful loss of revenue to the Government and displayed gross negligence as well as carelessness in the discharge of his official duties. The statement of imputations of misconduct contained the particulars of the assessees. It gave in detail the facts of the case of each of the assessee and also the material placed before the Income-tax Officer about the applicant and also the conclusions of the applicant. One of the annexures to the said document contained the list of documents by which the articles of charge framed against the applicant were proposed to be sustained. To us, it appears that the documents supplied to the applicant in the form of imputation really contained a summary of the orders of assessment passed by the applicant.

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11. In the Inquiry Officer's report it is recited :"I do not find any substance in the allegation that the C.O. had not scrutinised the returns and that he had finalised assessments in a careless and negligent manner and in undue haste. On the contrary, there is ample evidence on record to show that the C.O. very much applied his mind to the facts placed before him and disallowed the major portion of gifts which were not supported by any proof and had admitted only reasonable portion of such gifts. He had also adopted enough care to see that the income assessed by him was not on very high side because it is common knowledge that in such cases, the appellate authority takes a different view. ----------"

12. Evidently, the applicant was aware of the contents of the order of assessment. The Inquiry Officer was aware of the contents of the order of assessment and he had applied his mind to the said contents after perusing them in detail. It follows, therefore, that the mere fact that the assessment orders had not been formally exhibited did not and could not amount to any material irregularity in the disciplinary proceedings. The punishing authority, in our opinion, really relied upon a circumstance which was not material for directing a further enquiry. He, therefore, took into consideration a factor which was really not relevant or germane to the exercise of power under Rule 15(1). In fact, he created a ground for exercising power which was, in fact, non-existing. Such an exercise of power is bound to be declared as bad. We, therefore, come to the conclusion that the punishing authority exceeded its jurisdiction in passing the impugned order dated 31.10.1991.

13. We come to the question as to whether we should now give another chance to the punishing authority to make up his mind on the basis of the report of the Inquiry Officer, namely, Shri Rastogi. The applicant has retired from service.

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The matter has been hanging fire since the year 1983. We feel that the applicant has been sufficiently punished by keeping the sword of Democles hanging on his head all these years. We, therefore, feel that it will not be in the interest of justice to allow the proceedings to go on any further. We are, therefore, inclined to quash the disciplinary proceedings.

14. It is true that in the application there is no prayer that the disciplinary proceedings may be quashed. This Tribunal also exercises power under Article 226 of the Constitution as a substitute ~~functionary~~ of the High Court. Apart from the fact that courts of law are clothed with sufficient power to mould the relief to meet the exigency of a case, Article 226 confers sufficient powers so as to enable the court to pass such orders as it deem just and proper. Of course, even the High Court cannot issue any order under Article 226 which may be in conflict with any constitutional or statutory provisions. We are satisfied that neither any constitutional nor any statutory provision would be violated if the disciplinary proceedings are quashed by us. We, therefore, do not find any substance in the challenge made by Shri Pradhan, the learned counsel for the respondents to our jurisdiction to quash the disciplinary proceedings.

15. The application succeeds and is allowed. The impugned order dated 31.10.1991 passed by the Commissioner of Income-tax is quashed. The charge-memo given to the applicant on 28.12.1983 is also quashed. We direct the respondents not to take any departmental action against the applicant on the basis of the aforesaid charge-memo dated 28.12.1983.

16. There shall be no order as to costs.

(M.Y.PRIOLKAR)
MEMBER (A)

(S.K.DHAON)
VICE CHAIRMAN

mrj.