

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH:MUMBAI
OA No. 1209/1994

THURSDAY, THE 19TH DAY OF OCTOBER, 2000

HON'BLE MR.JUSTICE ASHOK AGARWAL, CHAIRAMAN
HON'BLE MR.B.N.BAHADUR, MEMBER(A)

Nazir Fazal Merchant
residing at 85, Dongri Street
3rd Floor, Room No.7, Dongri
Bombay-400 009.

... Applicant

(By Advocate Shri P.A.Prabhakaran)

vs.

1. Chief Commissioner of Income Tax
(Admn.), Bombay
Ayakar Bhavan, Maharshi Karve Road
Bombay-400 020.
2. Commissioner of Income Tax
Bombay City XII
Pratyaksh Kar Bhavan
C-13, Bandra Kurla Complex
Bandra East, Mumbai-400 051.
3. The Dy. Controller of Estate Duty
Bombay
C/o Respondent No.2
4. Shri Mani Rajgopal
Assistant Commissioner of Income Tax
Coimbatore
(Tamil Nadu)

... Respondents

(Shri M.I.Sethna, counsel with Shri V.D.
Vadhavokar, counsel)

ORDER (ORAL)

JUSTICE ASHOK AGARWAL:

Applicant, who at the material time was a Tax Assistant in the office of the Assistant Controller of Estate Duty was proceeded departmentally under the following articles of charge:

ARTICLE-I

"Shri N.F. Merchant, while functioning as Tax Assistant, Estate Duty Circle, Income-tax Office, Ballard Pier, Bombay between Nov., 1979 and January, 1980 after 17.11.1979 and before last week of Nov., 1979 on 3-4 occasions whenever Shri Yashwant visited the Estate Duty Circle, the said Shri N.F. Merchant demanded a bribe of Rs.500/- from the said Shri Yashwant as a motive or reward for expediting the issue of Estate Duty Certificate to Shri Yashwant's mother to enable

...2.

her to claim the GPF amount of late Shri N.K. Keluchkar from the Provident Fund Commissioner. Further in the last week of Nov., 1979 the said Shri Merchant made a demand of Rs.300/- from Shri A.V. Bata, a maternal uncle of Shri Yeshwant for the purpose aforesaid and on request from Shri Bata the said Shri Merchant reduced the demand of bribe from Rs.300/- to Rs.200/- for the purpose aforesaid and further the said Shri Merchant told Shri Bata that the certificate would be issued only if the bribe amount was paid. Further on 11.12.1979, the said Shri Merchant repeated the demand of bribe for the purpose aforesaid from Shri Bata. Further between 17.12.1979 and 15.1.1980 the said Shri Yeshwant visited the Estate Duty certificate but every time the said Shri Merchant repeated the demand of bribe from Shri Yeshwant and told him that he would give a certificate to Shri Yeshwant only if the bribe amount was paid.

Shri N.F. Merchant by his above acts exhibited lack of integrity and contravened Rule 3(1) (i) of the Central Civil Services (Conduct) Rules, 1964 for which he is charged.

ARTICLE-II

Shri N.F. Merchant while functioning as above on 16.1.1980 in the forenoon repeated the demand of bribe of Rs.200/- from Shri A.V. Bata as a motive or reward for expediting the issue of Estate Duty Certificate to Shri Yeshwant's mother to enable her to claim the GPF amount of the late Shri N.K. Keluchkar from the Provident Fund Commission and in the afternoon on the same day the said Shri Merchant repeated the demand of bribe and accepted a sum of Rs. 200/- as a motive reward for the purpose aforesaid from Shri A.V. Bata and thereby contravened Rule 3(I)(i) of the Central Civil Services (Conduct) Rules, 1964 which is discharged.

Further between 17.12.1979 and 13.1.1980 Shri Yashwant met the said Shri Merchant on several occasions for getting the Estate Duty Certificate, but every time Shri Merchant repeated the demand of bribe (sic) give the certificate only if the bribe amount was paid.

On 16.1.1980 in the forenoon the said Shri Merchant repeated the demand of bribe as aforesaid from Shri A.V. Bata for the aforesaid purpose. In the afternoon on the same day i.e. on 16.1.1980 the said Shri Merchant repeated the demand of bribe and accepted a sum of Rs.200/- as such from Shri A.V. Bata for the purpose aforesaid.

...3.



It is clear from the above facts that Shri N.F.Merchant while functioning as a Tax Assistant, Excise Duty Circle, Income-tax, Ballard Pier, Bombay exhibited lack of integrity and thereby contravened Rule 3(1)(i) of the Central Civil Service (Conduct) Rules, 1964 for which he is charged."

It is not necessary to detail various stages of the enquiry as the same are no longer relevant. It is enough to state that the enquiry officer by his report of 10.9.1986 has on appreciation of the evidence adduced before him both orally as also documentary had held both the charges as proved. A copy of the enquiry report was duly submitted by the disciplinary authority to the applicant, who in turn, submitted his representation against the same. Disciplinary authority by his order dated 16.3.1993, on a careful consideration of the submissions advanced by the applicant has accepted the findings of the inquiry officer and has proceeded to impose a penalty of removal of the applicant from service. Aforesaid order of the disciplinary authority was carried by the applicant in an appeal. The appellate authority by his order of 24.11.1993 has accepted the findings both of the enquiry officer as also of the disciplinary authority, and has maintained the order of penalty and has dismissed the appeal. Aforesaid orders are impugned by the applicant in the present OA.

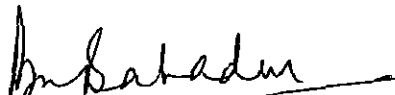
2. We have heard Shri P.A. Prabhakaran, the learned counsel who has appeared for and on behalf of the applicant as also Shri Vadhavokar with Shri M.I.Sethna, learned counsel appearing for and on behalf of the respondents. We have with their assistance gone through the entire record of the case. In our judgement, the orders impugned are just and proper


...4.



and do not call for any interference in the present OA. This is not a case as is sought to be submitted by Shri Prabhakaran where the findings have been based on no evidence. We have perused the relevant evidence both oral as also documentary and we have no hesitation in holding that the findings are based on good and proper evidence which has been adduced in the enquiry. It has to be remembered that we are not a court of appeal. It will, therefore, not be open to us to reappraise the evidence and to arrive at a finding contrary to the one which has concurrently found favour with the enquiry officer, the disciplinary authority as also the appellate authority. Both on the issue of demand of bribe as also on acceptance of the same, there is sufficient evidence on record to justify the finding of guilt of the applicant. It is true and this has also been found by the disciplinary authority that there are contradictions in the evidence of one of the witnesses, namely Mr. Bata who is the complainant in the case. The said contradictions have been considered and yet his evidence has found favour with the relevant authorities. Moreover, this is not the only evidence which has been relied upon. On appreciation of the totality of the evidence on record, we have no hesitation in holding that the findings are fully justified.

3. Present OA, in the circumstances, we find is devoid of merit. The same is accordingly dismissed. No costs.


(B.N. BAHADUR)
MEMBER (A)


(ASHOK AGARWAL)
CHAIRMAN

SNS

Next date of hearing 21/09/2000

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.1209 OF 1994

N.F. Merchant

Applicant

Vs.

Union of India & Ors.

Respondents

(Chief Commissioner of Income Tax,
Mumbai)

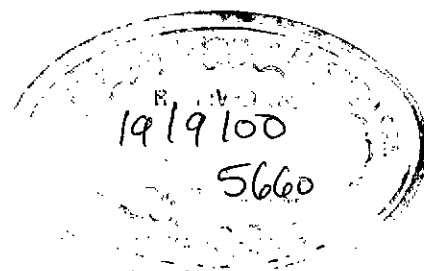
I N D E X

S.No. Description of Document Exh.No. Page No.

1. Affidavit in reply on behalf of Respondents.
2. Copy of reply to O.A. No. 95/90.

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(178-190)
"1" 05 - 17

Recd
19/9/00



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.1209 OF 1994

N.F. Merchant

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Vs.

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Respondents

(Chief Commissioner of Income Tax,
Mumbai)

I, V. K. Vishwanathan, Assistant
(S.L.)

Commissioner of Income Tax, Mumbai, having my
office at Aayakar Bhavan, M.K. Road, Mumbai -400
020 do say on solemn affirmation as under :

1. I have read a copy of the aforementioned
Application. I have also perused all the relevant
documents available in my office in connection with
the issues involved in the Application. I am
accordingly conversant with the facts and
circumstances of the case and able to depose to the
same. I am making this affidavit in reply to the
O.A. on behalf of the Respondents.

2. Without prejudice to what is stated
hereinafter, I say and submit that the Application
as filed is totally misconceived and discloses no
cause of action which can be entertained by this



Hon'ble Tribunal. I therefore, pray that the Application deserves to be dismissed with costs. What is stated hereinafter is without prejudice to the aforesaid submission.

3. It may be respectfully recalled that the Applicant was dismissed from service on 6-1-87 vide order under rule 15(4) read with rule 11(9) of the CCS(CCA) Rules, 1965. He filed an appeal against this order before the Chief C.I.T. and the Chief C.I.T. Mumbai vide his order dated 24-11-93, confirmed the penalty imposed. He filed an O.A. No. 95/90 before the Hon'ble CAT Mumbai Bench and the CAT vide its order dated 13-8-91, quashed both the above orders on the ground that a copy of enquiry officer's report was not given to the applicant. However, the CAT had observed that this action will not preclude the disciplinary authority from going ahead with the disciplinary proceedings beyond the stage of giving the E.O's report to the applicant giving him reasonable time to file objections against the same. Accordingly, a copy of the EO's report was forwarded to the applicant on 9-1-92. The Applicant filed his reply on 8-2-92 and the Disciplinary authority again agreed with the findings of the EO and imposed the penalty of removal from service w.e.f. 16-3-93. Against this



order, he filed an appeal to the Chief C.I.T. on 4-6-93 and the Chief C.I.T. after giving him an opportunity of being heard on 30-8-93, dismissed the appeal and confirmed the penalty order vide his order dated 24-11-93.

4. I further say that the present D.A. 1209/94 has been filed against this order. The contents of the D.A. 95/90 and the present one broadly appear to be the same except the development which took place after the Hon'ble Tribunal's order dated 13-8-91. The Respondents had in fact, filed a reply to the D.A. 95/90 on or about 9-8-90, a copy of which is annexed herewith and marked as Exhibit "1". In D.A. 05/90 in para 4.26 the applicant had submitted that he was not given a copy of the EO's report, while in the present D.A. also (para 4.28) it is stated that EO's report was not given to the applicant.

Ex. "1"

In the premises I pray that the Application be dismissed with costs.

VERIFICATION

I, V.K. Vishwamathan, Assistant
(S.L.)
Commissioner of Income Tax, Mumbai, on behalf of



the Respondents do hereby verify that the contents of above paragraphs are true to my knowledge and belief and I believe the same to be true.

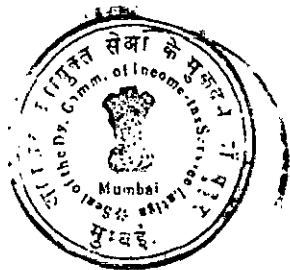
Place : Mumbai

Dated : ~~18th~~ September 2000
12th

VKVL

(श्री. के. विश्वनाथन)
V K VISHWANATHAN
पहासक आयकर आयुक्त,
Asst. Commissioner of Income-tax
सेवा के मुकामें, मुम्बई.
Service Litigation, Mumbai.


Advocate for the Respondents



(V. D. Vadhanekar)
Advocate

for Mr. L. Selvaraj

Sr. Cent. Govt. St. Counsel.
C.W.T. Mumbai Bench,
Mumbai