

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION NO. 757/97/199

Date of Decision: 29 SEPTEMBER, 98

R. B. Gade

Petitioner/s

MR. P. A. PRABHAKARAN

Advocate for the
Petitioner/s

V/s.

COMMISSIONER OF IT&Anor.

Respondent/s

MR. V D Vadhavkar
for Mr. M I SETHNA

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri Justice R.G.Vaidyanatha, V.C.

Hon'ble Shri D.S. Baweja, Member(A)

(1) To be referred to the Reporter or not? W
(2) Whether it needs to be circulated to other Benches of the Tribunal? W

Alphonse
V.C.

trk

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESOT ROAD, MUMBAI 400001

O.A. No. 757 OF 1997

DATED : THIS 29 DAY OF SEPTEMBER, 1998

CORAM : Hon. Shri Justice R G Vaidyanatha, V.C.
Hon. Shri D S Baweja, Member(A)

R.B.Gade
Ex. Income Tax Officer
R/a. Flat No.201 A,
Manoday Building
Dattapada Road
Borivali (E)
Mumbai 400066
(Adv. Mr. P A Prabhakaran)

Applicant

V/s.

1. Commission of Income Tax
Bombay City-I having its
office at Aaykar Bhavan,
Maharshi Karve Marg,
Mumbai 400020.

2. Union of India
through Shri Sanjay Puri
Under Secretary
Government of India
Ministry of Finance
Department of Revenue
Central Board of Direct Taxes
Central Secretariat
South Block, New Delhi 110001
(By Adv. Mr. V D Vadhavkar, for
Mr. M I Sethna, Senior Standing
Counsel)

Respondents

ORDER

=====

(Per: R G Vaidyanatha, Vice Chairman)

1. This is an application filed under section 19 of the
Administrative Tribunals Act, 1985. Respondents have
filed reply. We have heard the learned counsel appearing
on both the sides.

2. At the relevant time the applicant was working as
Income Tax Officer at Mumbai. The applicant was placed
under suspension by order dated 26.4.1983. Then



disciplinary inquiry was instituted against the applicant by issuing a charge sheet dated 17.8.1983. The applicant filed a written statement denying the allegations. Then the inquiry was held. The inquiry officer gave a report dated 18.8.1984 holding that the charges are proved. Then the disciplinary authority passed an order dated 7.2.1985 accepting the report of the inquiry officer and imposing the punishment of dismissal from service. The applicant preferred an appeal to the President of India which came to be dismissed by order dated 7.1.1988. Then the applicant filed a O.A. challenging the order passed by the disciplinary authority in this Tribunal in O.A.No.3/86. It appears that during the pendency of that O.A. the appellate authority passed an order dated 7.1.88. This Tribunal vide order dated 12.8.91 quashed the orders passed by the competent authority only on the legal ground that copy of the inquiry report had not been furnished to the applicant before the disciplinary authority passed the impugned order. An observation was also made that is is open to the disciplinary authority to proceed with the inquiry after supplying a copy of the inquiry report. Then the disciplinary authority furnished a copy of the inquiry report to the applicant. In the meanwhile the applicant had attained the age of superannuation on 31.10.1985. Therefore the matter was submitted to the President for taking action under Rule 9 of the Pension Rules. After considering the representation of the applicant and after consulting the Union Public Service Commission, the President passed the



impugned order dated 26.6.97 under which an order is passed withholding the full pension of the applicant on a permanent basis. Being aggrieved by this order the applicant has come up with the present application.

3. Number of grounds are taken in the O.A. challenging the disciplinary inquiry proceedings and the final order passed by the President of India. Mr. Prabhakaran, the learned counsel for the applicant at the time of argument pressed before us some of the grounds and contentions and urged that the impugned order is liable to be quashed. He also made an alternative submission that the penalty of withholding the entire pension on permanent basis is grossly disproportionate to the alleged misconduct of the applicant and requires modification. On the other hand Mr. V.D. Vadhavkar, on behalf of Mr. M I Sethna, counsel for respondents, contended that the disciplinary inquiry has been held according to rules and this Tribunal cannot sit in appeal over the orders of the competent authority. As far as penalty of withholding full pension is concerned, he submitted that the penalty is just and reasonable having regard to the gravity of the charges.

4. We will consider the contentions urged by the learned counsel for the applicant one by one.

5. The first contention of the learned counsel for the applicant is that withholding of pension can be done only



if the misconduct is grave as mentioned in Rule 9 of the CCS(Pension) Rules 1972. The words used in Rule 9 are "Grave misconduct or negligence". It was submitted that the alleged misconduct against the applicant or negligence is not grave and therefore the action of withholding full pension under Rule 9 was not warranted. On the question of principle that the President has no right to withholding pension unless misconduct or negligence is grave there cannot be no two opinions. Whether on facts the alleged misconduct or negligence is grave or not is a question depending upon the facts and circumstances of each case.

6. In the present case the charges framed against the applicant are as follows:

"Shri R.B. Gade, I.T.O., Group B, while functioning as I.T.O. Market Ward, during the period 1979 to 1980

- (a) made assessments in several cases in dishonest and malafide manner and caused wrongful loss of revenue to the Government and
- (b) displayed gross negligence as well as carelessness in the discharge of his official duties.

7. Then the charges are supported by detailed imputation of misconduct which runs into 31 pages (vide pages 34 to 65 of the paper book). detailed allegations were made as to how the applicant has made assessment in respect of seven assesses. According to the allegations the applicant has passed assessment orders in respect of these assesses with a malafide intention and with



collusion of the assesses and thereby causing loss of revenue to the Government. The allegations are very serious and grave and if these allegations are proved then certainly it called for invoking rule 9 of the Pension Rules. Hence we are not prepared to accept the argument of the learned counsel for the applicant that the misconduct alleged against the applicant was not a grave misconduct. It is certainly not a simple misconduct like absence from duty for few days or some other minor misconduct. It is a grave misconduct touching the question of integrity and honesty of the applicant in the discharge of his duties as I.T.O. Therefore the argument of the learned counsel for the applicant that this is not a fit case to withhold pension under Rule 9 cannot be accepted.

8. The next submission of the learned counsel for the applicant is that the misconduct is not proved against the applicant. He took us to the relevant pages of the inquiry report and the order of the President etc. We have already seen the charges framed against the applicant. Number of witnesses were examined during the inquiry, then we have a detailed inquiry report which runs into 20 pages (vide pages 70 to 89 of the paper book). The inquiry officer has referred to the case of the prosecution, defence of the applicant and then raised points for determination at para 19 and then took issue by issue and considered the evidence and recorded a finding that the misconduct is proved. He recorded a

?

✓

MM

finding that the delinquent officer completed the assessment in a careless and negligent manner. He also held that in some cases the applicant proceeded to pass orders of assessment though he had no territorial jurisdiction. He also noticed that some of the addresses of the assessee were fake and fictitious. He has also recorded a finding that the delinquent official acted in a particular way to bestow favour on the assessee in collusion with the assessee. Then he recorded a finding as follows:

"...The aforesaid circumstances and acts of omissions and commission of the CO lead to the inference that the CO was acting in dishonest and malafide which resulted in wrongful loss of revenue to the Govt. In accordingly hold that the charges as framed stand proved."

(in many places the inquiry officer has used the word "CO" which means Charged Officer viz., the present applicant).

9. On the earlier occasion the disciplinary authority passed a lengthy speaking order dated 7.1.88 wherein evidence was discussed in detail and the disciplinary authority agreeing with the inquiry authority held misconduct is proved. Of course this order came to be set aside by this Tribunal on a technical ground viz., that the order was passed without serving a copy of inquiry report on the applicant.

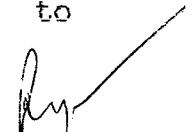
10. Then we come to the advice of the Union Public Service Commission dated 20.3.87. Even the UPSC has considered the nature of allegation/against the applicant



and there is brief reference to the evidence recorded and then it is held that the case is proved against the applicant which deserves penalty of dismissal from service, but since the applicant has retired from service it was advised that the pension may be withheld under Rule 9. Then the President has passed the impugned order dated 26.6.97 holding that the charge is proved and imposing the penalty of withdrawal of full pension.

11. The learned counsel for the applicant referred to some discrepancies and made some comments on the inquiry report. After going through the record we are satisfied that the report of the inquiry officer is based on proper appreciation of the evidence adduced before him. Then there is advice of the UPSC who have concurred with the opinion of the inquiry officer, then there is presidential order concurring with the finding of the Inquiry Officer and UPSC.

12. Now it is fairly well settled by recent decisions of the Supreme Court that the scope of judicial review is very limited. This Tribunal cannot sit in appeal over the findings recorded by the domestic tribunal. This Tribunal cannot reappreciate the evidence and take a different view, even if another view is possible. It is explained that judicial review is only to find out the legality of the decision making process and not the legality of the actual decision. In this case the applicant had sufficient and full opportunity to



represent his case, principles of natural justice have been fully complied with. The learned counsel for the applicant did not bring to our notice any irregularity or illegality in conducting the departmental inquiry or about any violation of principles of natural justice. In view of the law laid down by the Apex Court we cannot discuss the evidence produced during the departmental inquiry and take a different view than the one taken by the disciplinary authority / President of India, (vide 1998(1) SC SLJ 74 [UNION OF INDIA & ORS. Vs. B. K. SRIVASTAVA], 1998(1) SC SLJ 78 [UNION OF INDIA Vs. A. NAGAMALLESHWAR RAO]). For the above reasons we hold that on merits the applicant has not made out any case to interfere with the impugned order.

13. The next submission of the learned counsel for the applicant is that there is discrimination in awarding punishment to the applicant. He has pointed out like the applicant another I.T.O. J.C.Hinduja was also tried in a departmental inquiry of similar charges. Then it is pointed out that Hinduja has not been given any punishment and he has been allowed to retire voluntarily but whereas the applicant has been imposed the punishment of earlier dismissal from service and now withholding of the entire pension permanently. It was therefore submitted that the authorities have discriminated between two officers who faced departmental inquiry on identical charges. Reliance was placed on a decision of the Principal Bench of this Tribunal reported in (1998)38 ATC



76 [POORAN LAL Vs. UNION OF INDIA AND ANOTHER]. That was a case where one Chief Booking Clerk and a Booking Clerk were issued separate charges in respect of one transaction and then common inquiry was held. In respect of one official the punishment was removal from service and in respect of other punishment of penalty to the lowest grade for a period of 10 years. The officer who was removed from service challenged the same before this Tribunal. The Principal Bench observed that on merits the applicant has no case. In para 6 of the reported judgement the Principal Bench has clearly observed that two different standards cannot be applied by the appellate authority while disposing of the two appeals arising out of a common inquiry proceedings for a common charge. In our view the above decision has no application to the facts of the present case. For one thing the charge sheet against the applicant and the charge sheet against Hinduja were not in respect of same transactions. There was no common inquiry. Both were chargesheeted on different and independent act of commission and omission done by them in respect of different assesses for different periods. It may be that both were charge sheeted for their mis-conduct in passing assessment orders and the allegations are similar. But the inquiries were separate and the witnesses were separate. Therefore the rule which is applied in a common inquiry cannot be applied to the present case of the applicant and Hinduja.



14. Another distinguishing feature is that it is not a case of either disciplinary enquiry or appellate authority giving different punishments to applicant and Hinduja on identical charges as observed by the Principal Bench in the above decision. As far as Hinduja is concerned though a copy of inquiry report was given against him subsequently on his request he has been granted permission to retire voluntarily. The applicant has not brought on record as to on what grounds Hinduja asked for voluntary retirement and on what grounds the permission was granted by the competent authority. At any rate it is not a case of Hinduja being given any punishment by the disciplinary authority. It is a case of voluntary retirement on the request of the official. As far as the applicant is concerned he was punished as per the order of the disciplinary authority. It is not as if the applicant had also given application for voluntary retirement and that he was not retired and that Hinduja's request was granted. It is not the case of the applicant that by way of punishment he was removed from service and Hinduja was compulsorily retired. It is only in such a case the applicant could have some merit in asking that there was differential treatment. We do not know on what grounds Hinduja asked for voluntary retirement and on what ground the voluntary retirement was granted. Admittedly it was not a case of compulsory retirement of Hinduja by way of penalty. The applicant never made a request for voluntary retirement and therefore he cannot complain as to why Hinduja was given



compulsory retirement. Therefore, the two cases of Hinduja and the applicant are different in so far as in one it is a case of imposition of penalty of the disciplinary inquiry holding misconduct is proved and in another case the official is permitted to retire voluntarily, the grounds for which are not made out by the applicant. Therefore, it is not a case of differential treatment to two persons similarly placed in all respects.

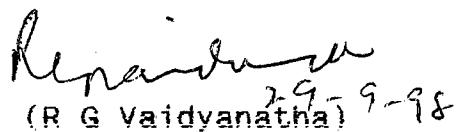
15. The next and the last submission is that the imposition of penalty of withdrawal of full pension was not justified. It is again a well settled principle that a court or Tribunal has no right to interfere with the penalty imposed by the competent authority. As already pointed out this Tribunal is not sitting in appeal over the orders of the disciplinary authority. It may be that in exceptional cases the court or tribunal may interfere if the penalty is disproportionate to the misconduct so as to shock the conscience of the court. In this case there are serious allegations against the applicant touching his integrity and ~~honesty~~ and allegations are made about malafide intentions and therefore it is not possible to say that it is a grossly disproportionate penalty so as to shock the conscience of the Tribunal. In our view none of the grounds are made out for interfering with the impugned order.



16. In the result the application fails and is dismissed. No costs.


(D S Bawej)

Member()A


(R G Vaidyanatha) 29-9-98

Vice Chairman

trk

R P Ato
without fee
by applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

REVIEW PETITION NO. 22 OF 99
IN
ORIGINAL APPLICATION NO.757/97.

Coram: Hon'ble Shri Justice R.G.Vaidyanatha,
Vice-Chairman.
Hon'ble Shri D.S.Baweja, Member(A).

R.B.Gade,
R/at Flat No.201-A,
Manoday Building,
Dattapada Road,
Borivli(East),
Mumbai - 400 066.

... Applicant (Original)
Review Petitioner.

V/s.

1. Commissioner of Income-tax,
Bombay City-I,
Ayakar Bhavan,
M.K.Road,
Mumbai-400 020.
2. Union of India
through Shri Sanjay Puri,
Under Secretary Govt. of India,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
Central Secretariat,
South Block,
New Delhi - 110 001..

... Respondents (Original)
Review Respondents.

: ORDER ON REVIEW PETITION BY CIRCULATION : Dt.30.6.99

(Per Shri Justice R.G.Vaidyanatha, Vice-Chairman)

This is a petition for reviewing our order
dt. 29.9.98. The Review Petition is now filed in June, 1999
about eight to nine months after our order, which is prima
facie barred by limitation and undue delay. No doubt, in
M.P. 401/99 has been filed for condoning delay on some
medical grounds with some medical certificates.

After perusing the materials on record and the

...2.



Review Petition we find that there is no apparent error in our order so as to call for review. If the applicant is aggrieved by our order his remedy is elsewhere. The present Review Petition does not come within the four corners of Review Petition under Order 47 Rule 1 CPC.

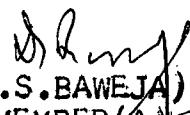
The contention that the papers are not submitted to the President for passing the impugned order of withholding of pension has no merit since the impugned order dt. 26.6.97 is a Presidential order and it has been issued in the name and by order of the President of India.

Another contention taken in the Review Petition is that one Mr. Hinduja has been given the punishment of Compulsory Retirement, whereas, for the applicant the punishment is one of withholding entire pension. We have already considered this contention in our order and we have rejected it. It is not a case of applicant and Hinduja being tried in a same or common enquiry. They are different enquiries and orders are passed by different authorities and therefore the question of equal treatment will not arise. The case against Hinduja was in respect of different assessments for different years and the order of punishment was passed by the Commissioner of Income-tax, Bombay. But the impugned order against the applicant has been passed by the President of India withholding the entire pension. They were tried in different cases and for different allegations of different assessments. Therefore, the question of giving same punishment to both of them will not arise. It is only in cases where persons are tried in a

common enquiry and all of them are found guilty one cannot be given a lighter punishment and another a higher punishment. But, that cannot apply to persons who are tried for different sets of allegations and in different enquiries.

In our view, there is no merit in the Review Petition and hence it is liable to be rejected. Since we are rejecting the Review Petition itself, we need not separately consider whether sufficient reasons are made out for condonation of delay.

2. In the result, Review Petition No.22/99 is rejected. Consequently, M.P. 401/99 is also disposed of.


(D.S. BAWEJA)
MEMBER(A)


(R.G. VAIDYANATHA)
VICE-CHAIRMAN

B.