

(88)

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No.488/89.

Date of Decision :

-T.A.No.-

N.D.Sharma

Petitioner.

Shri K.V.S.Bhaskara Rao

Advocate for the
petitioner (s)

Versus

The Union of India, represented by

Respondent.

The Secretary, Ministry of Finance,

Department of Revenue, North Block, New Delhi & 2 others

Shri N.Bhaskara Rao,

Advocate for the

Addl. CGSC

Respondent (s)

CORAM :

THE HON'BLE MR. J.Narasimha Murthy : Member(Judl)

THE HON'BLE MR. R.Balasubramanian : Member(Admn)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

No

HJNM
M(J)

HRBS
M(A)

(89)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD.

O.A.No.488/89.

Date of Judgment 26.12.90

N.D.Sharma

.. Applicant

Versus

The Union of India,
represented by

1. The Secretary,
Ministry of Finance,
Department of Revenue,
North Block,
New Delhi.

2. The Commissioner of
Incometax, A.P.I.,
Ayakar Bhavan,
Basheerbagh,
Hyderabad.

3. Commissioner for
Department Enquiries,
Jamnagar Road,
New Delhi-110011. .. Respondents

Counsel for the Applicant : Shri K.V.S.Bhaskara Rao

Counsel for the Respondents : Shri N.Bhaskara Rao,
Addl. CGSC

CORAM:

Hon'ble Shri J.Narasimha Murthy : Member(Judl)

Hon'ble Shri R.Balasubramanian : Member(Admn)

[Judgment as per Hon'ble Shri R.Balasubramanian,
Member(Admn)]

This application has been filed by Shri N.D.Sharma
under section 19 of the Administrative Tribunals Act,
1985 against the Union of India, represented by the
Secretary, Ministry of Finance, Department of Revenue,
North Block, New Delhi and 2 others.

(QD)

2. The applicant claims to belong to Group 'A' service as Incometax Officer and was normally due to retire on 30.11.87 on superannuation. He opted for voluntary retirement and submitted a letter on 1.2.87 giving three months' notice. Subsequently, he gave another letter waiving the notice period and expected to be relieved immediately within a few days, not later than 28.2.87. The Commissioner of Incometax, A.P.I., however, accepted the voluntary retirement with effect from 30.4.87 vide his order No. Con. Vig/FR/6/87 dated 30.4.87. This letter was received by the applicant on 6.5.87. The applicant filed an O.A. No. 151/88 before this Tribunal praying for payment of 100% pension, the balance of G.P.F. and also commutation of leave and the balance of insurance amounts. By an interim order dated 7.4.88 this Tribunal directed the respondents to pay provisional pension to the petitioner as provided in Rule 69. This was, however, paid much after the last date specified in the order of the Tribunal. The applicant alleges harassment at the hands of the department. A C.B.I. raid was conducted and he was initially convicted by the lower court. Subsequently, however, the High Court of Andhra Pradesh acquitted him. He was also reverted from his adhoc officiation of Group 'A' to Group 'B'. He moved the Tribunal again and by its order dated 12.8.87 in O.A. No. 405/86 the reversion from the adhoc officiation was stopped. The applicant also makes several allegations

such as withholding house building documents, reassessment of his income etc. The charge-sheet was issued by the Commissioner of Incometax and the applicant questions the competence of the Commissioner of Incometax to issue the charge-sheet since he is already a Group 'A' officer and it is beyond the jurisdiction of the Commissioner to issue the charge-sheet. He also alleges that though the charge-sheet was issued on 24.4.87, just 6 days prior to his voluntary retirement taking effect no enquiry has so far been held. He prays that to avoid further harassment the Tribunal direct the respondents to drop the enquiry proceedings.

3. The application is opposed by the respondents. The respondents have raised the question of limitation. The charge-sheet is dated 24.4.87 and the O.A. was filed on 25.4.89. It is also their argument that the applicant is only a regular Group 'B' officer and he had been officiating in Group 'A' only on adhoc basis and that it is within the competence of the Commissioner of Incometax to issue the charge-sheet.

4. The applicant has also made an additional submission in support of his claim that he belongs to Group 'A'. He had produced a copy of the order F.No.G.14011/19/79-V&L dated 19.6.89 issued by the Ministry of Finance, Department of Revenue, New Delhi which states that the disciplinary proceedings initiated against Shri N.D.Sharma, Incometax

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Officer (Retd) by the memorandum of charges dated 24.4.87 are to be continued. This order has been issued in the name of the President. The learned counsel for the applicant, therefore, contends that the Government has accepted him as a Group 'A' officer and therefore gave a covering order for the memorandum of charges issued earlier by the Commissioner of Incometax.

5. We have examined the case and heard the learned counsel for the applicant and the respondents. The main issues are:

(a) Whether the Commissioner of Incometax is competent to issue the charge-sheet and proceed with it?

(b) Whether there is any illegality in the charge-sheet?

6. The applicant contends that he belongs to Group 'A' service. We find from the judgment in O.A. No.405/86 that he had not been treated as a regular Group 'A' officer. This bench only stated that he cannot be reverted with retrospective effect. From the order we see that the applicant has not been selected regularly as a Group 'A' officer and that he had all the time been officiating in Group 'A' on on adhoc basis. In so far as he is only a Group 'B' officer it is within the competence of the Commissioner of Incometax to proceed against him.

7. The next question is whether there is any illegality in the charge-sheet issued. The applicant prays that the enquiry in pursuance of the charge-sheet dated 24.4.87 be dropped. The learned counsel for the applicant argued that the charges listed were all relating to a period much earlier before the date on which his voluntary retirement took effect and should, therefore, be struck down on that score. In this connection the learned counsel for the respondents drew our attention to a judgment of this bench in O.A. No.74/89. In that case this bench held that issue of a charge-sheet ~~though~~ within just 2 days prior to the date of retirement and in respect of events ~~that happened about 8 or 9 months~~ ^{years} prior to the date of retirement was not bad in law. In this light we have examined the present case. The charge-sheet issued on 24.4.87 contains 8 charges. Charge I relates to his failure to inform a certain transaction that occurred in 1975 in contravention of Rules 13 and 18 of the CCS (Conduct) Rules, 1964. Charge II relates again to a moveable property transaction in January, 1974. Charge III again relates to a moveable property transaction not reported. ~~as not known~~. Charge IV relates to a moveable property transaction in January, 1976. These four charges could have been acted upon by the respondents much earlier rather than

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preserving them all towards the fag end of his career. If not anything, this is certainly in bad taste on the part of the respondents. As for another charge - charge VII, the imputation is that he was found in possession of disproportionate assets amounting to Rs.16,262/-.. This aspect had been considered when the A.P. High Court acquitted him on the ground that it could not be considered possession of disproportionate assets. In the face of such an acquittal by the A.P. High Court it is bad ~~for~~ ^{to} that the respondents could introduce this as yet another charge against the applicant. As for the other charges, we shall not comment. We shall next take up the enormous delay between the retirement eve charge-sheet and the commencement of enquiry. The respondents have not satisfactorily explained the delay in the commencement of enquiry. The charge-sheet was issued as far back as April, 1987 and till date the enquiry has not commenced. In the case 1989(9) ATC 500, the Ahmedabad Bench of this Tribunal had remarked:

"The gap between the date of the alleged misconduct and the commencement of the enquiry by the Government has to be explained satisfactorily. The commencement of an expeditious departmental enquiry and its completion, like expeditious disposal of a criminal case is primarily in the interest of the department and the delinquent and a mandate of Article 21 of the Constitution of India."

The respondents though they were in a position to initiate ^{the} ~~any~~ charge-sheet ^{much earlier} did not do so ~~well~~ in time and it is not known why they kept it till the eve of

N.B.

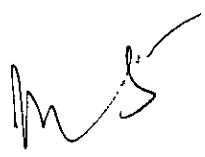
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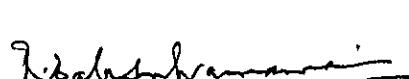
1. The Secretary, Ministry of Finance,
Department of Revenue, North Block,
New Delhi.
2. The Commissioner of Incometax,
A.P.I., Ayakar Bhavan, Basheerbagh,
Hyderabad.
3. Commissioner for
Department Enquiries,
Jamnagar Road,
New Delhi - 110 011.
4. One copy to Shri K.V.S Bhaskara Rao, Advocate,
1-2-7/4, Flat 'E' Banoo Colony, Domlaguda,
Hyderabad 29.
5. One copy to Shri N. Bhasker Rao, Addl.CGSC. *C.A.T. Hyd Bench.*
6. One copy to The Hon'ble Mr. J. Narasimha Murthy,
Member (J), C.A.T., Hyderabad Bench, Hyderabad.
7. One Copy to The Hon'ble Mr. R. Balasubramanian,
Member (A), C.A.T., Hyderabad Bench, Hyderabad.
8. One Spare Copy.

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his voluntary retirement which they had accepted with effect from 30.4.87. Even after issue of the charge-sheet on 24.4.87 no enquiry has been commenced for nearly 3 years and 9 months. As for the limitation, we find that the applicant had to keep himself engaged for even his terminal benefits which are otherwise due to him in the normal course without the intervention of this Tribunal. For this reason we condone the delay of about an year.

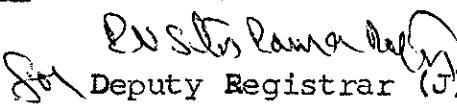
8. In view of the enormous delay in commencing the enquiry after the issue of the charge-sheet and in the light of the observations of the Ahmedabad Bench of this Tribunal we admit the prayer of the applicant and direct the respondents to drop the enquiry in pursuance of the charge-sheet dated 24.4.87. There is no order as to costs.


(J. Narasimha Murthy)
Member (Judl).


(R. Balasubramanian)
Member (Admn).

Dated

26th December 90


Sri Deputy Registrar (J)