

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

DA 774/93.

Dt. of Order: 14-7-93.

M.LakshmiKan~Rao

vs.

....Applicant

1. The Chief Commissioner of Income Tax, Ayakar Bhavan, Basheer Bagh, Hyderabad.
2. Mr.V.Raja Rao, Tax Recovery Officer, Ayakar Bhavan, Basheerbagh, Hyderabad.

....Respondents

-- -- --

Counsel for the Applicant : Shri G.V.R.S.Varaprasad

Advocate

Counsel for the Respondents : Shri N.R.Devraj, Sr.CGSC

-- -- --

CORAM:

THE HON'BLE JUSTICE SHRI V.NEELADRI RAO : VICE-CHAIRMAN

THE HON'BLE SHRI P.T.THIRUVENGADAM : MEMBER (A)

(Order of the Divn. Bench passed by
Hon'ble Justice Shri V.N.Rao, VC)

-- -- --

The applicant is working as Income Tax Inspector.

10
The Departmental Promotion Committee (DPC) met in the

second week of June, 1993, for consideration of the

eligible Income-Tax Inspectors for promotion to the cadre

of Income Tax Officer in Andhra Pradesh Charge. The

H/
applicant's name was also considered by the said committee

as he was within the zone of consideration. The applicant

....2.

1000

16

alleges that his name was kept in sealed cover. The charge memo dt. 28-6-93 was served upon the applicant on 2-7-93.

2. The sealed cover procedure had to be adopted only after Disciplinary Proceedings had commenced, and the said proceedings commences on the date of service of charge memo, and in this case sealed cover procedure was adopted even before the charge memo issued, the said procedure is held vitiated, argued the learned counsel for the applicant. In support of the said contention 1991 SC 2010 (Union of India Vs. K.V.Janakiraman) is relied upon.

3. We have heard Sri GVRS Varaprasad, learned counsel for the applicant and Sri N.R.Devraj, learned standing counsel for Central Government. Sri Devraj submits that he had no instructions in regard to the ~~that~~ ~~allegations as to whether~~ the sealed cover procedure was adopted in the case of the applicant. But as that ~~allegation is the basis for filing this O.A., we will/~~ ~~assume that~~ ~~assuming as the applicant's information is correct for~~ consideration of this O.A. at the admission stage.

4. Even in AIR 1991 SC 2010 (union of India Vs. K.V.Janakiraman) the Supreme Court observed that in view of the facts of that case the D.P.C. which met in July, 1986, was justified in resorting to sealed cover

procedure not with standing the fact that the charge sheet for disciplinary proceedings was issued in August/December, 1987. The special facts referred to therein are that the employees concern were prosecuted for false claim of L.T.C., and pending the trial they have deposited the amounts, and they pleaded guilty before the department, and then the ^{criminal} case against them were withdrawn without prejudice to initiate the departmental proceedings. After the said withdrawal the D.P.C met and resorted to sealed cover procedure. More than an year thereafter the charge memo was issued. In view of the facts the Supreme Court held that there was justification for resorting to the sealed cover procedure even before charge memo ^{was} issued.

5. In 1993 SC 1165 (State of Madhya Pradesh & another Vs. Syed Naseem Zahir & others) also the Supreme Court considered a case where D.P.C. adopted sealed cover procedure even before charge memo was issued. The charge therein was ^{on the} in view of loss caused to the tune of Rs.84 lacs in passing bills for the works ^{executed} ^{grave}. Same was held as aggrieved charge for justifying to resorting to sealed cover procedure. Thus it can be stated that when a decision is taken for initiating Disciplinary Proceedings, and if the charge ^{memo} to be

- 4 -

*in regard to grave charges,
issued is of maximum aggrieved nature, then the
DPC will be justified in resorting to sealed cover
procedure even before the issuance of charge memo.*

6. The two charges that were framed as per charge memo dt.28-6-93 issued to the applicant are as under :-

(i)that the said Shri M.Lakshmikara Rao, while functioning as Income Tax Inspector in I.T. Office, Machilipatnam during the year 1990 has purchased mango gardens to the extent of 7.28 acres in R.S.No.501 at Vellampatla Village in T.Narsapur Mandal of West Godavari District for an amount of Rs.85,012/- (including the registration charges & stamp value of Rs.9,012/-). Although the official did not have savings to the extent stated above from his known sources of income, he had nevertheless purchased the above lands, obviously from unexplained sources.

By this above act, Shri M.Lakshmi-
kara Rao, ITI has failed to maintain
absolute integrity and has exhibited
conduct unbecoming of a Government,
thereby violating Rule 3(1)(i) and
Rule 3(1)(iii) of CCS (Conduct) Rules,
1964.

(ii)that the said Shri M.Lakshmikara Rao, while functioning as ITI in IT Office, Machilipatnam during the year 1990, has purchased mango gardens to the extent of 9.44 acres in his wife's name Smt.M.Vijaya Durga Kumari in R.S.No.502 & 503 at Villampatla

village in T.Narsapur Mandal of West Godavari District for an amount of Rs.1,04.121/- (including the registration charges and stamp value of Rs.11,021/-). At the time of the above transactions, Smt.M.Vijaya Durga Kumari did not have adequate independent income of her own and therefore she had to depend on her husband for the above investment. Shri M.Lakshmikara Rao did not have savings to the extent stated above from his known sources of income but he has nevertheless purchased the above lands obviously from the unexplained sources.

By his above act, Shri M.Lakshmi kara Rao, ITI has failed to maintain absolute integrity and exhibited conduct unbecoming of a Government servant, thereby violating Rule 3(1)(i) and Rule 3(1)(iii) of CCS (Conduct) Rules, 1964.

7. Sri Varaprasad, learned counsel for the applicant submits that it is necessary to peruse the explanation given by the applicant in order to consider as to whether the charges are ~~aggravated~~ for justification for following the sealed cover procedure even before charge memo is issued. ~~He may not accede~~ to the said contention. The challenge in regard to the charges is not a matter for consideration in view of the relief claimed in this O.A. Hence in order to consider as to whether the charges are ~~aggravated~~ so as to justify the adoption of sealed cover procedure, the charges as

- 6 -

they stand have to be looked into. In view of the charges we feel that it cannot be stated that there is no justification for adopting the sealed cover procedure in this case.

8. It was next urged for the applicant that if ~~exceptions are to be made to the general~~ the ~~exception have to be given to the principle that~~ the sealed cover procedure can ~~not~~ be resorted to even before charge memo ^{is} issued, the departments may adopt that procedure in all cases of major penalty proceedings. But we make it clear that such a procedure can be adopted only in cases where the charges can be held as ~~aggravated~~ grave.

9. It was also argued for the applicant that the ~~exceptions~~ referred to in AIR 1991 SC 2010 and AIR 1993 SC 1165 are not by way of laying down any general principle, but it was only in exercise of special powers of Supreme Court. But we ~~may~~ not agree even to this contention. It was observed by the Supreme Court that the principle laid down in Janki-raman's case cannot be applied mechanically. It thus indicates that it was so stated by way of principle and not in exercise of special powers of Supreme Court.

10. Ofcourse this O.A. doesnot arise at all if the sealed cover procedure was not adopted by the Respondents in the case of the applicant and on that ground also the O.A. is liable to be dismissed. Thus in

- 7 -

either ^{any} grounds the O.A. fails. In the result
 the O.A. is dismissed. No order as to costs.

P.J.D.S
 (P.T.THIRUVENGADAM)
 Member (A)

V.Neeladri Rao
 (V.NEELADRI RAO)
 Vice-Chairman

Dated: 14th July, 1993.
 Dictated in Open Court.

av1/

820/7/93
 Dy. Registrar (Judl.)

Copy to:-

1. The Chief Commissioner of Income Tax, Ayakar Bhavan, Basheerbagh, Hyd.
2. One copy to Sri. G.V.R.S.Varaprasad, advocate, 113/3RT, Vijayanagar colony, Hyd.
3. One copy to Sri. N.R.Devaraj, Sr. CGSC, CAT, Hyd.
4. One copy to Library CAT, Hyd.
5. One spare copy.

Rsm/-

*14th July
 Recd on 10/7/93*

IN
C
TYPED BY

COMPARED BY
APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE V. NEELADRI RAO
VICE CHAIRMAN

AND

THE HON'BLE MR. A. B. GORTY : MEMBER (AD)

AND

THE HON'BLE MR. T. CHANDRASEKHAR REDDY
MEMBER (J)

AND

THE HON'BLE MR. P. T. TIRUVENGADAM : M (A)

Dated : 14/7/1993

ORDER/JUDGMENT:

M. A. / R. A. / C. A. No.

O. A. No.

in
774/93

T. A. No.

(w.p.)

Admitted and Interim directions
issued

Allowed

Disposed of with directions

Dismissed

Dismissed as withdrawn

Dismissed for default.

Rejected/ Ordered

No order as to costs.

pvm

