

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:  
AT HYDERABAD

ORIGINAL-APPLICATION-NO.1558-of-1993

DATE-OF-ORDER:-21st-JANUARY,-1997

BETWEEN:

P.K.MANDAL

.. APPLICANT

AND

1. Union of India represented by its  
Secretary, Ministry of Finance,  
Dept. of Revenue, New Delhi-11,
2. The Central Board of Direct Taxes,  
represented by its Secretary,  
New Delhi-11,
3. The Central Vigilance Commission,  
Govt. of India, New Delhi-11,
4. The Commissioner of Departmental Enquiries,  
(Sri Chandi Andrews), Govt. of India,  
New Delhi,
5. The Chief Commissioner of Income Tax,  
P-7, Chowranghee Square,  
Calcutta-69.

... RESPONDENTS

COUNSEL FOR THE APPLICANT: Mr. V.JOGAYYA SARMA

COUNSEL FOR THE RESPONDENTS: Mr.V.BHIMANNA,Adl.CGSC

CORAM:

HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.)

HON'BLE SHRI B.S.JAI PARAMESHWAR, MEMBER (JUDL.)

JUDGEMENT

ORAL ORDER (PER HON'BLE SHRI R.RANGARAJAN, MEMBER (ADMN.))

Heard Mr.V.Jogayya Sarma, learned counsel for the  
applicant and Mr.V.Bhimanna, learned standing counsel for  
the respondents.

2. The applicant while working as Deputy Commissioner  
of Income Tax, Range-VI, Calcutta during the year.1990 was



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issued with a charge sheet by memo F.No.C-14011/49/93-V&L dated 26.4.93 (Page 1 of the OA) on the alleged charge that he had failed to maintain absolute integrity, exhibited lack of devotion to duty and behaved in a manner unbecoming of a Government servant and thus contravened the provisions of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964. The applicant submitted a reply to that charge memo. Thereafter an inquiry was instituted to inquire into the charges. It is also stated that an FIR in Crime No.5/91 dated 28.1.91 was also filed by the Delhi Special Police Establishment, CBI, SPE and ACB, Calcutta Branch. The applicant contends that the inquiry was ordered without considering his representation dated 16.6.93 submitted as a defence reply to the charge sheet.

3. This OA is filed for setting aside the memo No.C-14011/49/93-V&L dated 26.4.93 (Page 1 of the material papers of the OA) by holding it as illegal, arbitrary and without jurisdiction and also for a declaration that the further proceedings in pursuance of the impugned charge sheet dated 26.4.93 on the basis of the FIR in Crime No.5/91 dated 28.1.91 filed by the Delhi Special Police Establishment, CBI, SPE and ACB, Calcutta Branch as illegal, arbitrary and without application of mind as they have not looked into the records of the Deputy Commissioner of Income Tax, Range-6, Calcutta and also for further declaration that the action of R-2 in not considering his representation dated 16.6.93 before ordering the inquiry as illegal and arbitrary.

4. An interim order dated 22.12.1993 in this OA was issued whereby it was ordered that "until further orders there is stay of disciplinary proceedings initiated in pursuance of the memorandum No.C-14011/49/93-V&L dated 26.4.93". The main reason for giving the interim order is in view of the judgement of the Apex Court reported in 1992(4) SLR (11) (Union of India and others v. A.N.Saxena) wherein it was held that the disciplinary proceeding should be taken only after great caution and close scrutiny of his action and if the circumstances indicate culpability viz. a desire to oblige himself or unduly favour one of the parties or an improper motive. It was interalia stated in the interim order that the file relating to the proceedings No.R-6/VPG/6(5)89-90/1558 dated 28.3.90 was not looked into before the disciplinary proceedings were initiated as per the memo dated 26.4.93.

5. When the case came up for hearing on 5.12.96, the main contention of the applicant was that the explanation submitted by the applicant after receipt of the charge sheet was not seen by the disciplinary authority before ordering the inquiry. But this contention was contested by the otherside. We felt that this can be ascertained from factual verification of the record and hence we asked the learned standing counsel for the respondents to produce that record wherein details were available. Accordingly file No.DP/G/801/Vig/93 was produced before us today. In the notings at Pages 19-N to 21-N, the case has been

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explained including the contention of the applicant in regard to the charges levelled against him. On the basis of those notings and also after seeing the explanation given by the applicant for the charge sheet, a decision was taken by the disciplinary authority to proceed further with the charge sheet by nominating a Presenting Officer and also asked the CVC to nominate a CBI officer for being appointed as an <sup>inquiring</sup> Investigating Officer in this case. Hence it is clear from the notings that the disciplinary authority had seen the explanation given by the applicant and after perusal of the explanation only he had initiated the proceedings as a follow up action of the charge sheet issued to the applicant. In this connection, the learned counsel for the applicant submits that the <sup>proceedings dated 28/3/90</sup> ~~interim order~~ would not have been seen by the disciplinary authority before initiating further action. When the applicant himself had submitted his explanation to the charge sheet, it could not have been conceived that he had submitted the explanation without bringing out the details in the above said proceedings. Those proceedings are <sup>his</sup> ~~under~~ main stay for not proceeding against him after issue of the charge sheet. Hence it can be very well concluded that the applicant himself had brought out the facts by either contesting or bring<sup>ing</sup> out the deficiency in the proceedings dated 28.3.90 as quoted in Para 6 of the interim order. Hence we are satisfied that the disciplinary authority had seen all the relevant details and came to the conclusion that the charges levelled against the applicant had to be further processed by appointing a Presenting and the Inquiry Officer. In view of what is stated above, we do

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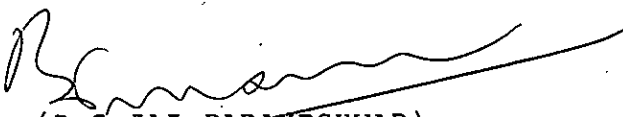
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not see any necessity to stall the proceedings any further. The above view of ours is also supported by the judgement of the Apex Court reported in 1996(5) SLR 713 (State of Rajasthan v. B.K.Meena).

6. In view of what is stated above, we are satisfied that the charge memo dated 26.4.93 need not be quashed and further proceedings can be processed further. In the meantime, if any decision is taken in the Criminal proceedings, the applicant may suitably represent his case to the concerned disciplinary authority for any action that is needed on the basis of the decision in the criminal proceedings.

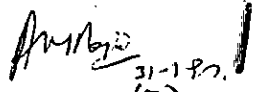
7. In view of the foregoing, we find that there is no merit in this OA. Hence this OA is dismissed. (Confidential file No.DP/G/801/Vig/93 is perused and returned back).

8. No order as to costs.

  
(B.S.JAI PARAMESHWAR)  
MEMBER (JUDL.)  
21-1-97

  
(R.RANGARAJAN)  
MEMBER (ADMN.)

DATED:-21st-January,-1997  
Dictated in the Open court.

  
Dy. Registrar (S)  
31-1-97

Copy to:-

1. The Secretary, Ministry of Finance, Dept. of Revenue, Union of India, New Delhi.
2. The Secretary, Central Board of Direct Taxes, New Delhi.
3. The Central Vigilance Commission, Govt. of India, New Delhi.
4. ~~SMXXSXX~~ The Commissioner of Departmental Enquiries, (Sri Chandi Andrews), Govt. of India, New Delhi.
5. The Chief Commissioner of Income Tax, p-7, Chowranghee Square, Calcutta.
6. One copy to Sri. V. Jagayya Sarma, advocate, CAT, Hyd.
7. One copy to Sri. V. Bhimanna, Addl. CGSC, CAT, Hyd.
8. One copy to Library, CAT, Hyd.
9. One spare copy.

Rem/-

1/2/97  
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THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN: M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR:  
M(J)

DATED: 21/1/97

Order/Judgement  
R.P./C.P./M.A. NO.

O.A. NO.

1558793

ADMITTED AND INTERIM DIRECTIONS ISSUED  
ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS.

II COURT

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