

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH:
AT HYDERABAD

ORIGINAL-APPLICATION-NO.531-OF-1994

DATE-OF-ORDER:-24th-March,-1997

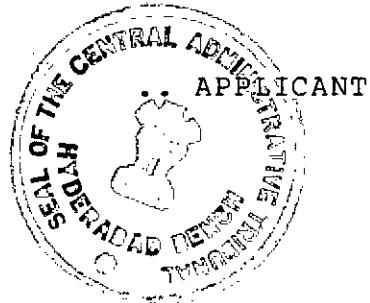
BETWEEN:

N.DEVI PRASADA RAO

AND

1. The Chief Commissioner of Income Tax,
A.P., Hyderabad,
2. The Commissioner of Income Tax,
A.P.I, Ayakar Bhavan,
Hyderabad,
3. The Inspecting Assistant Commissioner
of Income Tax, Range-III,
Hyderabad.

.. RESPONDENTS



COUNSEL FOR THE APPLICANT: V.VENKATESWARA RAO

COUNSEL FOR THE RESPONDENTS:Mr.K.BHASKAR RAO, ADDL.CGSC

CORAM:

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

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

ORDER

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

Heard Mr.V.Venkateswara Rao, learned counsel for the applicant and Shri K.Bhaskar Rao, learned standing counsel for the respondents.

2. The applicant herein was working as Tax Assistant under R-3. He remained unauthorisedly absent from 31.5.86. Further he committed default in repaying certain advances

For

Kum.N.Vijayalatha, daughter of the applicant participated and repudiated certain portion of the decree amount of Rs.5200/-, that the explanation offered by the applicant for submitting the appeal after a lapse of four years and odd was not convincing, that they alleged mental disease and statement stated by the applicant was far from convincing, that the certificate issued by Dr.Vaidyanadhan dated 12.8.92 is vague and not to be relied upon, that the alleged illness of the applicant is an after thought, therefore, the applicant's appeal was rejected, that the circumstances explained above clearly lead to misconduct under the provisions of Rule 19(2) of the CCS (CCA) Rules, that the disciplinary authority clearly held that the applicant is guilty of the charges levelled against him and the order removing him from service was justified, that the appellate authority may entertain the belated appeal if he has satisfied about the explanation given for the delay, that the revisional authority considered all the issues in the case and confirmed the decision of the appellate authority and that there are no grounds to interfere with the impugned orders.

8. It is to be noted that the disciplinary authority had not at all issued the charge sheet before initiating the disciplinary proceedings. Issuance of the charge sheet is a fundamental ^{step} right in initiating disciplinary proceedings. The respondents in support of their contention of non issuing the charge sheet, rely upon the Rule 19 of the CCS (CCA) Rules. That rule has been amplified by the Government of India instructions under order 2 under this rule. The reasons are not clearly



years, three months and 8 days in preferring the appeal against the order of removal from service. The Respondent No.2 mainly considered the reasons given by the applicant for submitting the appeal after lapse of so much delay. R2 was not satisfied with the explanation offered by the applicant. It appears that R-2 also made inquiries to trace him. The explanation given by the applicant for the long delay was inconsistent with the statement given by the Doctor. Therefore, R-2 was not satisfied with the explanation and hence by his order No. Con.614/92/1984 dated 8.9.93 (Annexure A.VI) rejected his appeal only on the ground of limitation.

6. Against the order of the appellate authority, the applicant submitted a revision petition on 23.11.93. R-2 is the revisional authority. The revisional authority by the impugned order bearing No. Con.614/93/R/412 dated 25.2.94 (Annexure A.XII to the OA) rejected his revision petition.

7. It is these orders that the applicant has challenged in this OA.

8. The respondents filed their counter justifying the circumstances under which the disciplinary authority was compelled to conclude the proceedings *ex parte* and also submitted that they had filed a Suit in O.S.No.4989/88 ^{before} in the court of the IXth Assistant Judge, City Civil Court, Hyderabad for recovery of dues, that the decree was passed against the applicant for a sum of Rs.5947=55 with interest, that in the execution proceedings,



India reported in 1995(3) SLR (SC) Page 1. In paras 12 and 13, the Hon'ble Supreme Court has observed as below:-

"It is, therefore, necessary to deal with this question in the instant case. We may, in this context, point out that a distinction has to be made between judicial review and justiciability of a particular action. In a written constitution the powers of the various organs of the State are limited by the provisions of the Constitution. The extent of those limitations on the powers has to be determined on an interpretation of the relevant provisions of the Constitution. Since the task of interpreting the provisions of the Constitution is entrusted to the judiciary, it is vested with the power to test the validity of an action of every authority functioning under the Constitution on the touch-stone of the Constitution in order to ensure that the authority exercising the power converted by the Constitution does not transgress the limitations placed by the Constitution on exercise of that power. This power of judicial review if, therefore, implicit in a written constitution and unless expressly excluded by a provision of the Constitution, the power of judicial review is available in respect of exercise of powers under any of the provisions of the Constitution. Justiciability relates to a particular field falling within the purview of the power of judicial review. On account of want of judicially manageable standards, there may be matters which are not susceptible to the judicial process.

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quoted by the respondents to resort to the order 2 under Rule 19 of the CCS (CCA) Rules. It is not known whether the rule 19 has been followed or not. Even in the revisional authority's order, the above position has not been explained fully. Hence it is essential that the revisional authority has to look into this case de novo once again~~s~~ on the basis of the observation made as above.

8. The learned counsel for the applicant relied upon the Division Bench decision of the A.P. High Court in the case of the Chief Engineer, Central Zone, APSEB, Vijayawada and others vs K.Naga Hema reported in 1995(8) SLR 484. The Hon'ble High Court has observed as follows:-

"The view which several High Courts expressed and applied in different parts of the country, notwithstanding the rules or certified standing orders providing for such automatic cessation of contract of service, has now been expressed by the Supreme Court in the case in D.K.Yadav v. JMA Industries Ltd., 1993(3) SCC 259: [1993(4) SLR 126 (SC)] in the case of a private employer, wherein it is stated, principles of natural justice and duty to act in just, fair and reasonable manner must be read into the standing orders and notwithstanding the order which provided for automatic cessation of contract of service, the court has directed that such order to terminate the service can be made only after an enquiry, otherwise it will be violative of Articles 14, 16(1) and 21 of the Constitution of India".

10. The learned counsel for the applicant also relied upon the decision in the case of Shri A.K.Kaul vs Union of

extraneous or collateral purpose is sought to be achieved by a proclamation under Article 356 of the Constitution, this Court will not shirk its duty to act in the manner in which the law may then oblige it to act." (p.46). Chandrachud J. (as the learned Chief Justice then was) has observed that if the reasons given are wholly extraneous to the formation of the satisfaction, the Proclamation would be open to the attack that it is vitiated by legal mala fides". (p.60). Goswami J. has held that the court "would not refuse to consider when there may be sufficient materials to establish that the proclamation under Articles 356(1) is fainted with mala fides." (p.92). Untwalia J. has said that the court is not powerless to interfere with an order that is ultra vires, wholly illegal or passed mala fide. (p.95). Fazal Ali J. has held that "on the reasons given by the President in his order if the courts find that they are absolutely extraneous and irrelevant and based on personal and illegal considerations the courts are not powerless to strike down the order on the ground of mala fide if proved."

10. From the principles enunciated in the case cited above, it is clear that the disciplinary authority must issue a charge sheet before initiating disciplinary proceedings and that in exceptional circumstances resort must be had to the orders issued under Rule 9(2) of CCS (CCA) Rules. From the scrutiny of the details given in the OA as well as the reply, we are not fully convinced that those rules are fully implemented. If these rules are fully complied with, there may be a case even for setting



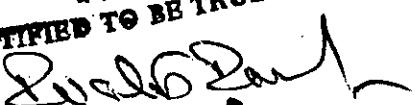
Such matters are regarded as non-justiciable. In other words, during the course of exercise of the power of judicial review it may be found that there are certain aspects of the exercise of that power which are not susceptible to judicial process on account of want of judicially manageable standards and are, therefore, not justiciable.

13. In the State of Rajasthan and others v. Union of India etc., (1978) 1 SCR 1, one of the questions falling for consideration was whether satisfaction of the President in the matter of exercise of the power to make a proclamation conferred under Article 356(1) of the Constitution is amenable to judicial review. At the relevant time when the impugned Proclamations were made there was an express provision in clause (5) of Article 356 which prescribed that the satisfaction of the President mentioned in clause (1) shall be final and conclusive and shall not be questioned in any Court on any ground." Inspite of such an express provision P.N.Bhagwati J. (as the learned Chief Justice then was) speaking for himself and A.C.Gupta J., has held that "If the satisfaction is mala fide or is based on wholly extraneous or irrelevant grounds, the Court would have the jurisdiction to examine it because in that case there would be no satisfaction of the President in regard to the matter which he is required to be satisfied." (p.82). Other learned Judges, with some variance, have adopted a similar approach. Beg CJ. has held that if it is revealed "that a constitutionally or legally prohibited or

aside the order of the disciplinary authroity. But the wife of the applicant herself was not aware of the whereabouts of her husband.***** Further, the applicant was also asked to report to the respondent-authorities by the paper notification. Though the applicant had submitted his appeal late, he has not explained the reasons for his late submission of his appeal. Under these circumstances, we are of the opinion that all these points should be taken into account by the revisional authority to come to the conclusion so that justice will be done to the applicant.

13. Under the circumstances quoted above, though we ----- authority, we are of the opinion that a de novo scrutiny of the case by the revisional authority meets the ends of justice. In that view, the impugned order of the revisional authority dated 15.2.94 is set-aside. The revisional authority shall once again de novo look into this taking into account the circumstances mentioned in this case and also taking due note of the various observations of the courts referred to above and take a final decision in this connection. The applicant should be informed of the final decision within a period of four months from the date of receipt of a copy of this order.

14. The OA is ordered accordingly. No order as to costs.

प्रमाणित प्रति
CERTIFIED TO BE TRUE COPY

कानूनी प्रकाशकारी
COURT OFFICER
केन्द्रीय प्रशासनिक अधिकारप
Central Administrative Tribunal
हैदराबाद न्यायालय
HYDERABAD BENCH