

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 444 / 1994
T.A. No.

199

DATE OF DECISION 18.1.1996

N.L. Parihar : Petitioner

Mr. R.N. Mathur : Advocate for the Petitioner (s)

Versus

Union of India & Ors. : Respondents

Mr. N.K. Jain : Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. N.K. Verma, Member (Administrative).

The Hon'ble Mr. Rattan Prakash, Member (Judicial) .

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? Yes
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(Rattan Prakash)
Member (J)

(N.K. Verma)
Member (A)

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
J A I P U R

Date of order : 18-1-1996

OA No. 444/1994

N.L. Parihar ... Applicant.

v e r s u s

Union of India & Ors. ... Respondents.

Mr. R.N. Mathur, Counsel for the applicant.

Mr. N.K. Jain, Counsel for the respondents.

CORAM:

Hon'ble Shri N.K. Verma, Member Administrative.

Hon'ble Shri Rattan Prakash, Member Judicial.

...

PER HON'BLE SHRI N.K. VERMA:

In this O.A. Shri N.L. Parihar, Assistant Commissioner of Income Tax (O.S.D.) (Computer), Jaipur, (ACIT, for short), has assailed the impugned orders dated 29.7.1992 by which he was punished with penalty of withholding of increments for five years without cumulative effect, order of appellate authority dated 4.5.1993 and the order dated 11/13.10.93 by which his memorial to the President was rejected. The applicant prays for quashing these orders and a direction to the respondents to promote him as Deputy Commissioner of Income-tax (DCIT, for short) either with effect from April, 1992 or from April, 1987.

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He had also prayed for an interim relief that the respondents be directed to consider the name of the applicant on the post of DCIT in the D.P.C. to be convened soon for promotion of the DCIT.

2. The OA was admitted on 4.10.94 and by an interim order dated 19.12.94, the respondents were directed that in the intervening period if a D.P.C. is conducted, the case of the applicant shall also be considered as per rules and law in view of the punishment awarded to him.

3. The facts of the case are that the applicant, a Scheduled Caste candidate, was appointed as Income-tax Officer (Grade 'A') in the year 1978 in Indian Revenue Services as a direct recruit and was holding the charge of Income-tax Officer (ITO, for short) Grade 'A' at Hanumangarh, Jodhpur and Pali for the period 11.06.83 to 25.5.1985 and subsequently served with a charge-sheet on 2.9.86 for enquiry under Rule 14 of the C.C.S. (CCA) Rules, 1965 on the basis of three charges levelled against him. Though the applicant had given a detailed reply to the charge-sheet on 3.9.86, the enquiry was completed only on 30.11.89 when the enquiry officer submitted the report. Based on this report and the detailed reply thereto filed by the applicant on 28.7.90, the respondents issued impugned order dated 29.7.92 imposing the penalty of withholding of increments for five years without cumulative effect.

4. The applicant's case is that a chargesheet was issued to him as a malafide intention and acts of Shri G.C. Agarwal, who was holding the post of Commissioner Income-tax, Jodhpur, at the relevant time. Although the applicant was suspended on 20.5.1985, it took the respondents more than a year to issue the charge-sheet on

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2.9.86 due to the malafide intention of the then Commissioner of Income-tax, Shri G.C. Agarwal. The applicant did not receive the subsistence allowance for a long time. Even when the subsistence allowance was sanctioned, it was not paid to him and during the 22 months of his suspension, the first payment of his subsistence allowance @ 50% was made in January, 1986, after six months of his being under suspension. The subsistence allowance was not even reviewed as per the rules and the enhanced subsistence allowance was paid to him only after approaching the competent authorities on 4.3.87. The disciplinary authority also awarded the punishment of withholding of increments for five years without cumulative effect through a non-speaking order and without considering the points brought to the notice through the applicant's representation.

(ii) Apart from the harassment of the non-payment of due subsistence allowance in time, the applicant was also denied the promotion to the post of DCIT in April, 1987 when the officers belonging to his batch were given promotions on the ground that the departmental proceedings were pending against him. As per the applicant his name was not even considered by the D.P.C. because of the disciplinary action. Thus, his right of being considered for promotion was denied and the sealed cover procedure was also not adopted. His further representation dated 12.10.93 requesting for promotion was also not considered. The applicant also made a further grievance that even the senior scale after completion of 4 years service was not granted to him in time for being considered alongwith his batch mates for promotion to the

DCIT. Thus, the applicant has been denied promotion which became due to him in April, 1987 and as per the impugned penalty order, he will be promoted only after expiry of five years period of the currency of the penalty in 1997 which would mean that apart from being denied increments for 5 years, he would also be denied promotion for ten years. He, therefore, prays that five years period should be counted from the date subsequent to the enquiry report in 1989 and his promotion should be given after computing 5 years from that date. If the proposed action of the respondents is not interfered with, it would mean double penalty to the applicant and thereby he would suffer consequences of major penalty though in actual terms he was awarded only a minor penalty. The applicant has made a further grievance that he received only 75% of admissible pay since December, 1985 till July, 1994. His full salary was not paid to him on account of disciplinary proceedings. The applicant has submitted that he has thoroughly been demoralised by irregular and illegal action of the respondents and that is why he did not approach the Tribunal even though he was harassed physically, financially and mentally at the hands of the respondents all these years. He also prayed for making further submissions regarding grounds for assailing the orders during the course of arguments.

5. The respondents in this case are Secretary, Ministry of Finance, Department of Revenue and the Chairman, Central Board of Direct Taxes. Although notices were served on them, they chose not to file a reply on their own. A reply was filed on their behalf

by an Officer of the level of Income Tax Officer (Recovery), Jaipur, claiming himself to be an Officer Incharge of the case. This officer has denied all the claims of the applicant. It has been averred that a disciplinary action and an order of penalty was imposed on the applicant as per the finding of the enquiry officer for good and sufficient reasons. As for the promotion of the applicant to DCIT, it was averred that his non-promotion is a natural consequence of specific and proven acts of misconduct. The applicant is not entitled for promotion to the grade of DCIT even from 1992 when the disciplinary proceedings were concluded. All the matters brought to the notice of the disciplinary authority and the appellate authority were duly considered before the imposition of the penalty and the rejection of the memorial. As for the subsistence allowance the allegations were denied as the subsistence allowance stood paid in April, 1987. The respondents have averred that the disciplinary and appellate orders are speaking orders. They have strenuously reiterated that the applicant was not due for promotion in 1987 due to the disciplinary proceedings pending against him as also in 1992 due to the penalty imposed upon him. There is no double jeopardy involved in the matter and, therefore, the OA deserves to be dismissed.

6. During the course of arguments, Shri R.N. Mathur, learned counsel for the applicant strenuously brought to our notice that the enquiry report did not prove the charges levelled against the applicant fully and the disciplinary authority ^{should} have taken proper note of the

findings of the enquiry officer who held that although the various acts of irregularities committed by the applicant were established, the charges of ulterior motives could not be held to be true. The applicant had acted more in his over enthusiasm as a young I.T.O. rather than motivated by dis-honest or ulterior motives of gain. The enquiry officer had also not established the extent of the pecuniary loss sustained by the respondents due to the irregular acts of the applicant and hence the penalty awarded was dis-proportionate to the irregularities and lapses committed by the applicant. The order of disciplinary authority though running into several pages has not given due weightage to the observations of the enquiry officer that those irregularities were committed due to his in-experience or less experience and on the basis of the UPSC's advice, a penalty of stoppage of increments for five years without cumulative effect was awarded. Shri R.N. Mathur also pointed out the harassment and agony inflicted upon the applicant by denying him the payment of subsistence allowance when it was due to the applicant and stated that even on the date of hearing all the dues of the applicant have not been paid for the period that he remained under suspension and thereafter.

7. Shri N.K. Jain, learned counsel for the respondents on the other hand reiterated the replies given by the respondents. As for the subsistence allowance, he produced a copy of the order passed on 18.8.94 by which the applicant had been sanctioned his dues on account of arrears of increment etc. and the whole amount stood

paid. He also reiterated that as per the relevant rules in operation the applicant's case for promotion would only be considered after the currency of penalty period. Referring to this, he brought to our notice the citation at 1991 (7) SLP in the matter of Nemai Chand Mondal vs. Union of India & Ors. wherein at para 10, it was held by Calcutta Bench of the Tribunal that there is no case of double penalty or double jeopardy and hence the OA does not deserve any further consideration.

8. We have given the matter a very serious consideration. So far the order of penalty regarding the severity of the punishment is concerned with reference to the enquiry officer's report and disciplinary authority's order thereon, the law has been settled by the Hon'ble Supreme Court in the case of Union of India & Others vs. Upendra Singh cited at 1994 (27) ATC 200 (SC) wherein their Lordships reiterating the principle of law relating to judicial review laid down in H.E. Gandhi, Excise & Taxation Officer-cum-Assessing Authority, Karnal vs. Gopinath & Sons cited at 1992 Supp.(2) SCC 312, it has been observed :

"6. In the case of charges framed in a disciplinary enquiry the Tribunal or Court can interfere only if on the charges framed (read with) imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the Tribunal has no jurisdiction to go into the correctness or truth of the charges. The Tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to Court or Tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the Court/Tribunal is one of the judicial review, the parameters of which are repeatedly laid down by this Court."

Thus, the scope of the Tribunal now is merely to see and examine whether there has been any procedural illegality in the conduct of disciplinary proceedings which may vitiate the disciplinary proceedings or that the applicant has been deprived of his fundamental right to present his defence effectively before the enquiry officer. The applicant had brought to our notice through this OA the financial difficulties created for him by the respondents in not sanctioning him the subsistence allowance when he was suspended on 20.5.1985. The subsistence allowance was released to him only in the month of January, 1986 @ 50% of his pay and he continued to be paid at this rate till March, 1987. He was entitled to 75% of his pay as the delay in issuing the chargesheet was not of his own making but of the respondents. The chargesheet itself was issued to him on 2.9.86 after a lapse of nearly 16 months, keeping him in dark about the reasons for his suspension and the non-payment of his due subsistence allowance also. This act itself ^{could} have weighed as a moral cum financial strain on him. The applicant had always co-operated with the enquiry as would be seen by the fact that he replied to the chargesheet immediately on 3.9.86 whereafter it took the respondents more than three years to have the enquiry report issued on the matter. The enquiry report again was served him only on 5.7.90 to which the applicant gave a very quick reply on 28.7.90 and, thereafter, the impugned order was served on him only on 29.7.1992 after a delay of nearly 2 years. The pace at which the respondents have treated this case of leisurely dealing with a charged officer who happened to be a Group 'A'

Officer working in the rank of an Assistant Commissioner really leaves a lot of question unanswered. The delay in sanction of subsistence allowance, the delay in the payment thereof, the delay in enhancing the subsistence allowance and the delay in processing the chargesheet are all unexplained. Though no time limits have been prescribed for early completion of departmental proceedings under the C.C.S. (CCA) Rules, there are certain guidelines regarding the speedy follow-up action in suspension case and time limits have been prescribed therein. As per the general principles in regard to suspension at Chapter II of paragraph (10) at page 179 of the Swamy's Compilation of C.C.S (C.C.A) Rules (18th Edition), it has been stated that: (2) even though such suspension may not be considered as a punishment it does constitute a very great hardship for a Government servant. In fairness to him, it is essential to ensure that this period is reduced to the barest minimum. (3) It has, therefore, been decided that in cases of officers under suspension, the investigation should be completed and a chargesheet filed in a Court of a competent jurisdiction in cases of prosecution or served on the officers in cases of departmental proceedings within 6 months as a rule. If the investigation is likely to take more time, it should be considered whether the suspension order should be revoked and the officer permitted to resume duty. If the presence of the officer is considered detrimental to the collection of evidence, etc., or if he is likely to tamper with the evidence, he may be transferred on revocation of the suspension order. This was further modified in 1971 when the Government decided that every effort should

be made to file the charge-sheet in Court or serve the charge-sheet on the Government servant, as the date may be, within three months of the date of suspension and in cases in which it may not be possible to do so, the disciplinary authority should report the matter to the next higher authority explaining the reasons for the delay. In 1972, the Government gave a further direction that the total period of suspension viz., both in respect of investigation and disciplinary proceedings should not ordinarily exceed six months. In 1978, the Government issued further instructions that it is impressed on all the authorities concerned that they should scrupulously observe the time limits laid down in the preceding paragraph and review the cases of such pension to see whether continued suspension in all cases is legally necessary. The authorities superior to the disciplinary authorities should also give appropriate directions to the disciplinary authorities keeping in view the provisions contained above. These instructions were further reiterated in 1984 by the Ministry of Home Affairs, Department of Personnel & Administrative Reforms. Viewed against these instructions, it is not understandable why the applicant was kept under suspension for 22 months and a charge-sheet was issued to him only on 2.9.1986, more than a year after his suspension was ordered. It is not known if the prescribed exercise by the disciplinary authority and the superior authority was carried out to review the suspension of the applicant and the charge-sheet thereon. The time gap between issue of charge sheet on 2.9.86 and revocation of the suspension on 2.4.87 is also not understandable. During

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the course of arguments Shri N.H. Jain, learned counsel for the respondents brought to our notice that all his due allowances and increments had been sanctioned and paid only under the order dated 18.8.1994.

9. This delay in processing of the disciplinary case cannot be allowed to go unnoticed. A co-ordinate Bench of this Tribunal at Ahmedbad has very recently, cited at (1995) 31 ATC 227 in the case S.M. Dubey vs. Union of India & Ors. held that the enquiry should be held within reasonable time and belated enquiry violate principles of natural justice. Right to speedy trial in our Country flows from Article 21 of the Constitution. In the instant case the delay prejudiced the applicant's case and, therefore, the proceedings were quashed. The learned Division Bench in that matter had quoted the case of Kundanlal vs. Delhi Administration cited at 1976 (1) SLR 133 wherein it has been ruled by the Delhi High Court that " elementary fairness to a public servant would require that the sword of Damocles should not be allowed to hang over him longer than necessary; otherwise there is likelihood of degeneration into an engine of oppression. Whether the departmental action taken against the petitioner in this case was legal or illegal, minimum fairness required that the said action was taken at least expeditiously and not after so much unexplained delay as has unfortunately happened in this case". The case of Hussainara Khatoun & Ors. vs. Home Secretary, State of Bihar, Patna cited at AIR 1979 SC 1369 was considered by that Bench and it was observed that " it is, absolutely essential that persons accused of offences should be speedily tried, so that in cases

where bail, in proper exercise of discretion, if refused, the accused persons have not to remain in Jail longer than is absolutely necessary. Thus, we find that the speedy trial, though it was not specifically enumerated, is the fundamental right^{and} had its implication in the broad sweep and contents of Article 21. The reason of this interpretation is that if a person is deprived of his life under a procedure which is not reasonable, fair and just, such deprivation would be violative of his fundamental right." We respectfully agree with the views held by our learned brothers of the Ahmedabad Bench and we have to take note of the unexplained and unreasonable delay in processing the disciplinary action against young I.T.O who also happens to be a Scheduled Caste coming from backward strata of life.

10. The next point to be considered is about the application of the punishment order and the applicant's denial of promotion during that period. It is a settled principle of law that unless the period of punishment expired by efflux of time, the claim for promotion during the same period cannot be taken. Admittedly, the order of penalty was issued on 29.7.92 and as such order requires to be prospective in operation. The applicant has made an averment that he was entitled to get promotion on the post of DCIT in April, 1987 when the officers belonging to his batch were given promotion. However, promotion was denied to the applicant only on the

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ground that a departmental enquiry was pending against him and the procedure of sealed cover was not adopted by the DPC. This averment was denied by the respondents by saying that the applicant was not entitled to get promotion to the post of Dy. Commissioner Income-tax (DCIT, for short) in April, 1987, as disciplinary proceedings were pending against him which culminated in imposition of penalty of withholding of 5 increments without cumulative effect.

11. The rules governing the promotion are very clear about the officers under cloud due to (i) Government servants under suspension ; (ii) Government servants in respect of whom disciplinary proceedings are pending or a decision has been taken to initiate disciplinary proceedings; and (iii) Government servants in respect of whom prosecution for a criminal charge is pending or sanction for prosecution has been issued or a decision has been taken to accord sanction for prosecution. These are detailed in the Swamy's Master Manual for DDCs and Heads of Office - Part II under the Chapter 4 'PROMOTIONS' at page 94. This ruling also indicates that " the DPC will assess the suitability of the above officials alongwith other eligible persons, without taking into account the disciplinary case / criminal prosecution, etc., against them. The assessment in such cases including unfit for promotion and the grading awarded will be kept in a sealed cover. The

sealed cover will be superscribed "Findings regarding suitability for promotion to the grade / post of in respect of (Name of Government servant). Not to be opened till the termination of the disciplinary case/criminal prosecution against Shri". In the D.P.C. proceedings suitable note that the findings are contained in the sealed cover should be recorded against the name of the Government servant. The department may be advised to fill up the vacancy in the higher grade only in an officiating capacity in the meantime. The same procedure will be followed by the subsequent DPCs till the completion of the case/prosecution.

After conclusion of the disciplinary proceedings/criminal prosecution, the sealed cover will be opened. If the findings are "not yet fit," the vacancy kept for such official, or filled temporarily can be filled on a regular basis. If the findings are Fit with suitable grading, action to be taken depends on the result of the proceedings/case. If the Government servant is completely exonerated, the due date of his promotion will be determined with reference to the position assigned to him in the findings kept in the sealed cover and with reference to the date of promotion of his next junior in the select panel. The official will be promoted, if necessary, by reverting the juniormost officiating person. His promotion will, however, be effective notionally from the date his next junior was promoted, but he will not be allowed any arrears of pay for the period preceding the date of actual promotion.

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If any penalty is imposed as a result of the disciplinary proceedings against the Government servant or if he is found guilty in the criminal case, the findings of DPC in the sealed cover will not be acted upon. His case will be considered by the next DPC in the normal course and having regard to the penalty imposed on him."

12. As far as these rulings are concerned, the applicant had not been awarded any punishment on the date when the DPC was held and the officers of his batch were promoted as DCIT. There has been no specific averment or any argument that the DPC which was held in 1987 in terms of the above rules made any recommendations regarding the applicant; ^{and} resorted to the "Sealed cover procedure." If the DPC had been held in 1987 or even in subsequent years, a recommendation about the applicant would have been known by opening the Sealed Cover when the penalty was awarded to him on 29.7.1992 and a fresh DPC should have been convened to consider his candidature. No such averment was made by the respondents who only denied the claim of the applicant by saying that he had no right to be considered for promotion because he was under suspension and undergoing a disciplinary proceedings. Admittedly, a charge-sheet was issued to the applicant on 2.9.86 and he was under suspension for a period of 22 months till the 2nd April, 1987. We are totally of the view that fact of a pending charge-sheet and the suspension period could not have been used as a reason for not considering his case by a DPC for promotion to the post of DCIT.

13. So far the unreasonableness or infirmity in the orders of disciplinary authority and the appellate authority are concerned, we find that the applicant was punished on 29.7.92 with the penalty of withholding of increments for five years without cumulative effect. As per F.R. 24, an increment shall ordinarily be drawn as a matter of course unless it is withheld. An increment may be withheld from a Government servant by the Central Government or by any authority to whom the Central Government may delegate this power under Rule 6, if his conduct has not been good or his work has not been satisfactory. In ordering the withholding of an increment, the withholding authority shall state the period for which it is withheld, and whether the postponement shall have the effect of postponing future increments. The Government of India orders under this rule also clarifies that the order has to indicate the next increment or one increment/number of increments so that there is a clarity that the next increment / one increment is to be withheld for a specified period of pay. The applicant was given senior scale and promoted as Assistant Commissioner of Income-tax (ACIT, for short) with effect from 1.11.1982 vide respondents' order dated 12.10.1993 which brought him to the senior time pay scale in the grade of Rs.3000-100-3500-125-4500. During the arguments, it was also submitted by the respondents that for all those years when the increments due were not disbursed to the applicant during the pendency of the disciplinary proceedings, have now been paid to him and, therefore, his next increments for 5 years

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have been withheld prospectively from the date of imposition of the penalty in July, 1992 as per order dated 18.8.94.

However, during argument we were informed that for all the time he was under suspension and subsequently reinstated, the full pay of the applicant was not disbursed to him. He was only paid 75% of his admissible pay in his old pay scale which he was drawing at the time of suspension. This contention also gets proved by the fact that by the order dated 18.8.1994 his pay was allowed to be fixed in the senior time scale of pay of Group 'A' officer and the applicant was redesignated as Assistant Commissioner of Income-tax with effect from 1.11.1982. On 1.10.82, the applicant was shown to have been drawing a pay of Rs.820/- which was the pay of the junior time scale in which he was working at the time of his suspension. If his pay was Rs.820/- on 1.10.82, he would have been due for crossing the E.B. at Rs.900/- in the same grade of pay in 1985, shortly after his suspension. There is no averment or indication by the respondents that any conscious decision was taken to stop him at the EB and thus was in receipt of the pay scale of junior time scale in which he had reached the threshold level for crossing the Eb. Again, while he was given the senior time scale retrospectively he was not authorised to draw that grade of pay till 18.8.1994 and his increments in that scale were not drawn as and when they became due. As a matter of fact, the applicant should have been at the level of Rs.1200/- in precised revised scale as on 1.11.84

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before the suspension and had this re-fixation been done in proper time, the rate of subsistence allowance could have been surely higher than what he was reluctantly sanctioned by the respondents in September, 1985. From the charge-sheet dated 2.9.1986, it is abundantly clear that the applicant was not promoted to the senior time scale of pay in the rank of Assistant Commissioner till that date. It is not known at what point of time his proforma promotion to the senior time scale was ordered. Though promotion to the post of ACIF is not strictly a promotion, it is still a promotion to the higher scale of pay and subject to the consideration of the D.P.C. There is no averment by the respondents as to when they promoted him as ACIF nor has the applicant himself clarified this point. However, from the Annexure A/9 dated 23.7.90 submitted by the applicant it appears that in 1990 when the enquiry report was sent to him he had already become ACIF in the senior scale of pay. However, the order of his appointment in the senior time scale was issued only on 13.10.1993 giving him retrospective seniority with effect from 1.11.1982. It was vide this order that he was allowed arrears of pay and allowances consequent upon his senior pay scale which was followed up by the order dated 16.8.1994 fixing his pay and increments. The reasons for this belated promotion to the senior time scale and payment

of arrears thereon have not been brought into focus by either party. But a cursory examination of the time scale of pay of the senior scale of Rs.3000-4500 reveals that it is only for 13 years and if the applicant became due for his fixation of pay in that scale on 1.11.1982, he would have reached the maximum of his grade on 1.11.1995 and withholding of increments for five years effective from July, 1992 without indicating the stage at which applicant pay stood after re-fixation in terms of IV Pay Commission recommendations makes the punishment order totally vague and invalid. The punishment order ~~does not~~ specify the pay scale in which the increment is sought to be withheld.

14. In the light of above position it appears to us that the penalty of stoppage and increments for five years without cumulative effect was not within the ken of the rules 11 (iv) of the CCS (CCA) Rules without indicating the stage of withholding of increments of pay. The C.C.S. (C.C.A) Rules under Rule 11 prescribes graded punishment which are of correctional nature excepting the punishments of compulsory retirement, removal from service and dismissal from service as detailed at sub paras (vii), (viii) and (ix). The minor punishments are:

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- (i) Censure;
 - (ii) Withholding of his promotion;
 - (iii) recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government by negligence or breach of orders;
 - (iv) withholding of increments of pay;

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Then there are two major penalties :-

- (v) reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the Government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay ;
- (vi) reduction to lower time scale of pay, grade, post or Services which shall ordinarily be a bar to the promotion of the Government servant to the time scale of pay, grade, post or Service from which he was reduced, with or without further directions regarding conditions of restoration to the grade or post or Service from which the Government servant was reduced and his seniority and pay on such restoration to that grade, post or Service.

The withholding of increments of pay simpliciter without any hedge over is certainly a minor penalty. But when the penalty imposed is withholding of 5 increments it means that the 5 increments would be a cut off stage as a measure of penalties for five years in his upward of march/earning higher scale of pay. In other words the clock is put back to a lower stage in the time scale of pay and on expiry of five years the clock starts working from that stage again. The insidious result of the impugned order by necessary implication is that the applicant is reduced in his time-scale of pay by 5 years and the punishment awarded is almost the same as provided in the major penalties Rule 11(v). The fact of the penalty being without cumulative effect does not alter the result in as much as this postpones the future increments of pay even beyond the normal span of the scales of pay prescribed for his grade of service. If this kind of stoppage of increments with the effect of postponing future increments in the time scale of pay is permitted it would empower the disciplinary authority to impose

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under the garb of the stoppage of increments of earning future increments in the time scale of pay even permanently ^{out} with-~~out~~ expressly stating so. The Hon'ble Supreme Court in a judgement cited at 1990 (6) SLR - Kulwant Singh Gill v. State of Punjab has clearly ruled "This preposterous consequences cannot be permitted". Ofcourse, this verdict was given in relation to a case where penalty of withholding of increment of pay with cumulative effect was imposed without holding enquiry and following the prescribed procedure. In this case, the procedure under Rule 16 (1-A) has been followed which states "Notwithstanding anything contained in clause (b) of sub-rule (1), if in a case it is proposed after considering the representation, if any, made by the Government servant under clause (a) of that sub-rule, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay for a period exceeding three years or to withhold increments of pay with cumulative effect for any period, an enquiry shall be held in the manner laid down in sub-rules (3) to (23) of Rule 14, before making any order imposing on the Government servant any such penalty." As per this expressed condition prescribed in Rule 16 (1-A), one can presume that normally a minor penalty of withholding of increments simplicitor as per Rule 11(iv) has to be limited to withholding of increments of pay for a specified period upto 3 years under F.R.24 with or without cumulative effect. However, this Rule 11 (iv) read with F.R.24

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does not give the respondents the liberty to impose a penalty of withholding of increments for any number of years which would deny the right of the Government servant to earn the increments of pay due and admissible to him for the grade pay scale prescribed for him, culminating in his drawal of the increments after 10 years or beyond the date when it fell due and as a necessary corollary the Government servant also has an added misfortune of missing his promotion even when duly recommended by the DPC due to the currency of the penalty of withholding of increments with prospective application. This kind of a penalty will be much more severe than the reduction to a lower stage in the time scale of pay for a specified period. Thus, the Government servant would be made to undergo a double penalty, first the penalty of withholding of his increments for nearly 10 years and then withholding of increments for the next five years and the consequent non-promotion during the currency of the penalty. We, therefore, feel that the punishment order imposing the penalty of withholding of five increments without cumulative effect was a very vague order as it did not indicate the stage of the relevant time scale of pay at which the increments had been stopped and the currency of that stoppage. As a result, the respondents have taken advantage of this order by making full payment of all the increments due and admissible to the applicant with effect from 1.11.1982 till the date of order of punishment and thereby they have tried to preempt the question of applicability of the punishment order. Viewed in context of these observations, the punishment & appellate orders and the order on the memorial require to be quashed.

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15. Applicant had made an allegation of harassment meted out to him by not paying him the subsistence allowance during the period of suspension and again by not allowing him promotion to the senior time scale for which he had become due in November, 1982 and thus by keeping him out of the list of the senior time-scale officers, they effectively blocked his promotion to the Dy. Commissioner of Income-tax (DCIT) and his name was also not put up before the DPC for consideration. No averments have been made by the respondents as to the reason for the delay in giving him the due promotion to the senior time-scale of pay in 1982 and any valid reasons why his name was not included in the list of officers to be considered by the DPC for promotion to DCIT. We are also not able to understand why it took two years to pass an order for withholding of increments for five years in July, 1992 when the enquiry report was submitted on 30.11.1989 and the applicant had been given a copy thereof on 5th July, 1990 to which a reply was given by him on 26th July, 1990. As already discussed, the disciplinary proceedings drawn against an officer, that too against a Class-I officer, who was within the zone of promotion to a higher grade of DCIT had to be processed with due alacrity and diligence by the respondents. We have not been informed by the respondents that there was any delay on the part of the applicant who indulged in non-cooperation with the enquiry officer. On the other hand, the applicant had been subjected to harassment by non-payment of subsistence allowance promptly which was required to keep the body and soul together of any officer who was not in receipt of his full pay and allowances and had also to participate in the enquiry. While the officer was put under suspension

for a period of 22 months with effect from 20.5.85, his subsistence allowance were paid to him only in January, 1986. The order dated 18.8.1994 fully supports the contention of the applicant that he was not paid his dues, subsistence allowance and other incremental benefits for the entire period of his being under suspension and undergoing disciplinary proceedings without any order thereto by the competent authority in gross violation of F.R. 24 and even F.R. 25. In this rejoinder dated 5.4.1994, ^{the} also further reiterated that " the subsistence allowance which were ordered to be paid vide order dated 4.3.87 has not been paid till date." It is substantially admitted by the respondents at page 10 of the reply that whatever has not been paid will be paid now.

16. In view of what has been discussed above, we have been persuaded to accept the allegation that the actions of the officers of the respondents department were suspect and not without malice and malafides. It appears that there was a premeditated intention to harass and prejudice the applicant in whatever manner possible by the officers of the Jaipur level, i.e., the then Chief Commissioner of Income-tax, G.C. Agarwal & Others in the Board who in spite of the clear rulings and instructions of the Government kept the applicant under suspension without issuing him a charge-sheet. Under the instructions, they were bound to issue a charge-sheet within 6 months of suspension failing which

they should have revoked his suspension and posted him at any other place so that they did not have trouble in finalising the disciplinary action against him. Apart from the fact that he was kept under suspension for such a long period irregularly, the applicant was not even paid his subsistence allowance to keep his body and soul together and even then the delayed subsistence allowance was allowed to him on lower rates than what he was entitled to. The enhanced subsistence allowance was paid to him only in March, 1987, after 21 months of his being under suspension. The issue of charge-sheet itself was delayed by more than a year. The most hard hitting action was in not giving him the due higher scale of pay in the senior time pay scale which he was entitled to as long back as November, 1982 and refix his pay in the terms of IVth Pay Commission in 1986. His due increment which cannot be stopped without an order of competent authority were withheld for more than ten years in the higher scale of pay of the senior time scale or even junior time scale of pay. His name was not put up for consideration by the DPC even though admittedly a DPC was held in April, 1987 when his batch mates were considered and promoted. After his suspension was revoked and he started working as ACIT, he had applied for consideration alongwith others in the DPC held in 1992, but his name was not included therein and no sealed cover procedure was resorted to. Even when an interim order was given for considering his name alongwith others in


the DPC to be held in 1994-95, there is no indication that this order of the Tribunal was complied with. There are unexplained delays in the conclusion of departmental enquiry and finally in issuing the punishment order. Therefore, there is an unmistakeable indication that the respondents had chosen to punish him, unmindful of the irregularity and illegal procedures and they succeeded in denying him both the rights of drawal of due increments for more than ten years as also his right of being considered for promotion. These civil injuries caused to the applicant cannot be allowed to be perpetuated with impunity by the respondents. The applicant had already been denied the increments due to him for more than ten years as would appear from Respondents own order dated 18.2.1994. In view of this, there cannot be any further withholding of increments for another five years as a result of punishment order.

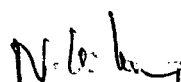
17. Before parting with this case, we would like to record our disappointment and dismay at the attitude of the respondents who did not co-operate with the Tribunal's proceedings in as much as the replies to the specific claims raised by the applicant were not adequately given. In the instant case, the I.T.O. (Recovery) has filed a reply on behalf of the respondents which was unreliable and not given out a proper explanation for the various acts and commissions of the respondents. The respondents were bound by the Notification No.A-11019/105/87/AT dated 30.7.1990 of the Government of India (Department of Personnel and Training) to have a reply filed at least by a Desk Officer or an officer of

equivalent or above rank of an Under Secretary to the Government of India in the Subordinate Offices. Both these respondents No. 1 & 2 kept clearly out of the picture with whatever intentions. Normally we would have liked to award costs in such a situation but having made these observations hereinabove we have fond hope that the respondents will take care in future.

O R D E R

18. In view of observations above, we cannot support the impugned punishment order as a valid and reasonable order. The OA, therefore, succeeds and the order of penalty dated 29.7.1992 (Annexure A/3), appellate order dated 4.5.1993 (Annexure A/2) and the order passed on the Memorial dated 11/13.10.1993 are directed to be quashed. The respondents are also directed to consider the case of promotion of the applicant as per the records pertaining to him at the time when the DPC was held in April, 1987 and in subsequent years for promotion to the post of DCIT. If he is found fit for promotion as per rules, he shall be given all consequential benefits. All arrears of pay and allowances including subsistence allowance on the basis of refixation of pay with effect from 1.11.1982 shall also be paid without any delay. He shall also be paid interest @ 12% per annum for delay in sanction and disbursement of his due increments and pay admissible as per the IVth Pay Commission in senior time scale. The directions above shall be complied with within four months of the receipt of these orders. No costs.


(RATTAN PRAKASH)
Member (J)


(N.K. VERMA)
MEMBER (A)