

(1)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

O.A. No. 523/97
T.A. No.

199

DATE OF DECISION 4.2.2000

K.R. Guglani

Petitioner

Self

Advocate for the Petitioner (s)

Versus

U.O.I & Anr.

Respondent

Mr. N.K. Jain

Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. S.K. Agarwal, Judicial Member

The Hon'ble Mr. N.P. Nawani, Administrative Member

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 ?


(N.P. Nawani)

Member (A).


(S.K. Agarwal)
Member (J).

(10)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.523/97

Date of order: 4/2/2000

K.R.Guglani, R/o 1/255, SFS, Agrawal Farm, Mansarovar,
Jaipur.

...Applicant.

Vs.

1. Union of India through the Secretary, Ministry of Finance,
Dept. of Revenue, Central Secretariat, New Delhi.
2. Commissioner of Income Tax, Raika Bagh Palace, Jodhpur.

...Respondents.

Applicant present in person

Mr.N.K.Jain - Counsel for respondents.

CORAM:

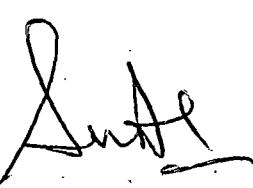
Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member.

PER HON'BLE MR.S.K.AGARWAL, JUDICIAL MEMBER.

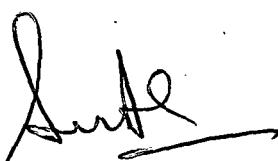
The applicant has filed this Original Application under Sec.19 of the Administrative Tribunals Act, 1985, to quash and set aside the impugned order of dismissal dated 7.8.92 and order in appeal dated 1.8.97. A further prayer has also been made that the entire suspension period of the applicant till his superannuation may be treated as on duty and in case this O.A is accepted, the respondents may be directed to stop from continuing the enquiry under the CCS(Pension) Rules, in view of the fact that they have become functus officio after expiry of time allowed by the Jodhpur Bench of the Tribunal in O.A No.253/87.

2. In brief the fact of the case as stated by the applicant are that while working on the post of Income-tax Officer in Banswara, a charge-sheet was served upon the applicant in February 1983. Enquiry was conducted and the applicant was dismissed from service in May 1985. The order of dismissal was challenged by the applicant before the Jodhpur Bench of the Tribunal and the Tribunal set aside the order of dismissal in O.A No.125/86 with the direction to make de novo enquiry. Again the applicant challenged the appointment of the Enquiry Officer by filing O.A No.251/87 and O.A No.253/87. Finally, O.A No.251/87 was dismissed and in O.A No.253/87, directions were given to the respondents to complete the enquiry proceedings within six months vide order dated 14.11.91. It is stated that Shri Neelakantan, was appointed as Enquiry Officer who conducted the enquiry and thereafter submitted the enquiry report on 26.5.92. On the basis of the enquiry report, the disciplinary authority dismissed the services of the applicant vide order dated 1.8.97. The applicant challenged the order of dismissal before the appellate authority who also dismissed the appeal vide



order dated 29.8.97. It is also stated that the applicant has also filed an appeal under Rule 27 of the CCS(CCA) Rules, 1965, before the President of India, which was also dismissed. It is further stated that while conducting the enquiry, applicant was denied the opportunity to defend his case and proper procedure was not followed and the principles of natural justice were violated. It is also stated that the conduct of the Enquiry Officer has been biased throughout the enquiry although the applicant submitted an application dated 14.1.92 alleging bias against the enquiry officer but the application for changing the Enquiry Officer was dismissed by the Commissioner of Income-tax without referring the matter to the Reviewing authority. It is stated that the applicant requested for postponement of hearing on 20.4.92 and 12.5.92 on the basis of reasonable and probable cause but his request was not acceded to and an ex-parte enquiry was made. The applicant made a request to engage a Lawyer to defend his case but it was also rejected and communicated the same to the applicant late. It is stated that the appellate authority had rejected his appeal without application of mind on the basis of the opinion given by the UPSC, therefore, the order of the disciplinary authority based on such a report is not sustainable in law and liable to be quashed. Therefore, the applicant filed this O.A for the relief as mentioned above.

3. Reply was filed. It is stated in the reply that procedure/rules were followed while conducting the enquiry and the applicant was given full and reasonable opportunity to defend his case and in no case principles of natural justice were violated. It is further stated that in view of the judgment of the Supreme Court in UOI Vs. Parmanand, this Tribunal shall not interfere in the order passed by the disciplinary authority and the appellate authority if the procedure/rules have been followed while conducting the enquiry and the applicant was afforded reasonable opportunity of hearing and the Enquiry Officer, Disciplinary authority and the Appellate Authority were exercised the powers in fair and judicious manner. It is stated that the Appellate authority has disposed of the appeal after seeking opinion from the UPSC, who is an independent body. It is further stated that Jodhpur Bench of the Tribunal had directed the respondents to complete the enquiry within six months and the applicant has raised baseless objections against the Enquiry Officer by filing the O.A with a view to delay the enquiry proceedings. It is further submitted that the applicant has avoided to attend the enquiry proceedings on the date fixed with a view to prolong the enquiry proceedings and the report of the Enquiry Officer makes it abundantly clear that the applicant was given full



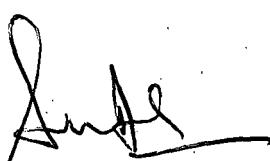
opportunity to defend his case and rules/procedure have been correctly followed. The appellate authority passed a speaking order after obtaining opinion from the UPSC, therefore, the applicant has no case for interference by this Tribunal and this O.A is devoid of any merit which is liable to be dismissed.

4. Rejoinder has also been filed, reiterating the facts stated in the O.A which is on record.

5. Heard the applicant and the learned counsel for the respondents and also perused the whole record including the enquiry proceedings file.

6. Applicant who appeared in person while presenting his case contended that Enquiry Officer while conducting the enquiry did not follow the rules/procedure, thereby violated the principles of natural justice. He contended that the Enquiry Officer was biased against the applicant and he moved an application for changing the enquiry officer. But the same was rejected by the Commissioner of Income-tax whereas the same should have been referred to the appropriate reviewing authority for consideration and for passing appropriate orders therein, thereby the respondents have violated sub-rule 14(13) of the CCS(CCA) Rules. In support of his contention the applicant has also referred to Govt. of India instruction mentioned in OM No.39/40/70-Est(A) dated 9.11.72 and a leading case Deepak Kumar Vs. UOI & Ors, 1997(2) WLC Rajasthan 292. In this case it was held by the Rajasthan High Court that for this purpose reviewing authority will normally be the appellate authority but disciplinary authority cannot become appellate authority.

7. It is an admitted fact that an application filed by the delinquent for changing the Enquiry Officer, Commissioner of Income-tax rejected the application whereas according to the O.M dated 9.11.72, whenever an application is made by a government servant against whom departmental proceedings are initiated under the CCS(CCA) Rules, against the Enquiry Officer on the ground of bias, the enquiry proceedings should be stayed and the application be referred alongwith the relevant material to the appropriate reviewing authority for considering the application and passing appropriate orders thereon. In this case, from the very beginning the delinquent is alleging bias on the part of the Enquiry Officer, even the Enquiry Officer was impleaded as party in one of the O.A filed by the applicant, the respondents should have considered the request made by the applicant in accordance with the instructions issued for this purpose. It is a settled principle of law that justice should not only be done but it should appear to have been done. In these circumstances, if there is an application for change



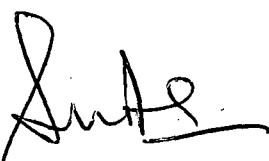
of Enquiry Officer from the delinquent government servant, it must have been decided/disposed of by the competent authority by following the relevant procedure by considering the factum of bias against the Enquiry Officer as alleged by the applicant. But in the instant case, it is abundantly clear that the instructions dated 9.11.72 are not followed and in other words these instructions are clearly violated.

8. The applicant also contended that his request for engaging an Advocate was improperly rejected and the rejection was communicated to him late, thereby violated the rules. On the otherhand the learned counsel for the respondents has contended that the applicant's request for engaging an Advocate was rightly rejected as the applicant has no right to engage an Advocate in departmental proceedings as the applicant himself was working as Income-tax Officer before termination, therefore, the claim of the applicant to engage an Advocate for conducting departmental proceedings has no relevance. In Bharat Petroleum Corporation Ltd. Vs. Maharashtra General Kamgar Union & Ors. 1999(1) SCC 626, Hon'ble Supreme Court has held that delinquent employee has no right to be represented by an Advocate in the departmental proceedings, therefore, the departmental proceedings would not be bad only for the reason that assistance of an Advocate was not provided to the applicant. This view also gets support from the Apex Court judgment in Cipla Ltd. & Ors Vs. Ripu Dhaman Bhanot & Anr. 1999(2) SLR SC 727. In view of the above legal position and facts and circumstances of this case, the contention of the applicant has no force and does not help the applicant in any way.

9. The applicant also contended that on 20.4.92 and 12.5.92/13.5.92 on the date fixed for departmental proceedings, he made an written request for adjournment/postponement of the enquiry and in support of his request, a medical certificate was also furnished. But the Enquiry Officer did not adjourn the hearing and ex parte enquiry was done, thereby violated the principles of natural justice. In support of his contention, he has also referred to 1998(3) WLC Raj.419, Manish Dak Vs. Malviya Engineering College Jaipur & Ors.

10. On the other hand, the learned counsel for the respondents has argued that this Tribunal fixed six months time to complete the enquiry proceedings and the applicant was in any way interested not to complete the enquiry within the stipulated period, so that he can raise the very point before the Tribunal by taking the ground for quashing the enquiry proceedings.

11. We have given anxious consideration of the rival



contentions of both the parties.

12. On the perusal of the enquiry proceedings file, it appears that the applicant submitted a written request to the Enquiry Officer for postponement of hearing or granting adjournment on the ground of his illness and in support of his contention, medical certificate was also sent which was issued by the competent medical officer. The applicant was asked to attend the departmental proceedings on the date fixed for which he has to travel from Udaipur to Delhi and the applicant has made it very clear in the application that he is suffering from High Blood Pressure and Back-ache, therefore the journey may cause serious complication to the applicant. But it appears that the Enquiry Officer has proceeded ex parte and no adjournment was granted in view of the directions given by the Jodhpur Bench of the Tribunal to complete the enquiry within six months. In this connection we make it very clear that the Tribunal never directed the respondents that while conducting the enquiry, the Enquiry Officer will not take into consideration the principles of natural justice or will not provide reasonable opportunity to defend the case to the applicant or the reasonable or legitimate request of the applicant may not be acceded to. If the applicant was seriously ill and unable to attend the enquiry proceedings on 20.4.92, 12.5.92/13.5.92 at Delhi, the delinquent should have been given further opportunity to attend the departmental proceedings. But the Enquiry Officer proceeded with ex parte in the instant case on the assumption that delinquent is intentionally adopting delaying tactics and seeking adjournment on the pretext of his illness so that enquiry may not be completed within the stipulated period and proceedings of Contempt may be initiated against the respondents. But we are not inclined to accept the above contention. In the instant case it also appears that the enquiry was completed in an unseemly haste under the pretext of time pressure of completing the proceedings within the period specified by the Tribunal, the respondents would have filed an application before the Tribunal to extend time for completing the enquiry stating the reason for not completing the enquiry proceedings within the time limit. But ignoring the ground of serious illness of the applicant the Enquiry Officer proceeded with ex parte proceedings against the applicant which was not in any way proper for him, thereby the Enquiry Officer has clearly violated the principles of natural justice by not affording the adequate opportunity to defend his case.

13. On the perusal of enquiry proceedings it appears that on 12/13.5.92, ex parte evidence was recorded and thereafter enquiry

report was given on 26.5.92. Therefore, the entire proceedings included the order of penalty imposed on the applicant, without affording an opportunity to defend his case to the applicant, appears to be against the principles of natural justice and liable to be quashed. In the same way the order of the appellate authority is also liable to be quashed as become nonest.

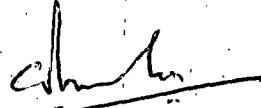
14. In view of the foregoing, we allow this O.A and :

(i) quash the order dated 7.8.92 by which penalty of dismissal from service of the applicant was imposed and order dated 1.8.97 in appeal;

(ii) respondents are directed to reconsider the application of the applicant for changing the Enquiry Officer in accordance with O.M. dated 9.11.72 and our observations in para No.7 of this order;

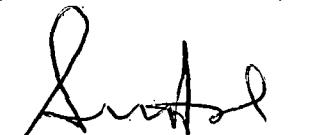
(iii) the respondents are further directed to conduct denovo enquiry against the applicant after the stage of issuance of charge-sheet. The respondents shall complete the enquiry proceedings as early as possible and the applicant is expected to cooperate the same so that the enquiry proceedings may not be delayed.

15. No order as to costs.



(N.P. Newani)

Member (A).



(S.K. Agarwal)

Member (J).