

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH,
JABALPUR

Original Application No. 1141 of 2004

Jabalpur, this the 14th day of December, 2005

Hon'ble Shri M.P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Judicial Member

Rahul Raman, S/o. late Shri Umeshwar Prasad,
Aged about 36 years, Deputy Commissioner,
Income Tax-1(1), Indore-M.P. Applicant

(By Advocate – Shri M.K. Verma)

V e r s u s

1. Union of India, through Ministry of Finance,
Department of Revenue, North Block, New Delhi.
 2. The Chairman, Central Board of Direct Taxes,
North Block, New Delhi.
 3. Central Vigilance Commission, Satarkata Bhawan,
GPO Complex, INA, New Delhi.
 4. Chief Commissioner of Income Tax (CCA),
Aaykar Bhawan, Hoshangabad Road, Bhopal.
 5. Union Public Service Commission, through Secretary,
Dholpur House, Shahjahan Road, New Delhi.
 6. Shri A.S. Thakur, the then Commissioner of Income Tax,
Mumbai City-XIV, Mumbai, Presently Chief Commissioner
of Income Tax, Aaykar Bhawan, Bailey Road, Patna, (Bihar)
- Respondents**

(By Advocate – Shri Umesh Gajankush for respondents Nos. 1 to 3
and Shri S.K. Jain for respondent No. 5)

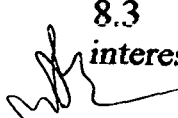
O R D E R

By M.P. Singh, Vice Chairman -

By filing this Original Application the applicant has claimed
the following main reliefs :

“8.2 to quash the penalty order dated 25.11.2004
communicated on 6.12.2004 in the interest of justice,

8.3 to quash the charge sheet dated 20.11.2002 in the
interest of justice,



8.4 to hold that the entire charge sheet dated 20.11.2004 and consequent penalty order dated 25.11.2004 communicated on 6.12.2004 is an out come of malafides of respondent No. 6,

8.5 to hold that the action on part of the respondent No. 6 in harassing, humiliating and victimizing the applicant, is bad in the cycs of law."

2. The brief facts of the case are that the applicant after joining the Income-tax Department as an IRS officer was posted as Asstt. Commissioner of Income Tax, at Mumbai. At that time the respondent No. 6 was the Commissioner of Income Tax posted at Mumbai. The applicant had undertaken a survey under Section 133-A of Income Tax Act, 1961 on 19.12.1997 and 23.12.1997 in the case of M/s. Advance Metal Powder, Mumbai and during the course of survey the applicant found incriminating evidence of huge tax evasion done by that firm to the tune of Rs.98,64,325/-. At that point of time the Voluntary Disclosure of Income Schemes Act, 1997 (hereinafter referred to as ' the VDIS Act') was in force but the benefit of the VDIS Act was not available to the persons against whom a survey under Section 133A of the Income Tax Act, 1961 has been carried out. Despite the embargo of the VDIS Act, M/s. Advance Metal Power was permitted to file the declaration under the VDIS Act by the respondent No. 6 and accordingly after 10 days of the survey u/s. 133A of Income Tax Act, M/s. Advance Metal Powder had submitted a declaration of their unaccounted assets on 29.12.1997 and the on the same day the respondent No. 6 had permitted M/s. Advance Metal Powder to opt for the scheme. The applicant had submitted complaints on 30.4.1998 and 1.5.1998 against respondent No. 6 about favoritism towards the undue benefits of VDIS Act to M/s. Advance Metal Powder. The respondent No. 6 had got the impugned charge sheet dated 20.11.2002 issued against the applicant in which it has also been alleged that the applicant had leveled unsubstantiated charge against respondent No.6. The applicant submitted a detailed

representation with all material facts and documentary evidence in support of his complaint. The applicant has submitted his reply to the charge sheet within the stipulated period on 18.12.2002. After two years when no final orders were passed by the Department the applicant filed OA Nos. 175/2004 and 752/2003 which were disposed of by a common order dated 30.9.2004 with a directions to the respondents to finalize the departmental enquiry within a period of two months. Thereafter the Department has passed the impugned order dated 25.11.2004 (Annexure A-13) by which the penalty of reduction of pay by one lower stage for a period of two years without cumulative effect has been imposed on the applicant. Hence, this Original Application.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. The learned counsel for the applicant has contended that the applicant had undertaken a survey under Section 133 A of Income Tax Act, 1961 on 19.12.1997 and 23.12.1997 in the case of M/s. Advance Metal Powder, Mumbai and during the course of survey the applicant found incriminating evidence of huge tax evasion done by that firm to the tune of Rs.98,64,325/-. At that point of time the VDIS Act was in force but the benefit of that Act was not available to the persons against whom a survey under Section 133A of the Income Tax Act, 1961 has been carried out. Despite the embargo of the VDIS Act, M/s. Advance Metal Power was permitted to file the declaration under the VDIS Act, by respondent No. 6 and accordingly after 10 days of the survey u/s. 133A of Income Tax Act, M/s. Advance Metal Powder had submitted a declaration of their unaccounted assets on 29.12.1997 and the on the same day respondent No. 6 had permitted M/s. Advance Metal Powder to opt for the scheme. The applicant had submitted complaints on 30.4.1998 and 1.5.1998 against respondent No. 6 about the favoritism towards the undue benefits

of VDIS Act to M/s. Advance Metal Powder. The applicant could not support the allegation and contentions by cogent evidence, made against the respondent No. 6, who was his superior officer, because he was transferred and he did not have any record with him in his possession. The learned counsel for the applicant has vehemently argued that if the applicant had made complaint for the illegal act of his superior officer which was based according to the provisions of law, then a regular enquiry should have been held against his superior officer. However, the respondents in stead of making an enquiry against the Commissioner, have issued the impugned charge-sheet against the applicant and have also punished him.


5. On the other hand, the learned counsel for the respondents has contended that the applicant has been charged for leveling unsubstantiated charges against respondent No.6 who was his superior. He has further contended that the disciplinary proceedings were not initiated at the behest of the respondent No.6 as alleged by the applicant. The penalty has been imposed upon the applicant after consulting the UPSC. He has also contended that the allegations which were made by the applicant against respondent No. 6 were not supported by material evidence. The disciplinary authority has considered the representation of the applicant. The allegations leveled against the applicant were found to be proved. Due opportunity of hearing was given to the applicant. The respondents have neither committed any irregularity nor any illegality while passing the impugned order against the applicant. No detailed enquiry was conducted as minor penalty was awarded to the applicant in this case. Thus, the OA deserves to be dismissed.

6. We have given careful consideration to the rival contentions and have also very carefully perused the material available on record.



7. In this case we find that the respondents have issued a memorandum dated 20.11.2002 to the applicant wherein it is stated that "statement of the imputation of misconduct or misbehaviour on which action is proposed to be taken as mentioned above is enclosed" and accordingly along with the said memorandum, a statement of imputation of misconduct or misbehaviour on which action was proposed to be taken against the applicant had been enclosed. Number of imputations have been leveled against the applicant. Out of this only two imputations of misconduct have been proved, firstly the applicant lacked devotion to duty and secondly leveling unsubstantiated charge against his Commissioner of Income-tax. The advice of the UPSC has been obtained by the respondents and the UPSC has advised that ends of justice would be met if the penalty of reduction in the pay by one lower stage for a period of two years without cumulative effect is imposed on the applicant. After obtaining the advice of the UPSC the respondents have passed the impugned order imposing the aforesaid penalty of reduction in pay by one lower stage for a period of two years without cumulative effect on the applicant vide order dated 25.11.2004.

8. We find that the disciplinary authority while passing the impugned order dated 25.11.2004 has stated about the *article of charge*, however, from a perusal of the memorandum dated 20.11.2002 we find that no specific *article of charge* was leveled against the applicant. However, para-1 of the statement of imputation has been converted into article of charge by the disciplinary authority while imposing the penalty vide order dated 25.11.04. On close scrutiny of this article of charge as proved by the disciplinary authority, we find that there was no charge of using intemperate language by the applicant against his superior i.e. the Commissioner of Income tax which amounts to insubordination, as held by the UPSC while giving their recommendations to the respondents for imposing the penalty on



the applicant. [Para 5.2 and 5.3.2(iii) of the impugned order dated 25.11.2004] ^{refer} Hence there was no necessity to discuss and prove the same by the UPSC and the disciplinary authority. Moreover, this finding of the UPSC, relates to the letters written by the applicant on 30.4.1998 and 1.5.1998, however, we find that the memorandum of statement of imputation has been issued only in 2002 i.e. after a period of four years for using intemperate language against the senior officer. This delay has not been explained by the respondents.

9. We have also carefully perused the impugned order dated 25.11.2004 passed by the disciplinary authority. We find that the whole order contains only the statement of imputation of misconduct and the advice given by the UPSC. There is no application of mind or reason recorded by the disciplinary authority to arrive at his own conclusion. Nothing has been discussed with regard to the facts whether the charges are proved or not. After reproducing the statement of imputation of misconduct and the advice of the UPSC, the disciplinary authority has just imposed the impugned penalty without analyzing the facts.

10. We further find from the facts mentioned in para 6.10 of the OA that the applicant has specifically made an allegation that the respondent no.6 by the act of permitting M/s Advance Metal Powder to avail the benefit and immunities under the V.D.I.S.Act,1997 has caused a revenue loss of a minimum amount of Rs.80 lacs and maximum amount of Rs.1.8 crores to the Government. That, the firm was liable to pay the amount of tax on that unaccounted amount of stock of around Rs. 1 crore and was further liable for 100% to 300% concealment penalty as per the Income-tax Act. However, vide letter dated 22.4.1998, the respondent no.6 permitted M/s Advance Metal Powder to make payment on the declared amount of Rs.1 crore under the VDIS

Act, 1997. These facts have not specifically been denied by the respondents-official or by the respondent no.6 and a vague reply has been given by both official and private respondents. We also find that the applicant has also made a specific averment that no revenue loss has been caused by the acts which have been alleged by the respondents against him. Moreover, the UPSC in their advice in para 4.4 have also observed that there does not appear to be any malafide on the part of the applicant in not sending the written proposal for transfer of the case. The disciplinary authority has accepted the advice of the UPSC and this charge was held as not proved.

11. We also find that the applicant has been penalized with respect to the first part of imputation of misconduct i.e. for lacking in devotion to duty. In this regard the learned counsel for the applicant has contended that the inspection was done in 26 cases, out of which 6 cases were made part of the imputation of statements and in these 6 cases, 25 charges were leveled. Out of 25 charges, one solitary charge has been held as proved. He has further contended that the assessment proceedings under the Income-tax Act. is a quasi-judicial proceedings. When the Assessing Officer is assessing the income of an assessee, he is vested with the powers of a Civil Court and the assessment order passed by him is a quasi-judicial order. The Hon'ble Supreme Court in the case of Zunjarro Bhikaji Nagarkar Vs. Union of India, 1999 SCC (L&S) 1299 has held as under:

"43. If every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance, misconduct is sought to be inferred by the appellant having committed an error of law, the charge sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi-judicial authority, something more has to be alleged than a mere

mistake of law, e.g. in the nature of some extraneous consideration influencing the quasi-judicial order. Since nothing of the sort is alleged herein, the impugned charge-sheet is rendered illegal. ”.

In the said case, it has been further held by the Hon'ble Supreme Court as under:

“the charge sheet, if sustained will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication were under quasi-judicial powers are conferred on administrative authorities would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings”.

12. In the instant case, we find that the respondents themselves including the UPSC have held that there was no malafide intention on the part of the applicant. Thus we find that the respondents instead of making an enquiry against private-respondent no.6 for allowing the benefit of VDIS to the aforesaid firm, with an ulterior motive have tried to find fault with the applicant while performing his quasi-judicial function and framed frivolous imputation of statements with a malafide intention. In the aforesaid decision, the Hon'ble Supreme Court, has clearly stated that something more has to be alleged than a mere mistake of law, e.g. in the nature of some extraneous consideration influencing the quasi-judicial order. In the instant case we find that since nothing of the sort, as mentioned in the decision of the Hon'ble Supreme Court, is alleged herein, the impugned memorandum of imputation of misconduct and consequential order of penalty are rendered illegal and are, therefore, liable to be quashed.

13. In view of the facts discussed above, we are of the considered view that this is a case of no evidence as the

respondents have failed to make out any charge against the applicant.

14. In the result, the Original Application is allowed. The impugned charge sheet dated ^{20.11.2002} (20.11.2004) and consequential penalty order dated 25.11.2004 are quashed and set aside. The respondents are directed to grant all consequential benefits to the applicant within a period of three months from the date of communication of this order. The respondents are further directed to pay a cost of Rs.1000/- (Rs.One thousand only) to the applicant.

(Madan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

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પૃથાંકન સં. ઓ/વ્યા.....જબલપુર, દિ.....

पतिलिपि लक्षणेभ्यः—

- (1) सचिव, उच्च न्यायालय, जयपुर
(2) आदेशक श्री/श्री. देवे कानसल
(3) प्रत्यक्षी श्री/श्री. देवे वगडंसल
(4) गंधपाल, द. प्र.
सूचना एवं आवरण के बिना

सूचना एवं आवेदन के लिए उप रजिस्ट्रार

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पृष्ठांकन सं ओ/न्या.....जबलापुर, दि.....

प्रतिनिधि. न. ३-३-३३

- (1) सचिव, जिला प्रशासन, जिला मुख्यालय
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उप-रजिस्ट्रार

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