

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR
....

Original Application No. 668/2001

Jabalpur, this the 16th day of July, 2004

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

V.S. Banthia,
I.R.S.,
Commissioner of Income Tax,
Ayakar Bhawan, City Centre,
Gwalior.

...Applicant

(By Advocate: Shri Rajendra Tiwari, Sr. Adv. with
Shri Manoj Sharma)

-versus-

1. Union of India through
Secretary,
Department of Revenue,
Ministry of Finance,
North Block, New Delhi.
2. Central Board of Direct Taxes,
Deptt. of Revenue,
Ministry of Finance,
North Block, New Delhi through
its Chairman.
3. Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi through its Secretary.

...Respondents

(By Advocate: Shri B.Da.Silva, Sr. Adv. with Sh.S.Akhtar)

O R D E R

By Madan Mohan, Judicial Member -

By filing the present original Application, the
applicant has sought the following reliefs:-

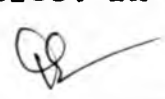
- 1) to quash and set aside the impugned order
dated 20.9.2001 (A/1) & the impugned advice
of U.P.S.C. dated 9.7.2001 (A/2).
- ii) to direct the restoration of the applicant
to his original pay, perks & status as if
there was no break, with all consequential
benefits and arrears thereof with appropriate
rate of interest thereon and complete resto-
ration of all service conditions including
consideration for promotion, etc.;

2. The brief facts of the case are that the applicant
is a Member of Indian Revenue Service of 1969 batch and

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has been working as Commissioner of Income Tax, Gwalior(MP). He was promoted as Commissioner of Income Tax with effect from 18.4.1990. During 2.8.1993 to 2.5.1994 the applicant performed his functions, duties and responsibilities as a Commissioner of Income Tax and Member, Appropriate Authority, Calcutta. An appropriate authority consists of three persons, two of whom are members of Indian Income Tax Service, Group 'A' holding the post of Commissioner of Income Tax or any equivalent or higher post and another Member of the Central Engineering Service, Group 'A' holding the post of Chief Engineer or equivalent or higher post. Any action to be taken in the capacity of Appropriate Authority in exercise of the statutory functions under Chapter XXC is required to be taken by the 3 members as aforesaid but the preparatory functions are usually apportioned by the mutual consent and understanding of the members constituting the Appropriate Authority for the time being. It would be appropriate to mention that at the relevant time there existed a resolution ~~amended~~ by which the work was distributed between the three members of the Appropriate Authority. That distribution of work memo dated 7.2.1994 is annexed herewith and marked as Annexure A/3. The main function of the Appropriate Authority is to examine whether transaction of immovable property having value of more than Rs. 10.00 lacs has been done as per market price or at a lower price. If the transaction is at a lower price than the market price for the purposes of evading taxes, then, the appropriate authority by an order acquire the property for the value for which it is being allegedly transferred.

2.1 The information with regard to transaction involving transfer of property worth Rs. 10 lacs or more, is required to be furnished in Form 37-I and if anybody fails to do so the Appropriate Authority can launch prosecution u/s 276AB of the Income Tax Act against both the transferor and transferee. In August, 1993, when the applicant took over as



Commissioner and Member of Appropriate Authority, Calcutta it was noticed that more than 60 huge multi storied complexes in posh localities/colonies were constructed during 1991- 1993. Each of these multi storied complexes consisted of nearly 30 to 50 units to be transferred apparently for more than Rs. 10 lacs. But no application in Form 37-I were filed before the appropriate authority for transfer of such units and as such all such evaders/offenders were liable for prosecution under section 276AB of the Income Tax Act, 1961 by the Appropriate Authority. It is clear from the letter dated 15.3.1989 of the CIT, Calcutta-II addressed to the then CIT and Senior Member of Appropriate Authority, that not only the defaulters/builders be identified by the Appropriate Authority but also Appropriate Authority should ensure compliance from such persons. However, it was big task to collect the name of the builders who constructed these complexes in different parts of posh localities in Calcutta. With great persuasion and many difficulties inspectors attached to the Appropriate Authority and allotted to the applicat for investigation business, who had constructed such 50 huge multi storied complexes by the end of November/December, 1993. However, the names of parties to whom these units were sold and transferred could not be determined precisely. After collecting full details about one such multi storied building concerned builder M/s. Martin Burn Ltd. and the persons to whom flats were sold, Appropriate Authority issued a Show Cause Notice for action to be taken under provisions of Section 276AB of the Income Tax Act. The builder took the matter before the Hon'ble High Court of Calcutta, which approved the notices so issued by the Appropriate Authority. After receipt of the communication of the Chairman in order to effectively implement the directions issued vide A/4, all the three members of the Appropriate Authority sat on 7.2.1994 and decided to distribute the work regarding

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collection of information, investigation, correspondences with higher authorities, judicial work and valuation work so as to have effective control over different aspects and to perform duties, functions and responsibilities in an efficient and time bound manner. This was done with a view to check the tax evasion through the Assessment Wing and to bring the offenders to book for non-filing Form No. 37-I by the Appropriate Authority. To give effect to the joint decision of the Appropriate Authority dated 07.02.1994 (A/3) Investigation work was entrusted to the applicant. This comprised of collecting information pertaining to builders and purchasers of the flats from them. In pursuance to this, routine communication seeking preliminary information about names, addresses and PAN of actual transferor and transferees, were sent by the applicant to various builders requesting them to give the names of the parties to whom flats were sold along with some more related information so that the matter may be judiciously examined. Other builders were called to furnish the names of the persons to whom they sold the various units in the multistoried complexes constructed by them, the builder's body became active to get the proceedings stalled by hook or crook.


2.2 In the month of February, 1994, the Chairman who directed the Appropriate Authority to take immediate action against the defaulting builders, retired. After his retirement the new Chairman ignoring the material facts on record as well as directions of his predecessor transferred the applicant from the post of Member Appropriate Authority and just before his retirement directed issuance of charge sheet to the applicant resulting into a formal show cause notice to the applicant in the month of March/April, 1996 for initiating action against the builders lobby in the interest of revenue (A/7). Various documents detailed were capriciously ignored and overlooked. Otherwise it would not have been possible in the first place itself to even initiate any



departmental action against the applicant. It was for the first time that U.P.S.C. while giving its advice has considered document (d) in its wrong perspective and referred to document (c) in casual manner. It is thus clear that after taking over charge by new Chairman in March, 1994 within one month of the issue of such letters, the applicant was transferred from the post of Member of Appropriate Authority and the investigation process initiated by the applicant was somehow landed in cold storage and to the best of the information of the applicant no further action has been taken against any of the builders and the transferees involved therein so far.

2.3 Interim reply was submitted by the applicant on 23.4.1996 (A/10). On 18.9.1996 the applicant inspected the records for the purposes of submission of his final reply wherein various relevant records were not made available to the applicant. However, despite these handicaps the applicant submitted his final reply to the show cause memo on 8.12.1996 (A/11). No delinquency is even prima facie made out against the applicant who was simply performing his lawful functions in his capacity as member Appropriate Authority within the four corners of the Income Tax Act. However, the applicant was served with a charge sheet dated 10.9.1997 on the identical lines mentioned in the show cause notice (A/12).

2.4 The charge memo contained three articles of charges, identical to the allegations contained in the show-cause memo. With regard to article I and II it is alleged that the applicant is guilty of misconduct while dealing with case Nos. 978 pertaining to property at Ballygunge, Calcutta. Whereas article III pertains to issuance of letters/notices/questionnaires to various builders and developers of Calcutta, requisitioning certain informations from them by which he has allegedly transgressed the limits of law and administrative instructions which is a grave misconduct and violative of



provisions of the C.C.S.(Conduct) Rules. In reply to the said charge memo, the applicant again submitted his detailed written submission on 29.9.1997. While submitting the above reply, it was submitted before the disciplinary authority that demanded documents by the applicant were not being supplied to him and he is being forced to file the final reply without full record being shown to him. It is further submitted that several documents have not been made available to him. Proper procedure has not been followed by the respondents during the departmental proceeding against the applicant. Before initiating the regular departmental enquiry, the norms laid down in the departmental manual dated 12th March, 1981 and 8th December, 1982 were flouted. According to these instructions, it is necessary to consider the written statement submitted by the C.O. The disciplinary authority did not consider the written statement dated 29.9.1997 and supplement to the written statement of defence dated 21.10.97 of the applicant and on 10.2.1998 a decision was taken to proceed further in the matter. The appointment of the Presenting officer was made contrary to rule 14(5)(b) as this was not done by the disciplinary authority as such the appointment of the Presenting Officer is illegal. During the course of enquiry proceedings the department has examined one of the Member Appropriate Authority Shri Ram Acharya (who was transferred on 13.1.1994 and had not worked as Member, Appropriate Authority upto 2.5.1994 as mentioned in the charge memo) and certain other witnesses. The enquiry officer submitted his report exonerating the applicant from all the charges except charge no. III. Against it, the applicant submitted his representation dated 2.2.1999 (A/24). Apparently the I.O., while tendering findings on article charge no. III has overlooked the material documents on record, laid in defence. The said documents have not been challenged or questioned by the department. At five different stages the matter was considered and the charges were found not proved. The said



five officers were only technical persons whose opinion was heavy and the information of these officers should have prevailed finally. But the matter went to the M.O.S. (Revenue) where unfortunately a note was recorded that the article of charge-III was made up. The matter also went before the Finance Minister and at this stage also without examining the whole issue based on the opinion of the M.O.S. a decision was taken to impose the penalty of dismissal of the applicant from service. The matter then came back to the Director of Vigilance and from there it was referred to the U.P.S.C. for its advice. The decision was taken by the disciplinary authority in June/July, 2000 itself and the note was made on the file to impose the punishment of dismissal on the applicant. This was again contrary to the provisions of Rule 14(4) of the CCS(CCA) Rules as this decision could be taken only after the advice of the UPSC. A bare reading of the advice of the UPSC shows that it has gone totally beyond its jurisdiction and imported new and fresh findings in its advice particularly of malafide and abuse of power. Till the finding of the UPSC there was no charge or iota of malafide or abuse of power in whole of the proceedings. It was only for the first time the UPSC has brought the concept and new charge of the malafide and abuse of power made the basis (without affording any opportunity to the applicant) for imposing such a severe penalty. The final order was passed by the disciplinary authority imposing the penalty of reduction in rank for the period of two years with a further punishment of loss of seniority of the period during which he held the office of the Commissioner of Income Tax i.e. entire period from 18.4.1990 till that date. There is no such punishment prescribed, causing total loss of seniority. Hence, this O.A. has been filed by the applicant seeking the aforesaid reliefs.



3. Heard the learned counsel for both the parties.

4. It is argued on behalf of the respondents raising preliminary objection that the applicant has^{not} filed appeal against the order passed by the disciplinary authority, hence, this O.A. is prematured on this ground and is liable to be dismissed. In reply, the learned counsel for the applicant argued that since the impugned order has been passed by the President of India, hence there is no provision to file appeal and to file a review is also not mandatory. In this regard, the argument advanced by the applicant's counsel seems to be legally correct and the O.A. is, therefore, maintainable.

5. It is argued on behalf of the applicant that charge No. I&II are admittedly not proved and charge no. III, which is alleged to have been proved is vague and our attention is drawn towards A/3 i.e. office order dated 7.2.1994 by which the division of work between the members of the Appropriate authority effective from 7.2.1994 and the applicant was entrusted the following work:

- a) Correspondence with higher authorities.
- b) Judicial and investigation.

In compliance with the above order, the applicant issued letter dated 16.2.1994 (A/6) to the owner/developer of Calcutta seeking information so that matter can be judiciously examined and he also further wrote a letter in the same manner. Thus both letters were well within the jurisdiction and powers of the applicant. The applicant restrained and confined himself keeping in view the division of work assigned by letter dated 7.2.1994. He has not committed any error or mistake in issuing these letters and rather the applicant was soon after transferred on 3.5.1994. Hence, he did nothing wrong. Merely he issued two aforesaid letters to collect the information so that matters can be judiciously examined. These letters have been considered as notices by the respondents which is apparently wrong. The applicant became




victim of the builders lobby . He also argued that the advice of the UPSC has imported new and fresh findings in its advice particularly in regard to malafide and abuse of powers. Till the findings of the UPSC, there was no charge or iota of malafide or abuse of power in whole of the proceedings. Hence, this advice of the UPSC does not support the report of the enquiry officer which is said to have proved the article of charge no. III. He also argued that copies of the enquiry officer's report and report of the UPSC were not supplied to the applicant which was legally required to be furnished to him. Our attention is drawn towards the judgement of the Hon'ble Supreme Court rendered in the case of Union of India vs. Ramjan Khan, reported in 1991(1) SCC, p. _____ and the decision of the C.A.T., P.B., New Delhi rendered in the case of Sh. Charanjit Singh Khurana vs. UOI, reported in All India Services Law Journal-VII, 1994(2) 360 to support the claim of the applicant. It is further argued that the punishment is too harsh. The applicant is a high ranking officer having very high status and if at all he is found guilty, minor penalty should have been awarded to him like censure. Hence, the whole departmental proceedings conducted by the respondents and impugned order passed by the disciplinary authority are illegal and in violation of the rules and regulations and also the prescribed procedure. The respondents have also violated the principles of natural justice in this regard.

6. In reply, the learned counsel for the respondents argued that the relevant documents including the report of enquiry officer were supplied to the applicant and the applicant had also filed a representation against the said report of the enquiry officer and the chargesheet. The disciplinary authority, after careful consideration of the representation filed by the applicant against the report of the enquiry officer, and in consultation with the advice of the UPSC passed the impugned order of penalty which is proper. The letters issued by the applicant are apparently




in contravention to the division of work assigned to him vide order dated 7.2.1994(A/3). He never consulted his other two colleagues before issuing such letters and he has used the word 'let me know' which is never expected from such an officer of high profile. Learned counsel for the respondents has drawn our attention towards the report of the enquiry officer (A/23) on page 208 para 3.3 and so on in which the charge no. III is said to have been substantiated. He has also drawn our attention towards the advice of the UPSC dated 9.7.2001 (A/2) and in its para 7.8 article of charge No. III is shown to have been completely proved and there is no infirmity between the aforesaid report of the enquiry officer and the advice of the UPSC in view of charge of article No. III. It is further argued that the applicant has transgressed the limits of law and acted not only against the statutory provision of administrative instructions by issuing letters/questionnaires/notices etc. It is further argued that the alleged letters issued by the applicant are also covered in article of charge no. III. Hence, it cannot be said by the applicant that he did not issue any notices. He merely issued letters is not sufficient to exonerate him from his liability. The order passed by the disciplinary authority dated 20.9.2001 (A/1) is perfectly speaking order in which it is mention that the applicant was fully aware of the relevant provisions of the I.T. Act which do not confer any power to a Member of Appropriate Authority to unilaterally call for information from private builders etc. and yet he went ahead in several instances by wrongfully taking support from an internal office order. Applicant's misconduct was also established by the fact that in none of the cases where he issued such letters was any acquisition proceeding pending. After consideration of all the relevant facts of the case, the report of the enquiry officer and the advice of the UPSC, the President was pleased to accept the advice of the UPSC and imposed the



impugned penalty. Hence, this is not a case of 'no evidence'. Learned counsel further argued that a copy of the report of the enquiry officer was duly supplied to the applicant and the advice of the UPSC was also in conformity with the report of the E.O. If the enquiry officer had exonerated the applicant from charge of article no. III and the UPSC had proved that charge in that event the applicant would have supplied the copy of the advice of the UPSC. Since this is not the case of the applicant, it was not necessary to supply the advice of the UPSC to the applicant. No prejudice is caused to the applicant by non-supply of the advice of the UPSC to the applicant. He further argued that none of the rulings cited and relied upon by the applicant is applicable in the favour of the applicant. He further argued that from an officer of high profile like the applicant it was expected that he would have discharged his official duties and responsibilities in a much efficient manner while the applicant has failed to do so. Hence, the punishment awarded to the applicant is not harsh in any way.

7. After hearing the learned counsel for both the parties and careful perusal of the record, we find that article of charge no. III is proved and established by the enquiry officer against the applicant and also in view of the advice of the UPSC. Apparently there is no infirmity in between the report of the E.O. and the advice tendered by the UPSC as in both these documents it is mentioned that the applicant has transgressed the limits of law and acted not only against the statutory rules and provisions but also against the administrative instructions by issuing letters/ notices/questionnaires (in the nature of roving enquiries) to several builders/developers of Calcutta requisitioning, inter-alia, information and details under Section 269UI read with Section 131 of the Income Tax Act without any specific information regarding default committed by these parties, and even though no proceedings under the Income Tax Act or any other Act were pending against them. By these Acts, the



applicant committed grave misconduct, violative of Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules. We have seen the advice of the UPSC in which words 'malafide' 'abuse of power' are mentioned but it does not mean that it is beyond the charge of article III. The report of the enquiry officer was furnished to the applicant who in turn submitted his representation and after due consideration of the contents of the reply filed by the applicant against the enquiry officer's report, the disciplinary authority i.e. the President of India has passed the impugned order of penalty after taking into consideration the EO's report and the advice tendered by the UPSC. Hence, no principles of natural justice has been violated. This is not a case of 'No evidence'. So far as quantum of punishment is concerned, it is the settled legal position that the Tribunal/courts cannot go into the quantum of punishment. So far as citation relied upon by the applicant are concerned, the learned counsel for the respondents have stated that those rulings are not applicable to the present case and supported his version of non-supply of the advice of the UPSC by relying upon a judgement of the Hon'ble Supreme Court rendered in the case of State of U.P. Vs. Harendra Arora and another, (2001) 6 SCC 392 in which it is held that from the case of ECIL it is plain that in cases covered by the constitutional mandate i.e. Article 311(2), non-furnishing of enquiry report would not be fatal to the order of punishment unless prejudice is shown. Therefore, requirement in the statutory rules of furnishing copy of the enquiry report cannot be made to stand on a higher footing by laying down that question of prejudice is not material therein. No prejudice is shown by the applicant by not supplying the advice of the UPSC. The enquiry officer's report was duly supplied to the applicant. In ^{an} ^{Hon'ble} another case of the ^{Hon'ble} Madras High Court in the Chief Engineer (Highways and Rural Works), Madras-5 and another Vs. A. Chengalvarayan, 1982(2) SLR 662, it is held that "Constitution of India, Articles 311(1) and 320(3).



Tamil Nadu Civil Services (Disciplinary Proceedings) Rules, 1955, rules 9 and 10 (b) - Reasonable opportunity - Advice of Public Service Commission taken into consideration while inflicting punishment of dismissal - copy of advice of Public Service Commission not supplied to the delinquent officer - Not necessary to supply copy of such advice - No violation of rules of natural justice." Hence, in view of the aforesaid both rulings of the Hon'ble Supreme Court as well as of the Hon'ble High Court of Madras, non-supply of UPSC's advice report is not necessary. The applicant was given due opportunity of hearing and the charge No. 3 against the applicant was well established and proved.

8. Hence in view of the aforesaid, we are of the considered opinion that the applicant has failed to prove his case and the Original Application is liable to be dismissed as having no merits. Accordingly, the Original Application is dismissed. No costs.

(Maden Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

"SA"

Issued
on 22.7.04
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पृष्ठकन सं ओ/व्या..... जलपुर, दि.....
पतिलिपि अर्थात् मिल -
(1) सचिव, उच्च न्यायालय बाय एरोकिटाना, जलपुर
(2) आदेशक श्री/श्रीमती/श्री..... के कार्यालय
(3) प्रत्यक्ष श्री/श्रीमती/श्री..... के कार्यालय
(4) बांधवरा, बांधवरा, जलपुर बांधवरा
सचिव एवं आवश्यक कार्रवाई हेतु
6-7 उप निदेशक
22-7-04
Rayendra Tiwari
B. danika