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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

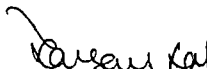
ORDERS OF THE TRIBUNAL


12.9.2007

OA 123/2006

Mr.P.V.Calla, counsel for applicant.
Mr.Gaurav Jain, counsel for respondents.

List tomorrow.


(TARSEM LAL)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)


vk

13.9.2007

Mr. P.V. Calla, Counsel for applicant.
Mr. Gaurav Jain, Counsel for respondents


Heard. Order Reserved.

(Tarsem Lal)
M(A)


(M.L. Chauhan)
M(J)

17.9.2007.

The order pronounced today
in the open court by the
aforesaid Bench.


17/9/07.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Jaipur, the day of ^{17th} September, 2007

ORIGINAL APPLICATION NO. 123/2006

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. TARSEM LAL, ADMINISTRATIVE
MEMBER

L.R. Tulsiani son of shri Chelaram Tulsiani aged above 60 years, retired Income Tax Officer, from the office of Commissioner of Income Tax (CIB), Jaipur. Resident of 5/287, SFS, Agarwal Farm, Mansarowar, Jaipur.

By Advocate: Mr. P.V. Calla.

.....Applicant

Versus

1. Union of India through the Chairman, Central Board of Direct Taxes, Government of India, Department of Revenue, New Delhi.
2. The Chief Commissioner of Income Tax (CCIT), New Central Revenue Building, Statue Circle, Jaipur.
3. The Commissioner of Income Tax (CIB), Rajasthan, New Central Revenue Building, Statue Circle, Jaipur.

By Advocate: Mr. Gaurav Jain.



.....Respondents

ORDER**PER HON'BLE MR. TARSEM LAL**

The applicant, Shri T.R. Tulsiani, has filed this OA No. 123/2006 asking for the following reliefs:-

- "(i) the Hon'ble Tribunal may be pleased to declare the enquiry proceedings initiated on 16.2.2006 to be illegal and memo dated 6.2.2006 may kindly be quashed and set aside.
- (ii) the Original application may kindly be allowed with costs.
- (iii) Any other relief to which the applicants are found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicants.

2. The applicant has explained in the OA that he was working on the post Income Tax officer Ward 1(3) Ajmer. He conducted a survey along with four staff members on 23.01.2002 at Sabzi Mandi, Ajmer at the business premises of M/s Bool Chand Motiram and M/s Rajkumar Boolchand. He found that the firms have not deposited due tax liability amounting to Rs.2,81,658/- for which four post-dated cheques were handed over by the assessee.

3. While the Survey party was returning from the business premises to their office, an Anti Corruption



Bureau (ACB) party intercepted the vehicle of the survey party and recovered four cheques amounting to Rs.281,650 as per details given in Para 4(ix) of the OA. In addition to above, cash amounting to Rs.79,000/- was also recovered from the Survey party. A sum of Rs.15,900 was also recovered from below the seat of the vehicle used by the Survey Party.

4. After confiscation of the cheques and cash, ACB party visited M/s Bool Chand Motiram and Rajkumar Book Chand and recorded their statement u/s 161 of the Cr.P.C., an FIR was lodged against the applicant and other members of the survey party u/s 131(1)(d)(2) PC Act, 1988 read with Section 120-B IPC. The FIR lodged by the ACB Ajmer was registered as FIR No. 50/2002. On the basis of the FIR, ACB filed a charge sheet before the Special Court, P.C. Ajmer and the case was registered as case No. 49/2006. On 18.2.2006, the applicant submitted a Bail application and pending trial, the applicant was released on bail. However, in the meanwhile, Departmental authorities has issued charge sheet under



Rule 14 of the CCS (CCA) Rules, 1965 proposing to conduct a departmental inquiry for major penalty.

5. The applicant has explained that he was initially appointed as an LDC on 23.09.1964 and was promoted as UDC in August, 1968. He was further promoted as Tax Assistant in the year 1977. In 1987, he was promoted as Head-Clerk on promotion basis. He was further promoted as Income Tax Inspector in June, 1990. While he was working as Income Tax Inspector, he appeared in examination for promotion to the post of Income Tax Officer and he was promoted as Income Tax officer in June, 2001 with the posting as OSD with Commissioner of Income Tax, Ajmer.

6. On 14.08.2001, the applicant was posted as ITO Ward 1(3) Ajmer, which was a field post and was discharged his duties under the supervision of Addl. Commissioner of Income Tax, Range I, Ajmer. As per the directions of the Additional Commissioner, Income Tax, Ajmer, the applicant conducted a survey on 23.01.2001 u/s 133-A of Income Tax, 1961 along with four staff



members at the business premises of (i) M/s Bool Chand Motiram (ii) M/s Rajkumar Bool Chand. The record of the assessee were persued and it was revealed that the above Firm was liable to pay a sum of Rs.2,81,658/- on the unaccounted income of Rs. 9,28,453/- as tax liability for which four different cheques were handed over to the applicant.

7. In addition to above, the party was handed over the cash amounting to Rs.79,000/- so that the amount may be deposited in the department immediately and in case, the amount is deposited the remaining amount of cheque will be given within a day or two and in case he paid the amount in cash, his first cheque may be returned back. Therefore, the applicant accepted the cash of Rs.79,000/- and to this effect a challan was also prepared on which the party had signed (Annexure A/2). The applicant then gave a receipt to the party showing that he has received four cheques and cash of Rs.79,000/- (Annexure A/3).

8. The act of the applicant of collecting cash has been treated as an offence under Prevention of Corruption Act



and for that purpose after lodging the FIR, a challan has already been filed before a competent court of law for adjudication. The perusal of the charges leveled in the charge sheet as well as the charges leveled in the inquiry proceedings through memorandum dated 16.2.2006 (Annexure A/1) are on the same sets of facts.

9. The applicant submitted that at the end of his service career, a charge sheet dated 7.2.2006 has been filed before the competent criminal court of law and simultaneously for the same set of facts/allegation, the above charge sheet has been served proposing to conduct the departmental inquiry against the applicant. No charge sheet has been filed nor any departmental inquiry has been initiated against any member of the survey party.

10. The applicant has explained that criminal trial takes its own time and as a matter of fact, the respondents wanted to prove a criminal charge in the departmental proceedings which is not permissible under the law. The applicant submitted his reply to the charge sheet dated 24.01.2006 (Annexure A/7) denying all the three charges.



The Disciplinary Authority has not appointed any Inquiry Officer and no proceedings has yet been started. In case the inquiry officer is appointed and the departmental is allowed to proceed in the matter of inquiry, the applicant is bound to disclose his defence which may adversely effect the defence before the criminal court of law. The applicant further submitted that on the basis on which the challan has been filed (Annexure A/5) and memorandum dated 16.02.2006 (annexure A/1) has been given, it is clear that the allegation against the applicant in both the proceedings are exactly the same. It is, therefore, unreasonable to hold the departmental inquiry on the same allegation. The respondents cannot proceed in departmental inquiry on the same allegation. Therefore, the proceedings initiated against the applicant through Memo dated 16.02.2006 is illegal and deserves to be quashed and set aside.

11. The applicant has further explained that the above incident took place on 23.01.2002 whereas the charge sheet (challan) was filed on 07.02.2006 i.e. after more than four years. Inquiry has been initiated on 16.02.2006 i.e. also after more than four years whereas the applicant



retired on 28.02.2006. Therefore, the action taken by the respondents is malice as the charge sheet has been served at the end of his service career. Aggrieved by the above, he has filed this OA and asked for the relief as given in Para No. 1, above.

12. On the contrary, the respondents have filed their detailed reply to the OA and has not agreed to any relief asked for by the applicant. The respondents have pleaded that the applicant has himself admitted that he had accepted cash amounting to Rs.79,000/- from the assessee whose business premises he had surveyed in addition to the four post dated cheques for Rs.2,81,000/- i.e. the tax payable calculated by him.

13. The respondents have further averred that Shri Bool Chand , the assessee initially stated before the ACB that he had given Rs.79,000/- cash to the officer concerned as bribe on the day of the recovery of the cash from the possession of the applicant to settle the result of survey in his business premises, which was recovered from his brief-case. But on the next day, he denied his statement before



the ACB through an affidavit and stated that he had given Rs.79,000/- for payment of tax, which is prima-facie not acceptable. The acceptance of cash of Rs.79,000/- without any bonafide compelling reason is serious misconduct on the part of the applicant. Moreover, he has violated the provisions of Section 210(3) and 156 of Income Tax Act, 1961. Rs.79,000/- cash was found in his possession in his briefcase. Besides this, Rs.15,900 cash was also found under the seats of the vehicle used by the applicant. The applicant committed a serious lapse by not acting in accordance with the provisions of law as well as CCS (Conduct) Rules, 1964 so far as acceptance of cash, mentioned above. The FIR and filing of challan against the applicant under the provisions of Prevention of Corruption Act justify the initiation of disciplinary proceedings against the applicant.

14. The respondents have pleaded that the Hon'ble Supreme Court of India in the case of **Secretary, Ministry of Home Affairs vs. Tahir Ali Khan Tyagi** reported in JT 2002(supp.1) SC 520 has held that there is no prohibition


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for continuation of Criminal proceedings and departmental proceedings simultaneously.

15. The Hon'ble Supreme Court of India has further held in **Jang Bahadur Singh vs. Baij Nath Tiwari** reported in AIR 1969 SC 30 and in the case of **Union of India vs. Patnaik M. B.** reported in AIR 1981 SC 858 that there is nothing to debar the departmental authorities to initiate and continue disciplinary proceedings merely because criminal proceedings are pending in a criminal court on the same charges.

16. The respondents have further pleaded that no cash was recovered from any other member of the survey party and they were merely helper of the applicant and their cases are separately considered by the appropriate authority.

17. The respondents have averred that Inquiry officer is being appointed after following the due procedure. There is no question of adversely affecting the defence before the Criminal Court of law if he happens to disclose his defence



before the Inquiry Officer for disciplinary proceedings as in any case he has to take the same defense for the same sets of facts before both the authorities. Hon'ble High Court in the case of **Yasin Khan vs. Oil and Natural Gas Commission** reported in 1922(2) WLC (Raj.) page 68 has rejected the plea of the delinquent that disclosure of defence in disciplinary proceedings would prejudice the case of the petitioner before the Criminal court. Therefore, there is no bar for initiating disciplinary proceedings even if there is pending court case as both are separate proceedings under separate Act and Rules. Therefore, there is no question of quashing and setting aside the impugned memorandum dated 16.2.2006.

18. The respondents have submitted that there was no justification of setting aside the disciplinary proceedings till the disposal of the criminal court pending against the applicant before the competent court. In view of the detailed reply furnished by the respondents, they have pleaded that the OA of the applicant may be dismissed and the applicant is not entitled for any interim relief whatsoever.



19. The applicant has also filed rejoinder to the reply filed by the respondents and has stated that signature of the assessee was not required on Annexure A/3 on the receipt of the amount of income tax recovered through cheques and Rs.79,000/- obtained in cash. The applicant has pleaded that at the time of handing over the cheques and cash, he was told that in case challan is submitted and cash is deposited, the cheques may be returned.

20. The applicant has further averred that assessee has not made any complaint in writing that the assessing officer has demanded gratification from him. He has further pleaded that the undisclosed income of the assessee amounting to Rs.9,28,453/- and the amount recovered as income tax through cheques amounting to Rs.2,81,658/- has not been disputed. The applicant further submitted that there was no bad intention or any motive in his mind to give benefit to the assessee for which the gratification can be accepted. Keeping in view the chain of facts, no case of bribe is made out. The Disciplinary Authority proposed that advice of the Central



vigilance Commission (CVC) may be obtained in the matter. The above letter to CVC, New Delhi is required to be routed through the Director, Vigilance, New Delhi. The letter written by the Disciplinary authority was detained by the Director, Vigilance and the same was not forwarded to the Chief Vigilance Commissioner and the Director, Vigilance at his own accord directed the Commissioner Income Tax (disciplinary authority) to initiate the disciplinary proceedings against the applicant. After the receipt of the direction by the Director, Vigilance, the Disciplinary authority issued charge memo dated 16.2.2006 and, therefore, the disciplinary action initiated against the applicant cannot be said to be the decision of the Disciplinary Authority. Therefore, the same should be quashed and set aside.


21. We have heard the learned counsel for both the parties and perused the entire documents placed on record.

22. Learned counsel for the applicant reiterated all the arguments given in his OA and made us to traverse



through various documents. He pleaded that the applicant had given a receipt of Rs.79,000/- vide Annexure A/3, which was obtained in cash for depositing in Bank. Subsequently, he also vigorously pleaded that this incident took place on 23.01.2002 whereas the charge sheet has been issued on 16.02.2006 i.e. after a period of four years and a few days before the retirement of the applicant. He also pleaded that the charge sheet has been issued on the advice of Director, Vigilance and the Disciplinary Authority has not applied his mind while issuing the charge sheet. He also submitted that no case of bribe has been made out.

He pleaded that vide Para No. 9.3.1 of **Manual of Office Procedure Vol. I (Administrative)** issued by the Central Board of Direct Taxes stipulates that the case which are not referred to the CVC, the Disciplinary Authority should take expeditious action to ensure that charge sheets, if necessary, are issued within two months of the receipt of the investigation report from the CBI. He further pleaded that the applicant started his career as a Clerk and was promoted as an Income Tax Officer. He had no experience working in the field.



23. Learned counsel for the applicant relied in the case of **Sanchal Bilgrami vs. The Secretary, ICAR & Others** reported in December, 2005, Swamy News Page 45 wherein it was held that delay in issuing the charge sheet from 05.09.2000 to 21.12.2004 was held to be bad in law in initiation of disciplinary case against the applicant and the OA was allowed and the impugned memo under which charge sheet was issued was quashed.

24. Learned counsel for the applicant further relied the judgement of the **CAT, Principal Bench in OA No. 126/1997 decided on 11.07.2007** wherein it was held that charge sheet should not be issued for a case more than four years old. It was also held that charge sheet should not be issued on the eve of retirement.

25. Learned counsel for the applicant further relied in the case of **Union of India vs. Naman Singh Shekhawat & Others** reported in 2005(8) RDD 3332 (Raj.) DB (Jaipur Bench) wherein in Para No. 28, it was held as under:-

"A bare comparative reading of the contents of FIR, points to be considered and final conclusion of the criminal case as reproduced hereinabove and the report of seizure, of ownership of goods as well as



the charge Nos. 1 and 2 of the charge sheet should reveal that the same is based on identical set of facts and evidence, therefore, there appears to be no justification for initiating the departmental proceedings on the same facts again which in our opinion is nothing but harassment to officer and is sheer wastage of time and money."

26. Learned counsel for the respondents reiterated all the arguments given in the reply to the OA and explained that the applicant has himself admitted that he had obtained Rs.79,000/- from the assessee, whose premises were raided by the Survey party. He had also obtained the amount of tax, which was due, through four different cheques. Therefore, by accepting the cash of Rs.79,000/-, he has violated the provisions of Income Tax Act and CCS (Conduct) Rules. He explained that delay in issuing the charge sheet has taken place due to processing the same at different levels. He pleaded that it is a clear case of taking bribery for giving favour to the private party. He pleaded that under these circumstance, the OA of the applicant deserves to be dismissed.

27. This case has been considered carefully and the documents perused. It has been seen that in this case, the



following interim relief has already been passed vide order dated 29.05.2006, which reads as under:-

"Reply has not been filed. Another three weeks time is granted to the respondents to file reply. Rejoinder, if any, may be filed within two weeks thereafter. Learned counsel for the applicant has stated that the Inquiry Officer has been appointed by an order dated 24.1.2006 in the inquiry. By way interim measure, in case the respondents proceed with the inquiry, they should refrain from passing the final order in the inquiry until permission is granted by the Tribunal. List for possible final hearing on 18.7.2006."


28. It was observed that the applicant had visited the premises of M/s Bool Chand Motiram and M/s Rajkumar Boolchand. He has found an unaccounted income of Rs.9,28,453/- for which the income tax was calculated amounting to Rs.2,81,658/- for which four post dated cheques were obtained by the applicant. Subsequently, Cash amounting to Rs.79,000/- was recovered by the ACB from the brief-case of the applicant. In addition to above, Rs.15,900/- were also recovered below the seat of the vehicle used by the applicant and his party. It is considered that when he had already taken four different cheques amounting to Rs.2,81,658 as tax liability, there was no necessity for obtaining the cash at all. Moreover,

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Mr. Boolchand had already made statement before the ACB on the same day that he had paid Rs.79,000/- cash to the concerned officer as a bribe.

29. As regards the case law, quoted by the learned counsel for the applicant, the case of **Sanchal Bilgrami vs. The Secretary, ICAR** (supra) does not help him as the delayed charge sheet was issued to the applicant as he failed to verify the genuineness of the bills submitted by the private party during the period 1988-1991. He passed the Bills without any application of financial rules and as a result of this, an excess payment of Rs.8.8 lakhs was made. Thus in the above case, there was a mere negligence whereas in this case the applicant has obtained the amount as illegal gratification.

30. The other case of the **CAT, Principal Bench (OA No. 126/1997 decided on 11.07.1997)** quoted by the learned counsel for the applicant, is also of no help to him. Here the charge sheet was issued to the applicant as certain wrong assessment orders were passed by the applicant in his capacity as Sales Tax Officer and



subsequently re-assessment order was passed. Applicant in this case was not involved in any corruption case whereas the applicant of the present OA is alleged to have obtained gratification of Rs.79,000/-

31. The case of **Union of India vs. Naman Singh** also does not help the applicant as the applicant in this case charge sheet was served after his acquittal from the criminal case whereas in the case under consideration, the Court case of the applicant has not yet been adjudicated by the competent court.

32. As regards the case law on the subject it has been seen that Hon'ble Delhi High Court held in the case of **Than Singh vs. Union of India & others** reported in ATJ 2003(3) page 42 that charge sheet can be questioned on various grounds viz. (a) when it is not in conformity with law (2) if it discloses bias or pre-judgment of the guilt of the charged employee (3) there is non application of mind in issuing the charge sheet (4) if it does not disclose any misconduct (5) if it is vague (6) if it is based on stale allegations (7) if it is issued mala fide.

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It is observed that none of the above aspect are applicable in the charge sheet issued by the respondents in this case.

33. As regards delay in initiation of departmental proceedings, in para 19 in the case of **State of Andhra Pradesh vs. N. Radhakishan** reported in JT 1998(3) SC 123, Hon'ble Supreme Court has held that:

"It is not possible to lay down any predetermined Principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that grounds the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice in the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an

officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged office unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately the court is to balance these two diverse consideration."

34. In the case of **B.D. Luthra vs. Chairman & Managing Director, Punjab National Bank** reported in SLJ 2005(1) 451, Hon'ble Delhi High Court has held that :-

"In considering the factual matrix, the Court would ordinarily lean against preventing trial of the delinquent who is facing grave charges on the mere ground of delay. Quashing would not be ordered solely because of lapse of time between the date of commission of the offence and the date of service of the charge sheet unless, of course, the right of defence is found to be denied as a consequence of delay.

Hon'ble Delhi High Court has further held in the above case that:-

"Unless the statutory rules prescribe a period of limitation for initiating disciplinary proceedings, there is no period of limitation for initiating the disciplinary proceedings."

Hon'ble Delhi High Court in Para No. 29 of the above case has also held that :-

"Charge sheet was issued to the petitioner on 25.3.1996. The allegations pertained to the years 1991 to 1994. Allegations would reveal that misdeamnoun surfaced when the accounts became sticky. In the facts and circumstances, I do not find any delay, much less inordinate delay in issuing the charge sheet. IN any case, the petitioner has neither averred nor established any prejudice caused to him by the issuance of charge sheet in the year 1996. The first submission made by counsel for the petitioner is accordingly negated."

It may be seen that in this case the allegation pertained to the years 1991 to 1994 whereas the charge sheet was issued in 1996 and the same was upheld by the Hon'ble Delhi High Court.

35. It is clear from the above case law that it is not necessary that whenever there is any delay, the charge sheet has to be quashed and set aside. The courts are required to weigh and determine various factors in the interest of clean and honest administration and take decision accordingly. Moreover, no particular period has been laid by any of the courts beyond which the issue of charge sheet for disciplinary proceedings may be quashed.



It is also observed that in this case by issue of delayed charge sheet, no statutory rules have been violated.

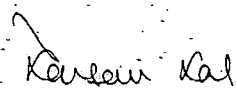
36. It is clear from the above discussion that the applicant was heading the Survey Party on 23.01.2002 and he had obtained four different cheques amounting to Rs.2,81,658/- from M/s Bool Chand for the tax, which was due. He had also obtained Rs.79,000/- which was recovered from his brief case in violation of the Income Tax Act, which was a serious misconduct on his part. It is a settled law that the charge sheet for disciplinary proceedings can be initiated on the same set of charges in addition to the Criminal case filed before the competent court simultaneously.

37. As regards delay in issue of charge sheet, as it is a serious case therefore charge sheet has been issued on the basis of the observations made by the Director, Vigilance. In this regard, Hon'ble Supreme Court has held that Courts have to weight various factors and take decision in favour of clean and honest administration. We would, therefore, not like to interfere with the charge sheet issued by the



respondents, while the case is under adjudication before the competent court. Therefore, the OA filed by the applicant is dismissed with no order as to costs.

38. In view of the order passed in the OA, interim stay granted on 29.05.2006 stands automatically vacated.


(TARSEM LAL)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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