

**Central Administrative Tribunal
Jaipur Bench, JAIPUR**

OA.186/2006

This the 29th day of January, 2010

Hon'ble Dr.K.S.Sugathan, Member (Administrative)
Hon'ble Dr. K.B.Suresh, Member (Judicial)

Srichand Sadhwani, S/o Late Shri Deepchand, aged about 61 years,
R/o 9- Jhulelal Colony, Near Guru Nank Colony, Ajmer.

...Applicant

(By Advocate: Shri S.K. Jain)

- VERSUS -

1. Union of India through Secretary Revenue, Ministry of Finance, Government of India Department of Revenue (Central Board of Direct Taxes) New Delhi.
2. Chairman, Central Board of Direct Taxes, Government of India, New Delhi.
3. Commissioner of Income Tax, Central Revenue building Jaipur Road, Ajmer.

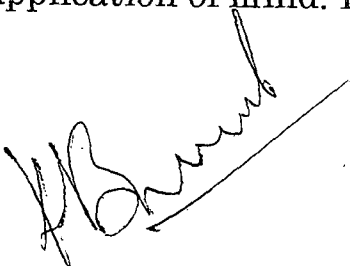
.....Respondents

(By Advocate: Shri Gaurav Jain)

ORDER

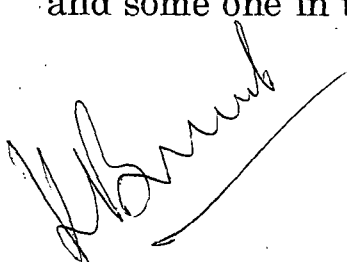
(By Hon'ble Dr. K.B. Suresh, M(J):-

The applicant assails the damocles sword hanging over his head. He prays for quashing of the charge sheet issued against him which he would aver without any base and on proven non application of mind. Factual matrix is as under:-



The CBI had conducted a raid at his residence on 27.9.2003 on the allegation of possession of disproportionate assets and filed RC No. 20/2003 on the same day. Apparently the investigation was for the period between 1989 to 2003, and after detailed investigation spanning over two years the CBI did not find sufficient material to proceed and they came to a finding that value of assets disproportionate to his known income is Rs. 84,842/- which is 7 % in excess and in view of the rulings of the Hon'ble Apex Court no prosecution can be launched against the employee if the assets are found to be upto 10% in excess of the known income. From the report of the SP Jaipur produced with Annexure A-2, it is clear that a lot of efforts had gone into the preliminary stages of the investigation itself which was followed by a very detailed investigative report. Vide Annexure A-3& A-4 they found reasons not to proceed further in the matter as alleged excess is only 7 % percent.

But vide Annexure A-5 dated 04.05.2005 DIG of CBI seems to have addressed a letter to the Chief Vigilance Officer of CBDT recommending regular departmental action and some one in the hierarchy had also noted that it is to be

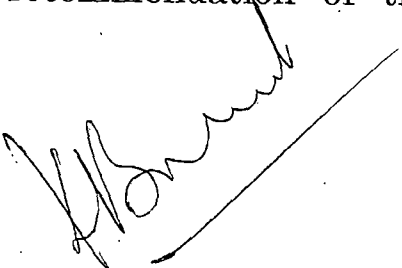
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taken up as it is a case of immediate retirement. It seems by a letter dated 25.5.2005 the letter of the DIG was sent to the Chief Commissioner of Income tax, Rajasthan. The report of the Superintendent produced along with that reveals that inspite of specific and detailed investigation and even the claim of the CBI themselves on denial of income of the son as a contributing factor and even then only 7 % could be even alleged as excess. But inspite of their conclusions to the contrary they had recommended regular departmental action. Annexure A-12 and A-13 would reveal then at the time of issuance of charge sheet there was no material sufficient with the authorities to substantiate the charge sheet and thus denying them an opportunity of applying their mind. Therefore, it is crystal clear that the regular departmental inquiry; at this stage and within this parameter will be unjust and illegal as it is based on no credit unity evidence and even this they had not seen at the appropriate time.

2. Learned counsel for the respondents submitted that nothing would prevent the applicant from raising all these matters at the time of the departmental regular inquiry and that he can raise all defenses in the departmental inquiry. The learned counsel for the

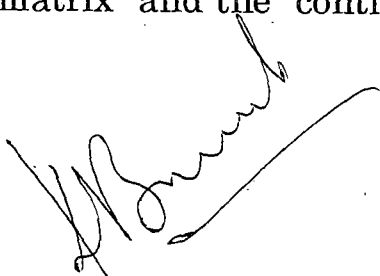
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applicant on the other hand points out that parimateria legal provision available in Section 482 of the Criminal Procedure Code when no offence is discernible in the allegation and of the allegation itself having subject to any inequities proclaimed by the law calls for interference. This legal provision enables interdiction of even a criminal trial at the first stage itself and to quash the charge sheet. The applicant would submit the same situation is available here as well. Learned counsel for the respondents would point out that the absolute nature of evidence is not required in departmental trial as in the departmental inquiry only preponderance of evidence is required but applicant points out that even for probability to exist, there must be a basic foundation and having gone through the report of CBI, Superintendent of Police there may not be any thing worthwhile to meet anybody with any penalty in the said report, submits the applicant, the applicant relied on the decision of the Hon'ble Apex court reported in *Union of India & Ors. Vs. Naman Singh Shehawat & Anr.* Reported 2008 4 SCC -1 which held that after as acquittal, only if the department initiate to adduce any evidence which is in its power and possession to prove the charges can any further change will hit but admittedly the departmental charge sheet is a result of recommendation of the CBI thereon. He also relied upon



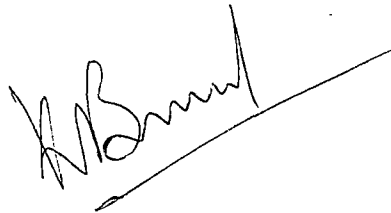
Cap. M. Paul Anthony Vs. Bharat Gold Mines Ltd. & Anr., AIR 1964 (SC 786 & 1999(3) SCC 679, the said judgment the Hon'ble Apex Court while setting aside the ex-parte departmental inquiry directed reinstatement of the concerned employee held likewise. Learned counsel for the respondents relied on a decision of the Hon'ble Supreme Court of *NOIDA Entrepreneurs Association Vs. NOIDA and Ors. (2007) 10 SCC 385* which is to the effect that even acquittal in the criminal cases does not defer departmental inquiry. This is obviously correct. Learned counsel for the applicant would submit that here is a case where even commencement of the prosecution could not be managed even after two years of intense investigation, and even plain reading of the report would convince anybody that a witch hunting is in progress. The applicant would rely on a decision of this Tribunal itself delivered in OA No. 304/2007 on 20th May, 2009. He would further submit that he was to have been retired on 30.11.2005 but the charge sheet was issued to him on 29.11.2005. It has caused severe prejudice to him and even now it has not gone beyond the selection of Inquiry Officer.

3. After considering inputs involved in the matter we are convinced that nothing much could be elicited from the present matrix and the continuation of the process of charge sheet would

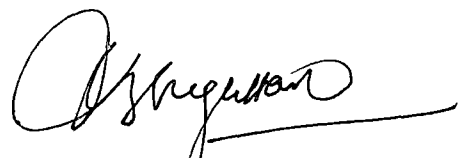


result in unmerited consequence for the applicant. We also find that the charge sheet is enthused merely by a action recommendation of the CBI and that apparently the respondents had no opportunity to apply their mind as well. Had they applied their mind to the report of the Superintendent, they would have come to a conclusion that the allegations are only allegations. It is to be remembered that departmental enquiries can defray human lives and in the present case we are convinced that this applicant is being prejudice needlessly. We, therefore, quash the Annexure A-1 dated 29.11.2003 and further direct all the retiral benefits to be paid to the applicant within three months from today.

4. In terms of above, the present OA shall stand allowed and there shall be no order as to the costs.



(Dr. K.B. Suresh)
Member (Judicial)



(Dr.K.S.Sugathan)
Member (Administrative)