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**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR**

**Original Application No. 89/2007.**

**Date of decision: 24th April, 2008**

**Hon'ble Mr. N.D. Raghavan, Vice Chairman.**

**Hon'ble Mr. J.P. Shukla, Administrative Member.**

M.N. Verma, S/o Shri R.K. Verma, aged about 60 years, presently residing at 5 Central Revenue Colony, Jyoti Nagar, Jaipur ( Retired Commissioner of Income Tax.)

: Applicant.

Rep. By Mr. Mahendra Singh : Counsel for the applicant.

**VERSUS**

1. Union of India through Secretary, to the Government, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Central Block, New Delhi.
2. Deputy Secretary to the Government, Ministry of Finance, Department of Revenue, Central Board of Direct Taxes, Central Block, New Delhi.

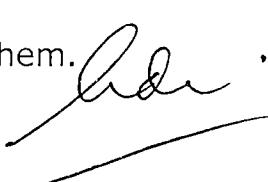
: Respondents.

Rep. By Ms. Kavita Bhati proxy counsel for : Counsel for the Mr. Kunal Rawat: Senior Standing Counsel respondents. And Mr. Kunal Rawat:

**ORDER**

**Per Mr. N.D. Raghavan, Vice Chairman.**

This application has been filed by the applicant under Sec. 19 of the Administrative Tribunals Act, 1985, challenging the charge memo dated 23.11.2006 along with Statement of article of Charge and imputation of misconduct in support thereof and praying for quashing of them.



2. The learned counsel for the applicants submitted as below:

The impugned charge sheet was issued hardly a week before the date of superannuation of the applicant. There was inordinate delay in issuing the said charge sheet. The issuance of charge sheet pertains to the year 2000-2001. Also, it was issued behind his back at the time of his retirement. Page 96-para 10, page 97-paras 11 to 13, page 98-para 17, page 102-para 29 of the reply may kindly be seen. The respondents department have taken two different stands before two different Tribunals, one is supporting the assessment order before the Income Tax Appellate Tribunal and a contrary stand thereto before this Tribunal. Para 4 of the reply may also be seen. Disciplinary proceedings are still continuing even after retirement. Reliance is placed on the following decisions:

- (a) **R.C. Sood vs. High Court of judicature at Rajasthan and ors.** [ JT 1998 (4) SC 4]
- (b) **P.D. Agrawal vs. State Bank of India and ors.**  
(2006) 8 SCC 776.

3. On the other hand, learned counsel for the respondents countered the aforesaid submissions of the applicant's counsel as below: Indeed and infact, this O.A is premature and is not maintainable at all since the applicant has not yet submitted his explanation to the charge sheet before the concerned authorities

- rashly too late. but rushed to this Tribunal. In support thereof, the following may

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kindly be ~~seen~~. Annex. A/1- page 25- statement of Article of charge framed against the applicant, Annex. A/II-page 27 - statement of imputation of misconduct in support of the article of charge framed, page 29 of the paper book, page 54-para no.3 of confidential letter dated 24.11.2003, page 55 comments of the Additional Director of Income Tax, may all be perused. The charge sheet was served on the applicant while the applicant was in service and it is not as if it had been served on him after his retirement. The attempt on the part of the applicant to highlight it otherwise is bad. The contention of the applicant that since no financial loss is caused to the Government, the issuance of the charge sheet is bad in law, is not sustainable. For issuing a charge sheet, financial loss alone is not the criteria. There is no necessity to go into the merits of this case at this stage since it deserves dismissal in limine being premature. Hence, this is not a fit case to be admitted. Reliance is also placed on the decisions following.

- (a) **The Deputy Inspector General of Police vs. K.S. Swaminathan** [ 1997 (1) SLR 176]
- (b) **Union of India and another vs. Ashok Kacker** [ 1995 (7) SLR 430].

4. In reply, the learned counsel for the applicant invited the attention of the Bench to Annex. A/13 DCIT's letter dated 12.01.2001 to the CCIT at page 60 - of the paper book, DCIT's letter to Addl. CIT Annex. A/14 dated 12.02.2001 and the applicant's letter dated 03.01.2007 to the Secretary, Ministry of *lha*.



Finance, Government of India - Annex. A/20-pages 82 to 87 and concluded that the O.A deserves to be only allowed and not otherwise.

5. Rival submissions heard and relevant records on hand read besides case laws cited by both parties before us. After doing so, though our mind tends to appreciate submissions of the learned counsel for the applicant that the incident pertains to the year 2000-2001 and that the preliminary inquiry was held only in the year 2003 ~~as that ad~~ <sup>as</sup> particularly the charge sheet was served hardly a week before his retirement of the incumbent as if a slap on him, however, we cannot fail to look at the issue from the angle of respondents too. It is true, as submitted by the learned counsel for the respondents, the charge sheet was issued when the applicant was still in service and not after retirement, i.e. to say prior to his superannuation. However, the crucial question involved in the instant case is as to whether this O.A is maintainable, for the reason that the impugned document dated 23.11.2006 (Annex. A/1) is only a memorandum which proposes to hold an inquiry against the applicant under Rule 14 of the ~~CCS~~ <sup>CCA</sup> (CCA) Rules, 1965, by His Excellency the President of India. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the Articles of Charge (Encl as Annex. 1) and the statement of the imputations of misconduct or misbehaviour in support of each article of charge is ( its Encl as Annex. 2) and the list of documents

*[Handwritten signature]*

and the list of witnesses on the basis of which the charges are to be sustained are also enclosed ( Annex. 3 and Annex. 4) The memorandum also directed the applicant to file his written statement of defence and also to state whether he desires to be heard in person. The said memo further informs that inquiry would be held in respect of those articles of charge as are not admitted and therefore the incumbent should specifically deny or admit each article of charge. The memo further states that if the applicant does not file his written statement of defence within 10 days of its receipt or does not appear in person before the inquiry officer or otherwise fails or refuses to comply with the provision of rule 14 of CCS (CCA) Rules, 1965 or orders/directions issued in pursuance of the said rule, the inquiring authority may hold the inquiry against him ex parte. The applicant's attention was also invited to Rule 20 of CCS (Conduct) rules, 1964 and he was directed to acknowledge the receipt of memorandum. It was issued by the Deputy Secretary to the Government of India in the name of President and served on the applicant while he was holding the post of Chief Commissioner of Income Tax, Jaipur.

— The Advocate —

6. The charge sheet issued to the applicant has been challenged before us, admittedly without submitting any explanation. No inquiry seems to have been also conducted in this regard. That is why, the respondents' counsel vehemently argued before us as to what is the difficulty for the applicant for not submitting his explanation or written statement of defence to the charge sheet

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either by admitting or denying the charges and face the inquiry, if fixed by the authorities and to represent before such authorities with whatever submitted before us now.

7. When the question was put forth to the learned counsel for the applicant as to what is his answer/response to the arguments advanced by the learned counsel for the respondents that the instant application of the applicant is premature for the reasons cited above, the applicant's counsel could not give any satisfactory answer, even though it was admitted that such query put by the Bench is crucial. But yet, the learned counsel insisted impliedly that the matter has to be decided on merits.

8. Now, we shall peruse the case laws relied upon by the respondents counsel on the preliminary point as below: The Hon'ble Apex Court, in the case of **D.I.G. of Police vs. K.S. Swaminathan** ( supra ) has held that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal or the Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would be a matter on production of evidence for consideration at the inquiry by the enquiry officer. When the Tribunal entertained the application at that stage, the Supreme Court has held that the Tribunal was totally wrong in quashing the charge memo. In the instant case, the applicant is

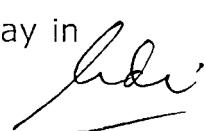


challenging the charge-memo even without submitting his explanation. Therefore this decision is not directly on the point involved in the instant case and therefore it would not be of much help to the respondents. However, the other case relied on by the respondents counsel viz. **UOI and anr. Vs. Ashok Kacker**, (supra) seems to be more befitting to the instant case. The Apex Court has held in para 4 as under:

"4. Admittedly, the respondent has not yet submitted his reply to the charge-sheet and the respondent rushed to the Central Administrative Tribunal merely on the information that a charge sheet to this effect was to be issued to him. The Tribunal entertained the respondent's application at that premature stage and quashed the charge sheet issued during the pendency of the matter before the Tribunal on a ground which even the learned counsel for the respondent made no attempt to support. The respondent has the full opportunity to reply to the charge sheet and to raise all the points available to him including those which are now urged on his behalf by learned counsel for the respondent. In our opinion, this was not the stage at which the Tribunal ought to have entertained such an application for quashing the charge sheet and the appropriate course for the respondent to adopt is to file his reply to the charge sheet and invite the decision of the disciplinary authority thereon. This being the stage at which the respondent had rushed to the Tribunal, we do not consider it necessary to require the Tribunal at this stage to examine any other point which may be available to the respondent or which may have been raised by him."

Thus the appeal of the Union of India was allowed by the Hon'ble Summit Court and the impugned order of the Tribunal had been quashed and set aside resulting in dismissal of the respondent's application made before the Tribunal.

9. The case laws cited by the learned counsel for the applicant has no relevance to the facts of this case. In the case of **P.D. Agrawal vs. State Bank of India and others**, (supra) the Appellant therein had participated in the inquiry without any demur and when the case went against him he raised the plea of delay in



initiation of disciplinary proceedings. The Apex Court has held that he not raising the plea of any prejudice having been caused to him by such delay before any forum, his plea that the delay in initiation of the disciplinary proceedings had vitiating the same was rejected. Therefore, the above judgement of the Apex Court is distinguishable on facts. The ratio decidendi in the case of R.C. Sood vs. High Court of judicature at Rajasthan and ors also has no relevance to the facts of this case.

10. In our considered view, the ratio decidendi of the Hon'ble Supreme Court in the case of Ashok Kacker (supra) holds good to the instant case. The memorandum gives an opportunity to the aggrieved applicant to file written statement of defence, which he has not done so far. No reply also seems to have been given to the charge sheet framed against the applicant. Further, no inquiry seems to have also started against the aggrieved applicant. We, therefore, consider that as has been stated in the aforesaid case, the applicant has not yet submitted his reply to the charge sheet but has rushed to the Tribunal at the premature stage. Reply to the charge memo should have been submitted by the applicant and the inquiry must have also been faced by the incumbent. Since the inquiry having not yet started, the Disciplinary Authority has also not taken any action since no order of the inquiry officer has been passed. Consequently, we are forced to hold that the present O.A is at a premature stage, having been filed hurriedly. We,



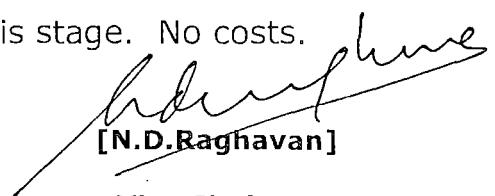
therefore, have no hesitation to hold that the O.A deserves to be rejected in limine, *as not having been admitted.*

11. In the result, we hold that the present O.A is now premature and dismissed as not maintainable at this stage. No costs.



[J.P. Shukla]

Administrative Member



[N.D. Raghavan]

Vice Chairman.

Jsv.