IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 8th day of July, 2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

OA No.309/2010

V.B.Gianchandani
s/o Bhoj Raj Gianchandani,
r/o 419, Near Gita Bhawan,
Adarsh Nagar, Jaipur,
Retired on superannuation
from the post of Inspector of
Income Tax on 30/11/2003.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary, Department of Revenue, Ministry of Finance, Central Board of Direct Taxes, Government of India, North Block, New Delhi.

2. Chief Commissioner, Income Tax, Rajasthan, New Central Revenue Building, Bhagwan Das Road, Jaipur

.. Respondents

(By Advocate: .....)

OA No.310/2010

Arjun Bhojwani
s/o Shri Vali Ram,
r/o 35-A, Gopal Vihar
Nandpuri,
Behind Malviya Nagar, Bye Pass,
Jaipur and retired from the post of
Inspector of Income Tax.

Office of Commissioner of Income Tax (CO)
NCR Building, Statue Circle, Jaipur
on 31/5/2008.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India through its Secretary to the Govt. of India, Department of Revenue, Ministry of Finance, North Block, New Delhi.

2. Chief Commissioner, Income Tax, NCR Building, Statue Circle, Jaipur

.. Respondents

(By Advocate: .....)

ORDER (ORAL)

By this common order, I propose to dispose of both these OAs as common question of facts and law is involved.

2. The applicants have filed these OAs against the memorandum/show-cause notice dated 11/17th June, 2010 in OA No.309/2010 and memorandum/show-cause notice dated 15th June, 2010 in OA No.310/2010 whereby the applicants were directed to file representation within 15 days from the date of receipt of the memorandum as to why penalty of withholding of pension and gratuity in full permanently should not be imposed upon them on the ground that they are guilty of grave misconduct as they have been convicted and sentenced in case No.3/2000 as

per the order dated 21.9.2007 passed by the Special Judge, CBI Cases, Jaipur.

3. I have heard the learned counsel for the applicant at admission stage. I am of the view that both these OAs are premature and not maintainable at this stage in terms of the law laid down by the Apex Court in the case of Union of India and Another Vs. Kunisetty Satyanarayana, (2007) 2 SCC (L&S) 304. As can be seen from para 13 and 14 of the judgment, Hon'ble the Apex Court has categorically held that ordinarily no writ petition lies against a chargesheet or show-cause notice, relying upon earlier judgments of the Apex Court. The reason why ordinarily a writ petition should not be entertained has been given in para 14. In para 14 it has been stated that mere chargesheet or show-cause notice does not give rise to any cause of action because it does not amount to any adverse order which affects rights of any party unless the same has been issued by a person having no jurisdiction to do so. It was further noticed that it is quite possible that after considering the reply to the show-cause notice or after holding enquiry, the authority concerned may drop the proceedings and/or hold that charges are not established. It was further held that it is well settled that writ petition is filed when some right of any party is infringed. A mere show-cause notice or chargesheet does not infringe right of anyone. It is only when a final order imposing punishment or otherwise adversely affecting a party is passed that the said party can be said to have any grievance.

4. The ratio as laid down by the Apex Court in the aforesaid case is squarely applicable in the facts and circumstances of these cases. It may be stated here that the applicants have been held guilty of corruption charges by the Trial Court after holding full trial in which the applicants were granted opportunity to defend their cases. It is only after conclusion of the trial and appreciating the evidence that both the applicants have been held guilty of corruption charges as well as under Section 120B of IPC. Thus, it cannot be said that under these circumstances, a show-cause notice issued by the appropriate authority is wholly illegal requiring interference at this stage.

5. For the foregoing reasons, and without going into merit of the cases, I am of the view that both these OAs are not maintainable at this stage being premature. Since the applicants have not filed any representation to the memorandum/show-cause notice Ann.A/1, they are permitted to file the same within a period of 10 days from today, and in case such representation is filed by the applicants, the appropriate authority shall entertain the same and consider it on merit.

copy given vide
No. 648
9/7/10

6. With these observations, both these OAs are disposed of at admission stage.

दिनांक ____ के आदेशानुसार मेरी उपस्थिति में दिनांक ____ को भाग-II व III सम्पन्न किये गये।

(M.L.CHAUHAN)
Judl. Member

R/

Section Officer (Judicial)
Central Administrative Tribunal
Jaipur Bench, JAIPUR