

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

Pronounced on: 3.2.2016
Reserved on : 28.01.2016

OA. No. 060/00013/2014

**CORAM: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J)
HON'BLE MRS.RAJWANT SANDHU, MEMBER(A)**

Roshan Lal Chhanalia, I.R.S. son of Shri Shibu Ram Chhanalia, age 55 years, Additional Director of Income Tax, Direct Taxes Regional Training Institute, S.C.O. No. 132-133, Sector 34-A, Chandigarh.

.....Applicant

BY ADVOCATE: Sh. D.R. SHARMA

Versus

1. Union of India through the Secretary to Government of India, Ministry of Finance, Department of Revenue, North Block, New Delhi - 1.
2. The Chairman, Central Board of Direct Taxes, North Block, New Delhi.
3. Dr. Sudha Sharma, Chairperson, Central Board of Direct Taxes, North Block, New Delhi - 1.

.....Respondents

BY ADVOCATE: Sh. K.K. THAKUR

ORDER

BY HON'BLE MRS. SH. RAJWANT SANDHU, MEMBER(A):-

1. This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief(s):-
 - (i) That impugned Memorandum dated 16.09.2013 (Annexure A-1) be quashed and set aside, in the interest of justice.
 - (ii) That respondents be directed to open the sealed cover kept pending pursuant to the D.P.C. proceedings held on 27/28.07.2011 for the panel year 2011-12 and promote the applicant as Commissioner of Income Tax.

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(iii) That the applicant be held entitled to consequential benefits/reliefs with interest.

2. It is stated in the OA that the applicant belongs to the Indian Revenue Service (I.R.S) and joined the Department on 20.08.1990 as Assistant Commissioner of Income Tax. He had been promoted as Additional Commissioner of Income Tax w.e.f. 02.12.2003 and at present is posted as Additional Director of Income Tax, Direct Taxes Regional Institute, Chandigarh. During the financial year 2000-01, the applicant while exercising the quasi-judicial powers as Deputy Commissioner of Income Tax (DCIT), Agra, assessed various cases of the Assessment Years 1994-95, 1997-98, 1998-99 and 2000-01. Applicant was suspended from service vide order dated 13.07.2010 and was reinstated in service vide order dated 01.03.2012. The Department issued charge sheet dated 20.04.2012 upon the applicant in which no inquiry proceedings were conducted and the same is pending. Again, after more than 12 years, the Department issued the impugned Memorandum dated 16.09.2013 (Annexure A-1) proposing to hold an inquiry against the applicant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. While denying the charges vide reply dated 08.10.2013, the applicant requested the respondents to withdraw the charge sheet as the same was based on misrepresentation of facts (Annexure A-2).

3. It is averred in the OA that the applicant was due for promotion to the post of Commissioner of Income Tax since April, 2012 for which DPC was held on 27/28.07.2011 for the panel year 2011-12. Upon recommendation, the sealed cover procedure had been adopted by the respondents. The issuance of charge sheet dated 16.09.2013 proposing to

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hold disciplinary proceedings against the applicant is unwarranted and result of malafide of the respondent No. 3 who was vindictive and biased against the applicant since 06.10.1995. She was the immediate superior/reporting officer during the financial year 1995-96 as Deputy Commissioner (Audit) Patiala where applicant was posted as Assistant Commissioner of Income Tax (Audit-SAP). She spoiled applicant's ACR which was upgraded later on by the then CCIT (NWR) Chandigarh. At present, the respondent No. 3 is heading the Central Board of Direct Taxes (CBDT) as its Chairperson and the charge sheet in question has been issued at her instance. In the past also in the financial year 2010, while working as Director General of Income Tax (Vigilance), New Delhi, the respondent No. 3 with malafide intentions made a complaint and got a case registered against the applicant with the Central Bureau of Investigation. Against the continuous mental torture, harassment and humiliation inflicted by the respondent No. 3 the applicant had filed complaint dated 24.11.1995 to the Commissioner of Income Tax, Patiala Charge, Patiala (Annexure A-10) and Complaint dated 15.09.1998 to the National Commission of Scheduled Castes/Tribes, New Delhi (Annexure A-11).

4. In the grounds for relief, it has, interalia, been stated as follows:-

(i) The charges in the impugned charge sheet dated 16.9.2013 pertain to the financial years 1994-95, 1997-98, 1998-99, 2000-01 when applicant was posted as Deputy Commissioner of Income Tax (DCIT), Agra during the financial year 2000-01. As such the issuance of charge sheet after a period of more than 12 years is not sustainable and deserves to be quashed. The delay in issuing charge sheet has greatly prejudiced the interest of the applicant. It is not a case that department was not in knowledge of incident narrated in the impugned charge sheet for so long. Reliance is placed on decisions of the Hon'ble Supreme Court of India in **N.K. Soleman Vs. FCI and**

another (1997-2003(SCT 443), M.P. Love Kush Parshad Gautam Vs. FCI (2001-2003 (SCT 899), P.V. Mahadevan Vs. MDTN Housing Board (SCSLJ 2005 (2) 186).

(ii) No charge of favoritism is alleged in the charge sheet. Thus, even otherwise, committing an error of law does not amount to showing of favour which is the sine qua non for the maintainability of the charge sheet. Further, there is no charge of causing any loss to the Department. The orders passed by the applicant were appealable. An error of law, assuming it was committed can be corrected by recourse to the Appellate Forum under Section 246 of the Income Tax Act, 1961 and also Reviewable under Section 263 to Commissioner of Income Tax. In appeal, the orders of assessment passed by the applicant was upheld, however, in Review, the CIT reversed the same. But on challenge by the Assessee, the Income Tax Appellate Tribunal again upheld the Assessment Order passed by the applicant.

(iii) Because the charges in impugned charge sheet are more or less on the same lines as in the earlier charge sheets i.e. completing the assessments with undue haste, without making necessary enquiry/investigation and not imposing penalties on assessee, conferring undue benefit to assessee. Such action of the Department has already been deprecated by this Tribunal vide order dated 06.05.2010 passed in OA No. 509 PB-2008 (Annexure A-3) whereby both Departmental Penalty Order dated 25.08.2009 and 2nd charge sheet dated 20.02.2008 issued to applicant were quashed and set aside. Order dated 06.05.2010 of the Tribunal has been upheld by the Hon'ble Punjab and Haryana High Court vide judgement dated 12.10.2010 while dismissing the C.W.P. No. 18563 of 2010 preferred by the UOI & Ors. (Annexure A-4).

Hence this OA.

5. In the written statement filed on behalf of respondents No. 1 & 2, it has been stated that after the decision of the Apex Court in UOI Vs. Tejinder Singh, (1991) 4 SCC 129, decided on September 26, 1986, the Government of India in the Department of Personnel & Training issued an Office Memorandum dated 12.01.1988 in supersession of all the earlier instructions on the subject including the Office Memorandum dated 30.01.1982 that sealed cover procedure is to be applied where a government servant is recommended for promotion by the DPC, but before he is actually promoted, he is either placed under suspension or disciplinary proceedings

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are taken against him or a decision has been taken to initiate the proceedings or criminal prosecution is launched or sanction for such prosecution has been issued or decision to accord such sanction is taken. Thus, the present OA is frivolous litigation. Besides a final order against which the applicant may have any grievance, is yet to be passed in the disciplinary proceedings by bringing the same to a logical conclusion. The applicant has approached this Tribunal at the very threshold of the disciplinary proceedings which is not permissible in the eyes of law and such OA is liable to be dismissed with costs. **Union of India and Anr. vs. Ashok Kacker, 1995 Supp (1) SCC 180** has been cited in this regard.

On the aspect of delay, reference has been made to **Deputy Registrar, Cooperative Societies, Faizabad Vs. Sachindra Nath Pandey & Ors., 1995(3) SCC 134** wherein the Hon'ble Supreme Court held as follows:

“On a perusal of charges, we find that the charges are very serious. We are, therefore, not inclined to close the matter only on the ground that about 16 years have elapsed since the date of commencement of disciplinary proceedings, more particularly when the appellant alone cannot be held responsible for this delay.”

B.C. Chaturvedi Vs. UOI & Ors., 1995(6) SCC 749 has also been referred to in this regard.

6. No reply has been filed on behalf of respondent No.3.
7. Replication has been filed on behalf of the applicant again pressing that the assessment orders in respect of which charge sheet had been issued to the applicant were quasi-judicial in nature. These had been upheld by the ITAT and hence, the applicant could not be charge sheeted in respect of these orders.

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8. Arguments advanced by learned counsel for the parties were heard. Learned counsel for the applicant referred to the charge sheet dated 16.9.2013 and stated that the matters referred to therein related to the year 2001 and the charge sheet had been issued 12 years later. The applicant had replied to the charges, but there was no further progress in the matter while the applicant's promotion as CIT to which he was entitled, had been held up on account of this very charge sheet. Learned counsel stated that earlier also, similar allegations had been made against the applicant and the Tribunal and the Hon'ble High Court had noticed these cases, the related OAs/CWPs were decided in favour of the applicant, but now again, the Department was bent upon harassing the applicant. Learned counsel also pressed that the assessment orders, reference to which was made in Article II of the charge sheet, were issued by the applicant as a quasi-judicial authority. The orders were appealable and the Department had indeed filed appeals in these cases. While the CIT had set aside the assessment orders, the ITAT had upheld the assessment orders issued by the applicant and hence, the applicant could not be charge sheeted regarding these very orders.

9. Learned counsel for the respondents stated that the applicant had a poor track record. There were question marks regarding his integrity. The learned counsel also drew attention to the copies of the file notings (F. No. DGIT (v) NZ/COM/27/03 Shri R.L. Chhanalia, DCIT, Jaipur (90106) that had been produced before the Bench, based on which decision was taken to charge sheet the applicant. He stated that the content of the noting sheet showed that there were serious lapses on the part of the applicant and these could not be ignored merely because there was some delay in initiating

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the disciplinary proceedings against the applicant. Regarding the present status of the matter, learned counsel stated that as per his knowledge, till date, Inquiry Officer had not been appointed in the case.

10. We have given our careful consideration to the matter and the memorandum dated 16.9.2013 (Annexure A-1) has been perused. From the statement of Articles of Charge, it is seen that article II of the same related to the applicant having passed assessment orders during financial year 2000-01 in cases that had been withdrawn from him by an order passed by the Additional CIT, Range, Agra on 14.02.2001 and having issued the assessment orders on back dates, earlier to 14.02.2001. Article III relates to tampering of Demand and Collection Register for the financial year 2000-01. These charges are indeed of a serious nature and cannot be ignored merely on the ground of delay as these merit thorough inquiry. However, it is seen that the applicant filed his reply to the memorandum dated 16.9.2013 vide reply dated 8.10.2013 (Annexure A-2) denying the charges. There is also a copy of letter on the record, dated 20.01.2015, addressed to ITO Headquarter, office of the Principal Chief Commissioner, Income Tax, Chandigarh from DGIT (Vigilance), New Delhi wherein it has been stated in para 3 as follows:-

“3. Another case involving criminal charges was instituted against the CO by CBI in which he was convicted by CBI Court Patiala for offences u/s 420, 471 of IPC and Sec. 13(1)(d) rule Sec. 13(1)(d) rule Sec. 13(2) of PC Act 1988 vide order dated 26.05.2014. Proceedings u/s 19((i) of CCS (CCA) Rules, 1965 have already been initiated against the CO for which a show cause notice under the said rule has been issued. The CO’s representation has been received and the same is being processed.”

It is also mentioned therein that the written statement of defence (WSD) denying all charges has been received from the charged officer (CO) vide his

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letter dated 8.10.2013 in response to memorandum issued vide F.No. C-14011/21/2013-V&L dated 16.09.2013. The appointment of I.O. & P.O. is under consideration. More than one year later, the position does not appear to have changed.

11. Keeping in view the discussion above, while we conclude that no relief can be granted as sought through this OA, the respondents are directed to take a view on the reply of the charged officer dated 8.10.2013 in response to memorandum dated 16.9.2013. If the competent authority decides to go ahead with the inquiry against the applicant, the Inquiry Officer and Presenting Officer may be appointed expeditiously and the inquiry proceedings completed within twelve months of a certified copy of this order being served upon the respondents. Applicant shall be required to fully cooperate with the respondents in this regard. Consequential action may be taken there after based on the findings in the inquiry proceedings.

12. OA is disposed of with the above observations. No costs.

(RAJWANT SANDHU)
MEMBER(A)

(JUSTICE L.N. MITTAL)
MEMBER(J)

Dated: 3.2.2016.
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