

**Central Administrative Tribunal
Principal Bench**

OA No.181/2016

Orders Reserved on: 26.07.2016.

Pronounced on:10.08.2016.

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

K.K. Kapila,
S/o late Shri Hem Raj,
R/o E-56, Ground Floor,
South City Part-1,
Ludhiana-142027
Punjab.

-Applicant

(By Senior Advocate Shri P.P. Khurana with Shri Sachin Sood,
Advocate)

-Versus-

Union of India
Through the Secretary,
Department of Revenue,
Ministry of Finance,
North Block,
New Delhi.

-Respondents

(By Advocate Shri Rajesh Katyal)

ORDER

Mr. K.N. Shrivastava, Member (A):

This Original Application (OA) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

"a. Quash and set aside the Memorandum dated 10.01.2004 forwarded and received by the applicant on 2.08.2015 (Annexure A-1):

- b. Quash and set aside the order dated 12.10.2005 forwarded by the Respondent on 3.11.2005 (Annexure A-2).*
- c. Pass any other or further order as may be deemed fit and proper in the facts and circumstances of the present case.”*

2. The brief facts of this case are as under:

2.1 The applicant retired from Income Tax Department on 31.01.2005 on reaching the age of superannuation. The last post held by him in the department was that of Chief Commissioner of Income Tax, Bareilly. Annexure A-3 memorandum of charges dated 25.10.2007 was issued to him on behalf of the President of India, who was his appointing authority. The said memorandum of charges has been signed by the Under Secretary, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance, Government of India. In the memorandum, the following two articles of charges were levelled against the applicant:

“Article I:-

That the said Sh. K.K. Kapila, while serving as Director General of Income Tax (Inv), Chandigarh, during the period November, 2002 to January, 2005, exhibited lack of integrity and acted in a manner unbecoming of a public servant by misusing or abusing his official position directly or indirectly, to effect collection of donations for Mother India Foundation in a highly irregular manner from parties mainly from Ludhiana and North West Region under his jurisdiction as also from parties whose matters were being handled by him as DOIT (Inv), Chandigarh with a view to give the assessee undue benefit (sic-benefit).

By the aforesaid acts of omission and commission, Sh. K.K. Kapila failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government Servant, thereby violating Rules 3 (1) (i), 3 (1) (ii), and 3 (4) (iii) of CCS (Conduct) Rules, 1964 (sic-1965).

Article II:-

That the said Sh. K.K. Kapila, the then DGIT (Ins), Chandigarh acted in a manner unbecoming of a government servant by displaying gross negligence, inaction and supervisory failure in handling the matter relating to the tampering of seized records in D.D. Mittal Group of cases (M/s Bhatinda Chemical group) thus resulting in undue benefit to the assessee.

By the aforesaid acts of omission and commission Sh. K. Kapila failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government Servant, thereby violating Rules 3 (1) (i), 3 (11) (ii), and 3 (1) (iii) of CCS (Conduct) Rules, 1964.”

2.2 Enquiry Officer (EO) and Presenting Officer (PO) were appointed. The EO held first hearing on 20.03.2009 in which the applicant had participated. It is the stand of the applicant that he kept on asking for copies of the documents relied upon by the respondents for initiating the enquiry against him, from the respondents as well as from the EO, but the same were never supplied to him. He approached this Tribunal by filing OA no.2718/2009, challenging the memorandum of charges dated 25.10.2007. The Tribunal vide Annexure A-9 order dated 30.08.2010 quashed the memorandum of charges and allowed the OA on the ground that the memorandum of charges was not approved by the Disciplinary Authority (DA), which is a legal requirement. The Tribunal, however, gave liberty to the respondents to proceed against the applicant and serve him with memorandum of charges, if the Minister concerned may approve the same in view of the observations made.

2.3 The Annexure A-9 order of the Tribunal dated 30.08.2010 was challenged by the respondents by filing a Special Leave Petition (SLP) (Civil) no.7762/2013 under Article 136 of the Constitution of India before the Hon'ble Supreme Court. The said SLP was clubbed with six other SLPs on the identical issues. This bunch of seven SLPs was disposed of by the Hon'ble Supreme Court vide judgment dated 05.09.2013 (Annexure A-11) upholding the view taken by this Tribunal that the memorandum of charges shall be issued only after the approval of the DA. The said judgment is famously known as **Union of India & Ors. v. B.V. Gopinath**, [Civil Appeal No.7761 of 2013 (Arising out of SLP (C.) No.6348 of 2011)]. The applicant's SLP is at serial no.2 of the memo of parties indicated in the said judgment. The Hon'ble Supreme Court has also noticed that the Central Administrative Tribunal (CAT) had granted liberty to the appellants (Union of India) to take appropriate action in accordance with law and has observed in its order that "we see no reason to disturb the liberty so granted."

2.4 Availing the liberty granted by this Tribunal in OA-2718/2009 filed by the applicant, which has been duly allowed to be retained by the Hon'ble Supreme Court in its aforementioned order dated 05.09.2013, issued the memorandum of charges afresh on 10.01.2014 duly approved

by the competent authority and the same was served on the applicant on 21.07.2015 vide letter no. CCIT/LDH//2015-16/1688 (Annexure A-1, page 41 of the paper-book).

2.4 Aggrieved by the Annexure-1 memorandum of charges dated 10.01.2014 and Annexure A-2 order dated 12.10.2015 whereby the PO has been appointed, the applicant has filed the instant OA.

3. Pursuant to the notices issued, the respondents entered appearance and filed their reply. With the completion of the pleadings, the case was taken up for hearing the arguments of the parties on 26.07.2016. Shri P.P. Khurana, learned Senior Advocate assisted by Shri Sachin Sood, learned counsel for the applicant and Shri Rajesh Katyal, learned counsel for the respondents argued the case.

4. The main contention of the learned Senior Advocate appearing for the applicant was that the charges contained in the impugned Annexure A-1 memorandum of charges relate to the period November, 2002 to January, 2005 when the applicant was posted as Director General of Income Tax (Investigation), Chandigarh and he retired from service on 31.01.2005, and hence, as per Rule 9 (2) (b) (ii) of CCS (Pension) Rules, 1972, no disciplinary enquiry (DE) proceedings could have been instituted against him for an

event which took place more than four years ago. Hence, Annexure A-1 memorandum of charges dated 10.01.2014 and Annexure A-2 order dated 12.10.2015, appointing the PO, are required to be quashed and set aside, Shri Khurana argued.

5. Per contra, learned counsel for the respondents stated that the Tribunal in its order dated 25.10.2007 in OA-2718/2009 had given liberty to the respondents to proceed against the applicant and serve him with memorandum of charges, if the Minister concerned may approve the same. This liberty has been allowed to be retained by the Hon'ble Supreme Court in its judgment dated 05.09.2013 in **B.V. Gopinath** (supra) in which the applicant was also a party. As such, there is no impediment in the way of the respondents to continue with the DE proceedings against the applicant; Shri Katyal stated. It was also submitted that after the impugned Annexure A-1 memorandum of charges was served upon the applicant, the respondents vide Annexure A-13 letter dated 22.09.2015 had granted final opportunity to the applicant to file his written statement of defence within 10 days. As the applicant failed to do so, the respondents were left with no option except to set the DE proceedings in motion by appointing the PO vide impugned Annexure A-2 order dated 12.10.2015. The learned counsel further stated that in response to Annexure A-13 letter of the respondents, the

applicant vide Annexure A-14 letter dated 03.10.201, *inter alia*, had stated that in the 2nd half of para-5 of the impugned charge memo dated 10.01.2014, the respondents have attempted to change the judgment of the Hon'ble Supreme Court dated 05.09.2013, which tantamounts to committing serious illegalities and could amount to contempt of the Hon'ble Supreme Court of India. If the respondents have committed any illegality, as alleged by the applicant in the said letter, the right course for him was to file a Contempt Petition against the respondents in the Hon'ble Supreme Court and not to come to this Hon'ble Tribunal, Shri Katyal contended.

5.1 Shri Katyal further stated that the Tribunal in its order dated 31.10.2010 in OA no.2718/2009 filed by the applicant had granted liberty to the respondents to proceed against the applicant and serve him with memorandum of charges, if the Minister concerned may approve the same; although four years had already elapsed at that time itself since the event taking place but the applicant never questioned the said liberty granted by the Tribunal by way of filing a Review Application in the Tribunal against the said order. Concluding his arguments, Shri Katyal stated that the Annexure A-1 memorandum of charges and Annexure A-2 order appointing the PO have been issued availing the liberty

granted by this Hon'ble Tribunal, which was duly allowed to be retained by the Hon'ble Supreme Court, and as such, the prayers made in the OA are liable to be rejected.

6. We have considered the arguments put-forth by the learned counsel for the parties and have also perused the pleadings and documents annexed thereto. Admittedly, the respondents have issued the impugned Annexure A-1 memorandum of charges and Annexure A-2 order appointing the PO, availing the liberty granted to them by this Tribunal and which was allowed to be retained by the Hon'ble Supreme Court. The applicant never questioned the liberty granted by the Tribunal in its order dated 31.08.2010 in OA no.2718/2009 filed by him on the ground now taken by him that more than four years had already elapsed since the event took place. Further, this point was also not raised by the applicant before the Hon'ble Supreme Court that he had retired from service on 31.01.2005 and hence no DE proceedings could be instituted against him in terms of Rule 9 (2)(b) (ii) of the CCS (Pension) Rules, 1972. The Hon'ble Supreme Court has allowed the retention of the liberty granted by the Tribunal to the respondents in its judgment dated 05.09.2013. Hence, we hold that the respondents are fully justified in starting DE proceedings afresh against the applicant by way of issuing Annexure A-1 memorandum of

charges and Annexure A-2 order, appointing the PO. As such, we do not find any merit in the OA. The OA is accordingly dismissed.

7. No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

‘San.’