

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No. 2634/2015

New Delhi, this the 28th day of July, 2017

Hon'ble Mr. V. Ajay Kumar, Member (J)
Hon'ble Mr. K.N. Shrivastava, Member (A)

Pradeep Kumar Sinha,
Aged about 69 years,
Chief Commissioner of Income Tax (Retd.),
S/o Late Shri Badri Prasad,
Flat No. 8108, Sector C-8,
Vasant Kunj, New Delhi-110070. ... Applicant

(By Advocate : Shri S.K. Ray with Shri Amitava Poddar)

Versus

1. Union of India
Through Secretary,
Ministry of Finance,
Govt. of India, North Block,
New Delhi-110001.
2. Secretary,
Department of Revenue,
Ministry of Finance,
Govt. of India, North Block,
New Delhi-110001.
3. Chairman/Chairperson,
Central Board of Direct Taxes,
North Block,
New Delhi-110001. ... Respondents

(By Advocate: Shri Rajesh Katyal)

ORDER**By Mr. V. Ajay Kumar, Member (J)**

The O.A. has been filed questioning the Annexure A-1 Penalty Order dated 29.08.2014 passed under Rule 9 of CCS (Pension) Rules, 1972 read with Rule 15 of CCS (CCA) Rules, 1965 in imposing the penalty of withholding of 30% of monthly pension, otherwise admissible, for a period of 5 years and also in withholding the entire amount of Gratuity permanently, on the applicant.

2. The brief facts necessary for the disposal of the instant O.A. are that the applicant while working as Chief Commissioner of Income Tax-II, Hyderabad, the respondents vide Annexure A-2 directed him to submit his reply on the issues mentioned in the annexures thereto.

3. The applicant submitted his detailed reply vide Annexure A-3 dated 02.11.2004. Thereafter, the respondents issued a Charge-sheet/Memorandum dated 31.03.2005 (Annexure A-4). The charges mentioned therein are as under:

“Article-I:-

That the said Shri P.K. Sinha, while working as Chief Commissioner of Income Tax-II, Hyderabad, Andhra Pradesh, from 24.7.2003 onwards, showed favour to the assessee and caused wrongful loss of revenue to the Government of India, by allowing waiver of interest charged under sections 234A, 234B and 234C of

the Income Tax Act, 1961 in the cases of twenty five assesseees, in gross violation of the order of the Central Board of Direct Taxes, New Delhi in F.No.400/234/95-IT(B) dated 23.05.1996.

By his above acts, Shri P.K. Sinha failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a Government servant, thereby violating the Rules 3(1)(i), 3 (1) (ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.”

Article-II:-

That the said Shri P.K. Sinha, Chief Commissioner of Income Tax-II, Hyderabad, on 5.5.2004 ordered the release of Rs.4.39 crores, out of the amount held under lien by the Income Tax Department, to HEH The Nizam’s Jewellery Trust in an irregular manner and in unseemly haste, even before ascertaining the exact quantum of arrears of tax due from the Trust.

Shri P.K. Sinha, thus, failed to maintain absolute devotion to duty and displayed conduct unbecoming of a Government servant, thereby violating Rules 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964.”

The applicant submitted his reply to the said charge-memo vide Annexure A-6 dated 04.04.2005. As the respondents have not satisfied with the reply to the said charge memo, have conducted Departmental Enquiry and vide Annexure A-7 dated 22/25.10.2010, the respondents furnished the Inquiry Officer’s report dated 21.05.2007 along with CVC Advice dated 01.04.2009 and called for applicant’s objections. The applicant submitted his reply to the Inquiry Report and also to the CVC Advice vide Annexure A-8 dated 11.03.2011. The respondents vide Annexure A-9 Office Memorandum dated 19.08.2013 again furnished the UPSC Advice dated 23.07.2013 to the applicant and called for his representation.

4. In view of pronouncement of the judgment by the Hon'ble Apex Court in **Union of India & Ors. vs. B.V. Gopinath**, (2014) 1 SCC 351, the respondents issued Office Memorandum dated 14.03.2014 intimating the approval of the Disciplinary Authority to the Charge Memorandum dated 31.03.2005 issued to the applicant and also for continuation of the disciplinary proceedings. Finally, after considering the objections of the applicant, the respondents issued the above referred Penalty Order (Annexure A-1) dated 29.08.2014.

5. Heard Shri S.K. Ray for the applicant and Shri Rajesh Katyal for the respondents and perused the pleadings on record carefully.

6. The learned counsel for the applicant in support of the O.A. averments, *inter alia*, contended as under:

(i) The charge-memo dated 31.03.2005 (Annexure A-4) was issued without the approval of the Finance Minister, who is the competent Disciplinary Authority and, hence, all the consequential disciplinary proceedings including the Penalty Order dated 29.08.2014 are vitiated and liable to be quashed in view of the decision of the Hon'ble Apex Court in **B.V. Gopinath** (supra).

(ii) The post-facto approval for the initiation of the disciplinary proceedings and for the draft charges and to the Charge

Memorandum is not valid and cannot make the disciplinary proceedings as valid.

(iii) Proviso to Rule 9(2)(a) of the CCS (Pension) Rules, 1972 not followed and, hence, the impugned orders are liable to be quashed.

7. Per contra, Shri Rajesh Katyal, learned counsel appearing for the respondents, would submit that the Charge Sheet against the applicant was issued on 31.03.2005, whereas the decision in **B.V. Gopinath** (supra) is dated 05.09.2013, hence, the same is not applicable to the disciplinary proceedings, which were initiated prior to the date of its pronouncement.

8. Further, since admittedly the Competent Disciplinary Authority has approved all the disciplinary proceedings in respect of the applicant after the pronouncement of decision in **B.V. Gopinath** (supra), all the impugned orders are valid and legal and cannot be interfered with on the said ground.

9. The learned counsel further submits that proviso to Rule 9(2) of the CCS (Pension) Rules, 1972 have no application to the applicant's case as the Charge Memorandum was issued while he was in service.

10. The learned counsel for the respondents placed reliance on the following decisions:

(a) **National Institute of Technology & Anr. vs. Pannalal Choudhury & Anr.**, 2015 (11) SCC 669; and

(b) **Rajiv Sinha vs. Union of India & Ors.**, Civil Review No.422 of 2016 dated 26.10.2016 of the Hon'ble High Court of Judicature at Patna.

11. The Hon'ble Apex Court in **B.V. Gopinath** (supra) categorically held that the Charge Sheet/Charge Memorandum having not been approved by the Disciplinary Authority was *non est* in the eye of law.

12. Admittedly, in the instant case, the Charge Memorandum, which was issued prior to the pronouncement of the decision in the **B.V. Gopinath** (supra), was without the prior approval of the competent Disciplinary Authority. However, after the pronouncement of **B.V. Gopinath** (supra), the Disciplinary Authority has approved the initiation of the disciplinary proceedings, the draft charge sheet and the final charge sheet and thereafter only the impugned Penalty Order was passed. Hence, the

issue whether post facto approval of the competent authority to various disciplinary proceedings will make them valid is before us.

13. The Division Bench of the Hon'ble High Court of Judicature at Patna in Civil Appeal No. 422 of 2016 dated 26.10.2016 (supra), on which the learned counsel for the respondents has placed reliance, examining the identical issue held that since the final order of punishment has the approval of the Finance Minister, even if it is assumed that the charge sheet is not approved by the Finance Minister at an earlier stage, will not confer any cause to the petitioner to dispute the order of punishment as with the approval of the final order, the entire proceedings are deemed to be "approved". Hence, the contention of the applicant's counsel that the post facto approval cannot make the charge sheet and the penalty order valid, is rejected.

14. Proviso to Rule 9(2)(a) of CCS (Pension) Rules, 1972 reads as under:

"Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President."

As observed above, the proviso to Rule 9(2)(a) provides that where the departmental proceedings are instituted by an authority

subordinate to the President, that authority shall submit a report recording his findings to the President.

15. In the instant case, the departmental proceedings were instituted when the applicant was in service. Though the applicant contends that the said proviso to Rule 9(2)(a) has been violated, it is not his case that the entire departmental proceedings were not submitted to the President before his consideration and passing of the impugned penalty order. Hence, this contention of the applicant is also unacceptable.

16. In the circumstances and for the aforesaid reasons, we do not find any merit in the O.A. and, accordingly, the same is dismissed. No order as to costs.

(K.N. Shrivastava)
Member (A)

(V. Ajay Kumar)
Member (J)

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