Central Administrative Tribunal
Principal Bench
New Delhi

OA No.4149/2014

Order Reserved on : 05.09.2018
Pronounced on : 26.09.2018

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

Keshavlal Trikamlal Maru
S/o Trikamlal Ukabhai Maru,
R/o G-627, 6th Floor, Raj Arcade,
Mahavir Nagar, Opp. D'Mart Mall,
Kandivali (West),
Mumbai-400067. … Applicant

(By Mr. S. K. Gupta, Advocate)

Versus

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

2. Chairman,
Central Board of Direct Taxes,
Ministry of Finance,
Department of Revenue,
North Block, New Delhi.

3. Director General of Income Tax (Vig.),
1st Floor, Dayal Singh Library,
1, Deen Dayal Upadhyay,
New Delhi. … Respondents

(By Ms. Madhurima Tatia, Advocate)

O R D E R

Justice L. Narasimha Reddy, Chairman :

The applicant retired as Assistant Commissioner of Income Tax on 31.10.2005 on attaining the age of superannuation. A charge-sheet was issued to him on 22.01.2008 alleging certain irregularities in the context of discharge of duties by him. The applicant filed OA No.3271/2010 challenging the charge-sheet. The principal contention urged therein was that the appointing authority did not accord approval for the charge-sheet. The OA was allowed on 29.08.2011 on the short ground and liberty was given to the respondents, to issue fresh charge-sheet in accordance with law.

2. After obtaining the approval of the appointing authority, the respondents issued charge memorandum dated 08.08.2014 (Annexure A-1). The same is challenged in this OA.

3. The applicant contends that under the CCS (Pension) Rules, 1972, the disciplinary proceedings cannot be initiated against a retired employee in respect of an incident which is more than four years, and in the instant case the charge-sheet is issued to him nine years after his retirement,

and thereby it is barred by time. It is also pleaded that the charge-sheet does not contain any list of witnesses, and the defect in this regard is serious in nature. The third contention urged by the applicant is that the charges relate to the discharge of functions by the applicant as an adjudicatory or *quasi* judicial authority, and the same cannot be subject matter of the disciplinary proceedings.

4. The respondents filed a counter affidavit opposing the OA. It is stated that the charge-sheet dated 22.01.2008 was issued within the time, and since it was set aside on a technical ground, with liberty to issue charge-sheet again, the one impugned in the present proceedings is issued with the same charges. They contend that the applicant cannot ignore the time between the two charge-sheets, which was spent on account of the litigation initiated by him. They further contend that the charges related to certain omissions and commissions on the part of the applicant in the context of passing orders of block assessment, and in that view of the matter, it was felt that there was no necessity to examine any witnesses, and the list was not furnished accordingly. They contend that rule 14 of the CCS (CCA) Rules, 1965 permits production of oral or

documentary evidence even while the disciplinary proceedings are in progress, and that no prejudice can be said to have been caused to the applicant. As regards the contention of the applicant that the subject matter of the disciplinary inquiry is the discretion exercised by the applicant while passing the *quasi* judicial orders, they submit that if in the inquiry it emerges that the discretion has been improperly used, causing loss to the revenue, the concerned person is certainly liable to be proceeded against.

5. Arguments on behalf of the applicant were advanced by Shri S. K. Gupta. The learned counsel elaborated the points urged in the OA, and has cited quite a good number of precedents in support of his contentions. Arguments on behalf of the respondents advanced by Ms. Madhurima Tatia, learned counsel, and she too relied upon citations.

6. The first contention urged by the applicant is that the impugned charge memorandum is barred by limitation. The plea of delay is taken with reference to rule 9 of the Pension Rules. The relevant provision reads as under:

> "*(2)* xxx xxx xxx

> *(b)* The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement, or during his re-employment, -
>
> xxx xxx xxx
>
> *(ii)* shall not be in respect of any event which took place more than four years before such institution, and
>
> xxx xxx xxx"

The purport of the provision extracted above is that in case a Government employee retired from service, proceedings cannot be instituted against him, except with the sanction of the President, and such proceedings shall not be in respect of any event which took place more than four years before the institution. The applicant bases his plea on the second condition.

7. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Brajendra Singh Yambem v Union of India & another*** [(2016) 6 SCC 20]. In that case it was found that the initial charge-sheet itself was issued after four years, and thereby was hit by rule 9(2)(b)(ii) of the Pension Rules. Even while upholding the judgment of the High Court of Guwahati, Imphal Bench, the Hon'ble Supreme Court permitted initiation of the disciplinary proceedings in exercise

of its power under Article 142 of the Constitution of India, having regard to the seriousness of the allegations therein. The plea of the respondents in this case is that the first charge memorandum was issued within limitation, and the period spent thereafter till the issuance of the charge-sheet impugned herein, deserves to be ignored, and the application of rule 9(2)(b)(ii) of the Pension Rules to the facts of the case does not arise.

8. Had it been a case where the impugned charge memorandum dated 08.08.2014 was the maiden attempt to initiate disciplinary proceedings against the applicant, the plea raised by him deserves to be accepted straightway. The reason is that he retired in the year 2005, and the charge-sheet is dated 08.08.2014. However, it is not in dispute that the applicant was issued a charge memorandum dated 22.01.2008, and it was challenged by filing OA No.3271/2010 on the ground that it was issued without obtaining the approval of the competent authority, i.e., the Finance Minister. The plea was accepted and the charge-sheet was set aside through order in OA No.3271/2010. The OA was allowed by following the detailed order dated 26.08.2011 passed by the Tribunal in OA

No.3732/2010 and batch, in ***S. Ramu & others*** *v* ***Union of India & others***. The operative portion of the detailed order in ***S. Ramu***'s case reads as under:

> "9. Considering the facts and circumstances of the cases and guided by the law laid by Hon'ble High Court of Delhi in ***B. V. Gopinath*** and ***S. K. Srivastava*** case, we are of the firm opinion that the impugned orders in all the present Original Applications where the charge sheets were issued against the applicants without getting the approval of the competent Disciplinary Authority, namely, the Finance Minister, are liable to be quashed and set aside. We order accordingly. We also grant the liberty to the respondents to proceed against the applicants in the respective OAs and frame charges if the concerned competent authority would approve the charge memo in the respective cases.
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> 10. In terms of our above orders, all the OAs listed here are allowed. This order is subject to the final outcome of the ***B. V. Gopinath***'s case (supra) under consideration of Hon'ble Supreme Court of India. As mentioned above, the respondents would be within their right to seek recall or review of our orders if the Hon'ble Supreme Court may reverse the judgment passed by this Tribunal and the High Court."
>
> (emphasis added)

The order in OA No.3271/2010 filed by the applicant, reads as under:

> "It could not be disputed during the course of arguments that present case is covered by the

> decision of the Tribunal in the matter of ***S. Ramu Versus Union of India and others*** (OA No.3732/2010 and other connected OAs decided on 26.08.2011).
>
> 2. For the parity of reasons given in the order passed in OA No.3732/2010 and other connected OAs, this Original Application is also allowed in the same terms."

From this, it becomes clear that permission was accorded to the respondents to issue fresh charge-sheet after obtaining approval of the competent authority. The very fact that the applicant did not plead or press the contention that the institution of the proceedings through charge-sheet dated 22.08.2008 was not hit by sub-rule (2) (b) (ii) of rule 9 of the Pension Rules, leads to the inevitable conclusion that the initiation of the disciplinary proceedings was otherwise valid. Obviously, for that reason, permission was accorded for issuance of another charge-sheet by placing reliance upon the order in ***S. Ramu***'s case. In case the applicant was of the view that the prohibition contained in sub-rule (2) of rule 9 operates and renders the issuance of another charge-sheet impermissible, he was expected to seek remedies accordingly. He did not do so and permitted the order in OA No.3271/2010 read with the one in ***S. Ramu***'s case, to become final.

9. Learned counsel for the applicant relied upon the judgment of the Hon'ble Supreme Court in ***State of Bihar & others*** *v* ***Mohd. Idris Ansari*** [1995 SCC (L&S) 1086]. In that case also the challenge to the disciplinary proceedings was on the ground that they were instituted beyond the time stipulated under rule 43(b) of the Bihar Pension Rules, which is similar to rule 9 of the CCS (Pension) Rules. On facts, it was held that the proceedings could not have been initiated in the year 1993 for the irregularity which had taken place in the year 1986-87. The respondents also did not dispute that fact, and on finding that the proceedings are in respect of the events which took place more than four years before the institution, they were set aside.

10. Once it emerges that the proceedings were validly instituted through charge-sheet dated 22.01.2008, the time between that charge-sheet and the one impugned in this OA needs to be excluded in the context of reckoning the period of time mentioned in sub-rule (2) of rule 9. In a way, this is referable to the concept of *acts of law*. It is well known that the time that is consumed in an adjudicatory process cannot be

counted whenever an occasion arises for determining the period of limitation.

11. Though the judgment in ***B. V. Gopinath & others*** *v* ***Union of India & others*** [(2014) 1 SCC 351] is also relied upon, that was of use to the applicant only in the first round of litigation, and has no impact or immediate relevance in this OA.

12. The second contention urged on behalf of the applicant is that the memorandum of charge does not contain the list of witnesses. It is stated that if the respondents did not propose to examine any witnesses, the question of the charge being proved does not arise, and on this short ground, the charge memo is liable to be set aside.

13. Rule 14 of the CCS (CCA) Rules deals exhaustively with the procedure to be followed for issuing charge memoranda, and for taking other ancillary steps. Sub-rule (3) of rule 14 reads as under:

> "(3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

After this formality is completed, the further steps such as appointment inquiring authority and the presenting authority, depending on the admission or denial of the charges by the employee, and proceeding with the inquiry, are provided for. Though sub-rule (3) of rule 14 of the CCS (CCA) Rules refers to list of witnesses by examining whom, the articles of charge are proposed to be sustained, it cannot be said that if a charge memorandum is not accompanied by a list of witnesses, it is vitiated. In a given case, the charge may be in relation to the interpretation of a document as regards which there is no dispute. For instance, if an employee has passed an order which he is otherwise not competent to do under the relevant

provisions of law, the necessity to examine any witnesses does not arise. The only question that needs to be verified or examined is as regards the nature of the order passed by the employee. Once he admits that he passed it, rest is a matter of interpretation and analysis.

14. In the instant case also, the charge is that in certain orders of block assessment, the applicant granted deduction of substantial amounts, contrary to the provisions of the Income Tax Act. The applicant did not dispute that he passed the orders mentioned in the charge memorandum. For all practical purposes, the controversy boils down to the one of interpretation of the orders, that too, in the limited context of the allegations as to negligence on the part of the applicant.

15. The list of witnesses mentioned in sub-rule (3) of rule 14 is not exhaustive or final. Rule 15 permits the disciplinary authority as well as the employee to adduce further evidence. The evidence, naturally, can be oral or documentary, and if the inquiry officer is satisfied about the relevance thereof, he can permit persons, whose names did not figure in the list furnished along with the charge memorandum, to be examined, subject to the right of cross examination by the

other party. Once there exists a facility to examine witnesses whose names did not figure in the list appended to the charge memorandum, there is no reason to take the view that if no list of witnesses is enclosed to the charge memorandum, the witnesses cannot be permitted to be examined at a later stage, depending on the satisfaction of the inquiry officer.

16. The third contention raised on behalf of the applicant is that he has discharged *quasi* judicial functions under the provisions of the Income Tax Act, and the orders passed therein cannot constitute subject matter of disciplinary proceedings. It is no doubt true that the disciplinary proceedings cannot be treated as appeals or reviews against the orders passed by the employee concerned in exercise of power conferred under the relevant provisions of law. However, in the limited context of examining whether the exercise of power was tainted with any acts of negligence or favouritism, the disciplinary proceedings can certainly be initiated.

17. In ***Union of India v K. K. Dhawan*** [(1993) 2 SCC 56], the Hon'ble Supreme Court dealt with this very question. Paras 27 and 28 of the judgment read as under:

"27. This dictum fully supports the stand of the appellant. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind.

28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party-;

(vi) if he had been actuated by corrupt motive however, small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great."

Reliance was placed upon its judgment in ***Union of India*** *v* ***A. N. Saxena*** [(1992) 3 SCC 124], wherein it was observed,

> "It was urged before us by learned counsel for the respondent that as the respondents was performing judicial or quasi-judicial functions in making the assessment orders in question even if his actions were wrong they could be corrected in an appeal or in revision and no disciplinary proceedings could be taken regarding such actions.
>
> In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence, the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely a desire to oblige himself or unduly favour one of

> the parties or an improper motive there is no reason why disciplinary action should not be taken."

Thus, it becomes clear that there is no prohibition against initiation of disciplinary proceedings in relation to the exercise of quasi judicial powers, by an official. However, the scrutiny cannot be the one, akin to that in an appeal or review. Therefore, the plea of the applicant cannot be accepted.

18. Viewed from any angle, we do not find any ground to interfere with the charge-sheet impugned in this OA. The applicant can put forward all his contentions in the disciplinary inquiry. We, therefore, dismiss the OA. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/as/