

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH

ORIGINAL APPLICATION NO.170/00778/2016

AND

MISCELLANEOUS APPLICATION NO.170/00355/2016

DATED THIS THE 18TH DAY OF SEPTEMBER, 2017

HON'BLE SHRI JUSTICE HARUN-UL-RASHID...MEMBER (J)
HON'BLE SHRI PRASANNA KUMAR PRADHAN, MEMBER (A)

Y.L. Srinivas Bhat,
S/o Lakshminarayana Bhat
Aged about 70 years,
R/a "Srinilaya" 75-76,
Kallahalli,
Vinobanagar,
Shimoga – 577 201.

... Applicant

(By Advocate Shri K. Raghavendra)

Vs.

1. The Secretary to the
Government of India,
Ministry of Finance of
Revenue Central Board of Direct Taxes,
North Block, New Delhi.

2. The Commissioner of Income Tax,
C.R. Building,
1st Floor, Nandigudda Road,
Attavara,
Mangalore – 575 001.

...Respondents

(By Shri M.V. Rao, Senior Panel Counsel)

ORDER (ORAL)

HON'BLE PRASANNA KUMAR PRADHAN, MEMBER (A):

The applicant has filed the present OA seeking the following reliefs:

- a) *To declare that the Order dated 13.03.2014 No.F.No.C-14011/25/2005-V&L passed by the first respondent as per Annexure-A1,*
- b) *To quash the order dated 04.02.2015 F.No.DP/CIT/MNG/2014-15 passed by the second respondent vide Annexure-A2 are illegal, null and void.*
- c) *And further direct the respondents authority to release all he pensioners benefits for which he is entitle.*

2. The applicant submits that he joined the 2nd respondent department as UDC in April, 1970. He was promoted as ITO in October, 1990 and Assistant Commissioner of Income Tax in 2001. While the applicant was working in the department, he had invested in shares in his name and in the name of his wife and son. In relation to transaction in the shares purchased in the year 1992 for a sum of Rs.30,150/-, a notice was issued to the applicant to which he immediately sent reply explaining his case. Thereafter at the fag end of his service he was issued a charge memo on the ground that he failed to maintain absolute integrity and devotion to the duty and acted in a manner unbecoming of a government servant. The inquiry was taken up after his superannuation and on completion of departmental inquiry the 1st respondent vide order dated 13.03.2014 (Annexure-A1) imposed a penalty of withholding 25% of monthly pension for 5 years under Rule 9 of CCS (Pension) Rules,

1972. Subsequently vide order dated 04.02.2015, the 2nd respondent imposed a penalty by withholding the monthly regular pension payable from 01.01.2007 to 31.12.2011, i.e., for a period of 5 years (Annexure-A2). Aggrieved by the said orders, he approached the Tribunal seeking above mentioned reliefs.

3. The applicant submits that the charges framed against the applicant in 2005 pertain to the year 1992, more so when the said charges were clarified by the applicant in 1992 itself. Therefore initiating proceedings after 13 years is completely unjustified. Moreover the impugned order was based on assumptions and presumptions and without any material evidence. Therefore the imposition of such penalty at this juncture is completely unjustified and the applicant is entitled to the relief sought by him.

4. The respondents filed a reply statement in which they have submitted that a charge memo dated 06.09.2005 containing two charges was issued to the applicant under Rule 14 of the CCS (CCA) Rules. After the charge memo was served on the applicant on 19.09.2005, he filed a written statement of defence on 18.05.2006 denying the charges. The applicant also filed a mercy petition to the Chairperson, CBDT on 15.01.2007. The IO and PO were appointed on 29.10.2007 and thereafter the inquiry proceedings was taken up between the period 29.11.2007 to 04.12.2008. During the course of inquiry proceeding, the applicant gave only incomplete and evasive replies. The Inquiry Officer submitted his report on 22.01.2009 holding the charges as proved. After obtaining approval from the Finance Minister on 14.01.2012 for accepting the findings of the Inquiry Officer, the applicant was asked on

07.02.2012 to comment on the Inquiry Officer's report and the views of the Disciplinary Authority. After the applicant made submission on 05.03.2012, the case was referred to UPSC for its considered advise. The applicant's comments were again called for on the UPSC advise dated 24.07.2012 on OM dated 16.08.2013. The applicant submitted his letter on 07.09.2013. After considering his representation and all the records, the penalty order dated 13.03.2014 was passed. The applicant was afforded opportunity at each stage of the disciplinary proceeding but he failed to provide evidence in support of his claim. The order passed was in accordance with the relevant provisions and after following the due procedure and hence cannot be considered as unjustified. They have also given a chronological event of the case at Annexure-R1.

5. The applicant had also filed MA for condonation of delay of 5 months in filing the OA.

6. We have heard the learned counsel for the parties. The learned counsel for the applicant submits that the investment was made by the applicant out of his own money and there is no case of any financial irregularities committed by the applicant. Even though in 1992 itself the applicant submitted his representation on being asked to clarify the matter, the respondents did not do anything and after 13 years they issued the charge memo. The inquiry were held only in 2007, nearly after 15 years. Hence the applicant could only provide information as per his memory. The respondents have only raised the issue of failure to explain the source of investment but the fact remains that it is his own money and there is nothing

illegal committed by the applicant. The learned counsel for the applicant further submitted the applicant is already 70 years old and is having serious illness which is paralytical in nature. Therefore the present penalty order imposing withholding 25% monthly pension for a period of 5 years is quite harsh and unjustified. Therefore he prayed that the applicant be granted relief as sought for.

7. The learned counsel for the respondents submitted that there was no doubt that there was some delay in initiating the proceedings and referred to the chronology of events given in Annexure-R1 and submitted that it is not intentional. Moreover the charges framed against the applicant was held as proved by the Inquiry Authority after holding detailed inquiry and giving all opportunity to the applicant to defend himself. The information provided during the inquiry by the applicant was evasive and not found justified. After consultation with UPSC and following all laid down procedure, the penalty was imposed. Therefore there is nothing wrong in the action taken by the respondents.

8. We have considered the prayer for condonation of delay. We have taken note of the grounds stated by the applicant for the delay and accept the same. The delay is condoned and the matter is taken up on merit.

9. We have carefully considered the facts of the case and submissions made by either side. It is evident from the records that the applicant was asked in 1992 to explain the source of investment in shares by him in his own name and his wife's name. Even though he submitted his reply immediately,

no action was taken thereafter by the respondents. The charge memo was issued only in September 2005. From the chronology submitted by the respondents at Annexure-R1, it also appears that the respondents took their own time to examine the matter and the issuance of charge memo. It took another 2 years to start the inquiry proceedings. Even though the Inquiry Officer submitted the report in 2009, it took nearly 4 years for issuing order imposing the penalty. It is clearly evident that there was enormous delay in taking up the proceedings by the respondents. We also note that the charges are more in the terms of failure to provide details regarding purchase of shares but there have been no allegation of any financial irregularity committed or having assets disproportionate to his income etc. There is merit in the contention made by the applicant that it was an investment made out of his own money and when information are asked on the share details after 15 years there is difficulty in providing all detail information about the modalities regarding the purchase of shares etc. In any case, we do not intend to question the final conclusion of the respondents on the possibility of failure on the part of the applicant to provide details regarding adherence to the procedure and the decision to impose penalty. However the penalty imposed withholding 25% of pension for a period of 5 years appears to us as quite harsh given the nature of the charges. Considering the condition of the applicant who is 70 years old and seriously ailing, as submitted by the learned counsel for the applicant, we are inclined to interfere in the final order imposing penalty and hold that it will meet the end of justice if the penalty imposed by the respondents is modified to withholding 25% of the monthly pension, otherwise admissible to the applicant, for a period of 2 years instead

of 5 years under Rule 9 of the CCS (Pension) Rules, 1972. The penalty imposed vide order dated 13.03.2014 and 04.02.2015 will stand modified accordingly. The excess amount withheld from his pension shall be refunded to the applicant within two months from the date of receipt of the order.

10. The OA is accordingly allowed in terms of the aforesaid directions. No order as to costs.

(PRASANNA KUMAR PRADHAN)
MEMBER (A)

(JUSTICE HARUN-UL-RASHID)
MEMBER (J)

Ksk

Annexures referred to by the applicant in OA No. 170/00778/2016

Annexure-A1: Copy of the order No.F.No.C-14011/25/2005-V&L dated 13.03.2014 passed by the Under Secretary to the Government of India.

Annexure-A2: Copy of the order F.No.DP/CIT/MNG/2014-15 dated 04.02.2015 passed by the second respondent.

Annexures referred in the reply statement

Annexure-R1: Copy of the chronology of events of the case of the applicant.
