

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH**

...

OA NO.290/00008/2018

THIS, THE 11TH DAY OF JANUARY, 2018.

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CORAM:

**HON'BLE MR. R. RAMANUJAM, MEMBER (A)
HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)**

...

OM PRAKASH BANSAL S/O LATE SHRI TULSI RAM BANSAL, AGED ABOUT 55 YEARS, R/O TYPE-II/9 QUARTER, BEHIND SHAHI BAG GARDEN, INCOME TAX COLONY, SECTOR-11, HIRANMAGRI, UDAIPUR, AT PRESENT POSTED ON THE POST OF LDC (UNDER SUSPENSION) IN THE OFFICE OF TAX RECOVERY OFFICER, SUB-CITY CENTRE, INCOME TAX BUILDING, NEAR SAVINA, UDAIPUR.

...APPLICANT

BY ADVOCATE : MR. J.K. MISHRA

VERSUS

1. UNION OF INDIA THROUGH SECRETARY, CENTRAL BOARD OF DIRECT TAXES, MINISTRY OF FINANCE, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI.

2. ADDITIONAL COMMISSIONER OF INCOME-TAX, BHILWARA RANGE, BHILWARA (RAJ.).

3. PRINCIPAL COMMISSIONER OF INCOME TAX, UDAIPUR.

RESPONDENTS

BY ADVOCATE: MR. SUNIL BHANDARI

ORDER (ORAL)

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PER HON'BLE MR. R. RAMANUJAM, MEMBER (A):-

HEARD. LEARNED COUNSEL FOR THE APPLICANT SUBMITS THAT THE APPLICANT IS AGGRIEVED BY THE ANNEXURE-A/1 IMPUGNED MEMO PROPOSING TO AWARD HIM THE PENALTY OF REMOVAL/DISMISSAL FROM SERVICE UNDER SECTION 19 OF THE CENTRAL CIVIL SERVICES (CLASSIFICATION, CONTROL AND APPEAL) RULES, 1965. IT IS SUBMITTED

THAT THE APPLICANT WAS CONVICTED UNDER THE PREVENTION OF CORRUPTION ACT AND THE INDIAN PENAL CODE FOR BEING IN POSSESSION OF ASSETS DISPROPORTIONATE TO HIS KNOWN SOURCES OF INCOME BY SPECIAL JUDGE CBI CASES, JODHPUR'S ORDER DATED 22.05.2013 IN SB CRIMINAL CASE NO.03/2003 (RC JDH 2002 A0011) AND HAD BEEN SENTENCED BY ORDER DATED 22.05.2013 TO RIGOROUS IMPRISONMENT FOR ONE YEAR WITH A FINE OF RS.5,00,000/- FOR THE OFFENCE PUNISHABLE UNDER SECTION 13 (1) (D) READ WITH SECTION 13 (2) OF THE PREVENTION OF CORRUPTION ACT, 1988.

2. LEARNED COUNSEL FOR THE APPLICANT WOULD ARGUE THAT THE ORDER OF CONVICTION WAS PASSED AS FAR BACK AS MAY, 2013 AND NO ACTION WAS TAKEN THEREON BY THE RESPONDENTS. THERE IS ABSOLUTELY NO PROVOCATION NOW TO ISSUE A SHOW CAUSE NOTICE IN NOVEMBER, 2017. IN THE EVENT THE RESPONDENTS WISHED TO TAKE ACTION AGAINST THE APPLICANT FOR ANY ALLEGED MISCONDUCT VIOLATIVE OF THE RELEVANT CONDUCT RULES, THEY ARE BOUND TO ISSUE A CHARGE MEMO UNDER RULE 14 OR RULE 16 AS THE CASE MAY BE. ACCORDINGLY, HE WOULD PRAY THAT THE OPERATION OF THE IMPUGNED MAY BE STAYED AND NOTICES ISSUED TO THE RESPONDENTS.

3. WHEN THE MATTER WAS TAKEN UP ON 08TH JANUARY, 2018, COUNSEL FOR THE RESPONDENTS WAS DIRECTED TO OBTAIN INSTRUCTIONS FROM THE RESPONDENTS. COUNSEL FOR THE RESPONDENTS SUBMITS THAT THE IMPUGNED MEMORANDUM DATED 21.11.2017 WAS FULLY COVERED BY THE PROVISIO TO RULE 19 OF THE CCS (CCA) RULES ACCORDING TO WHICH A GOVERNMENT SERVANT CONVICTED IN A CASE OF CRIMINAL OFFENCE HAD TO BE GIVEN AN OPPORTUNITY OF MAKING A REPRESENTATION ON THE PENALTY PROPOSED TO BE IMPOSED BEFORE ANY ORDER IS MADE IN THIS REGARD. THE IMPUGNED MEMO IS ONLY A NOTICE OF THIS NATURE WITH A VIEW TO GRANTING AN OPPORTUNITY TO THE APPLICANT TO MAKE A REPRESENTATION. AT THIS STAGE, THE APPLICANT COULD HAVE NO CAUSE FOR GRIEVANCE. THE APPLICANT HAS ALREADY SUBMITTED TWO REPLIES IN RESPONSE THEREOF WHICH ARE UNDER CONSIDERATION. THE OA IS, THEREFORE, PREMATURE AND IS LIABLE TO BE REJECTED, IT IS SUBMITTED.

3. LEARNED COUNSEL FOR THE APPLICANT WOULD, HOWEVER, ALLEGE THAT A RULE 14 ENQUIRY WAS PENDING AND THEREFORE, NO ACTION COULD BE TAKEN BEFORE CONCLUSION OF THE ENQUIRY.

4. LEARNED COUNSEL FOR RESPONDENTS CONTESTS THE ALLEGATION WITH THE INFORMATION THAT THE RULE 14 ENQUIRY HAD SINCE BEEN DROPPED AND NOW THAT THE APPLICANT IS CONVICTED, THE QUESTION OF HOLDING A FRESH ENQUIRY OR CONTINUING AN EARLIER ENQUIRY DOES NOT ARISE.

5. ON A CAREFUL CONSIDERATION OF THE FACTS, WE ARE OF THE VIEW THAT THE IMPUGNED MEMORANDUM HAS BEEN ISSUED UNDER THE PROVISIO TO RULE 19 WHICH CLEARLY STATES THAT NOTWITHSTANDING

ANYTHING CONTAINED IN RULE 14 TO RULE 18 WHEN A PERSON IS CONVICTED OF CRIMINAL CHARGE, THE DISCIPLINARY AUTHORITY MAY CONSIDER THE CIRCUMSTANCES OF THE CASE AND MAKE SUCH ORDERS THEREON AS THEY DEEMED FIT. ACCORDINGLY, WE DO NOT FIND ANY REASON TO INTERFERE WITH THE IMPUGNED MEMORANDUM DATED 21.11.2017 ISSUED BY THE RESPONDENTS UNDER THE PROVISIO THEREOF, GRANTING AN OPPORTUNITY TO THE RESPONDENTS TO MAKE A REPRESENTATION ON THE PENALTY PROPOSED TO BE IMPOSED. THE APPLICANT HAS ALSO REPLIED TO THE MEMO. EVEN ASSUMING THAT A RULE 14 ENQUIRY ORDERED EARLIER IS PENDING, SINCE RULE 19 IS CLEAR THAT THE RESPONDENTS COULD PROCEED NOTWITHSTANDING ANYTHING CONTAINED IN RULE 14 TO RULE 18, WE SEE NO IRREGULARITY IN THE IMPUGNED MEMO.

6. CLEARLY THE OA IS MISCONCEIVED AND PREMATURE. WE ARE, THEREFORE, NOT INCLINED TO ENTERTAIN IT AT THIS STAGE. OA IS DISMISSED. NO COSTS.

(SURESH KUMAR MONGA)
MEMBER (J)

(R. RAMANUJAM)
MEMBER (A)

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