

**Central Administrative Tribunal
Principal Bench**

**OA No.3935/2015
MA No.569/2019
MA No.3913/2018
MA No.1544/2016**

New Delhi, this the 29th day of March, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Sh. B.K. Gupta,
Chief Commissioner of Income Tax,
Kolkata – I (Retd.)
R/o. B-6, Asiad Village,
New Delhi-110049.

...Applicant

(By Advocate : Shri Krishna Kumar)

Versus

1. Union of India
Through Secretary
Dept. Of Revenue
North Block,
New Delhi-110001.
2. Chairman, CBDT,
Dept. Of Revenue,
North Block,
New Delhi-110001.

...Respondents

(By Advocate : Shri N.D. Kaushik)

ORDER (ORAL)**Justice L. Narasimha Reddy, Chairman :-**

The applicant retired as Chief Commissioner of Income Tax from Koltaka on 30.06.2009. He was extended the retirement benefits and is being paid the monthly pension. A charge memo dated 21.05.2012 was issued to him, alleging that he submitted fictitious bills as regards the cataract operation, said to have been undergone by him, and on verification it was found that the hospital, in whose name the bills were issued, denied the issuance of the same. This was followed by an order dated 16.09.2015, through which the presenting officer was appointed and the date of hearing was fixed. This OA is filed challenging the charge memo dated 21.05.2012 and order dated 16.09.2015.

2. The applicant contends that just before his retirement, his explanation was called for in relation to anonymous complaints, wherein several allegations, including the one, of submitting fictitious bills, were made, and that on a consideration of the explanation offered by him, the Committee constituted in this behalf, did not find any substance in them. He contends that

on account of this development, a vigilance clearance certificate was also issued to him before his retirement and on the basis of that, the pension and other benefits were granted. It is stated that the charge memo was issued on the basis of non existing facts, after his retirement.

3. The respondents filed detailed counter affidavit objecting to the very maintainability of the OA. It is stated that the charge memo issued in the year 2012 cannot be challenged in the year 2015. They further submit that though several opportunities were given, the applicant did not submit his explanation and the inquiry is unduly stalled. Other contentions are also raised.

4. We heard Shri Krishna Kumar, learned counsel for applicant and Shri N.D. Kaushik, learned counsel for respondents.

5. The applicant held a fairly high position in the establishment of Income Tax, i.e., Chief Commissioner of Income Tax and retired from service on 30.06.2009. A charge memo was issued on 21.05.2012, i.e., nearly three years after his retirement. The same reads as under:-

“Statement of Imputation of misconduct or misbehaviour in respect of the articles of charge framed against Shri B K Gupta formerly CCIT, Kolkata

Article-I

That the said Shri B K Gupta while functioning as CCIT-II, Kolkata during the period from 12/06/2008 to 07/05/2009, had prima facie committed grave misconduct by self sanctioning on 23/03/2009 and getting reimbursed thereby the two bogus medical bills of Rs. 28,000/- each of one hospital of Kolkata, M/s Silverline Eye Hospital claiming falsely and receiving unduly total amount of Rs. 56,000/- from the Govt. exchequer.

Article-II

That during the aforesaid period and while functioning in the aforesaid office, the said Shri B K Gupta, by the aforesaid act of omission and commission had failed to maintain absolute integrity, showed lack of devotion to duty and exhibited conduct unbecoming of a Govt. Servant in violation of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964.”

6. Though the applicant was supposed to submit the explanation, he made representations on certain occasions, seeking time. It is also stated that he prayed for supply of an affidavit said to have been obtained from

M/s Silverline Eye Hospital. Ultimately, the respondents proceeded to appoint the inquiry and presenting officers.

7. Immediately before his retirement, the applicant, was required to offer his comments in relation to certain alleged irregularities, which included the submission of fictitious medical bills. The explanation was submitted and obviously, on being satisfied about it, the vigilance certificate was issued and, thereafter his pension was also granted.

8. The question as to whether charges framed against the applicant in the year 2012 are true or not, can be ascertained only after the version of the applicant is known and if it is not satisfactory, by conducting the detailed inquiry. We are of the view that though there was no justification for the applicant in not submitting his explanation, he can be given opportunity to file it immediately.

9. The applicant has also made a request to shift the venue of the inquiry from Kolkata to Delhi, since he is residing there. Naturally, it would be difficult for a retired employee to travel such a long distance only for the purpose of facing the inquiry. The representation

made by the applicant can be considered, particularly when there is a full-fledged and trained establishment of the Department, at Delhi.

10. We, therefore, dispose of the OA directing that :-

- a) the applicant shall be entitled to submit his explanation within three weeks from today, by raising all factual and legal contentions and no further time would be granted for this purpose;
- b) the disciplinary authority shall consider the same and decide whether or not to proceed with the inquiry;
- c) in case it is proposed to proceed with the inquiry, the same shall be communicated to the applicant and his request for shifting the venue of the inquiry to Delhi shall be considered within a period of two weeks thereafter.
- d) if the explanation is not received within two weeks, as mentioned above, it shall be open to the respondents to proceed with the inquiry.

Pending MAs , if any, also stand disposed of.

There shall be no order as to costs. Order **Dasti.**

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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