

**Central Administrative Tribunal
Principal Bench**

OA No.3228/2018

New Delhi, this the 10th day of December, 2018

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

Sunil Bajpai,
S/o Sh. R.L. Bajpai,
Aged about 50 years,
R/o 402, Aayakar Bhawan,
Marris Road, Aligarh-202001
Group 'A' Officer of Income Tax Department
Presently working as CIT (Appeals)Aligarh.

...Applicant

(In person)

Versus

- 1) Union of India,
Through its Secretary,
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
North Block, New Delhi-110001.
- 2) Pr. Director General of Income Tax (Vig.),
Income Tax Department,
Second Floor, Jawaharlal Nehru Stadium,
New Delhi-110003.

...Respondents

(By Advocate : Shri Rajnish Prasad)

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

The applicant is working as Commissioner of Income Tax. He has been issued a memo of charge dated 01.05.2018, wherein, four articles of charges were framed, in relation to the discharge of functions by him as Additional Commissioner of Income Tax, Range 14, New Delhi. The same is challenged in this OA on several grounds.

2. The applicant contends that the proceedings were initiated, in respect of adjudication, undertaken by him in the year 2004 and there is an inordinate delay. He contends that the basis for the charge memo is an anonymous complaint and the same is impermissible, as per the guidelines issued by the DOP&T and CVC. Another contention of the applicant is that no disciplinary proceedings can be ordered in respect of his functioning as quasi judicial authority. It is alleged that though at one stage of the proceedings, it was decided to drop the further action, it was resumed on the basis of the opinion given by the CVC.

3. The respondents filed counter affidavit opposing the OA. It is stated that the delay in issuing the charge memo occurred on account of involvement of various offices in the context of investigation and examination of complaint and that it was only on 02.01.2018, that the CVC gave its clearance for initiation of the proceedings. They contend that it is permissible for initiation of the disciplinary proceedings in relation to quasi judicial proceedings also, if adequate material exists. It is further contended that circular dated 07.03.2016, issued by the CVC permits the proceedings of this nature.

4. The applicant argued the case in person and we heard Shri Rajnish Prasad, learned counsel for respondents.

5. The charges framed against the applicant are in relation to the discharge of functioning by him as Additional Commissioner of Income Tax. It appears that the applicant permitted certain deductions, which, according to the respondents are impermissible.

6. It is no doubt true that the orders in question were passed in the year 2004-05, and the charge memo was issued in the year 2018. The fact, however, remains that the initiation of proceedings was on the basis of an anonymous complaint and naturally it required some exercise to get to the roots of the matter as well as to verify the genuine nature of the allegations. Added to that, the respondents were placed under obligation to bring the facts to the notice of the CVC, before taking a final decision. It is only on 02.01.2018, the CVC opined that the matter must be inquired into by initiating the proceedings under CCS (CCA) Rules. Therefore, it cannot be said that there was an undue delay in initiation of proceedings.

7. Reliance is placed on the judgment of the Hon'ble High Court of Delhi in **Union of India Vs. Yateendra Singh Jafa** in WP(C) No.8171/2008, wherein the gist of various judgments rendered by the Hon'ble Supreme Court was furnished. We are of the view that since the matter was being dealt with in consultation with the CVC, and the final clearance came only in the month of January, 2018, it cannot be said that there was an undue delay.

8. It is also argued by the applicant that disciplinary proceedings cannot be initiated as regards the discharge of quasi judicial function by him. He submits that in case the orders passed by him suffered from factual or legal errors, the only course open to the affected parties, or the department, was to avail the remedies provided for, under the Income Tax Act, in the form of appeal or review.

9. The initiation of disciplinary proceedings in relation to the orders passed by an officer in exercise of quasi judicial powers is no doubt, very rare. However, there is no prohibition against such a step. This very contention was dealt with by us in ***Keshavlal Trikamlal Maru vs. UOI & ors.*** OA No.4149/2014 decided on 26.09.2018. It was held as under:-

“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.”

After referring to the judgments of Hon'ble Supreme Court in ***Union of India vs. K. K. Dhawan*** [(1993) 2 SCC 56] and ***Union of India vs. A. N. Saxena*** [(1992) 3 SCC 124], it was observed as under:-

“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.”

Same situation obtains in the present case also.

Hence, we do not accept the plea of the applicant.

10. Another important contention advanced by the applicant is that proceedings could not have been initiated on the basis of an anonymous complaint. He placed reliance upon office memorandum dated 18.10.2013, passed by the DOP&T and similar circulars issued by the CVC. In those circulars, it was mentioned that no action is required to be taken on anonymous complaints. However, in the recent past, the CVC reviewed its policy in this behalf in its circular dated 07.03.2016. Clause (iii) occurring in para 5 thereof, becomes relevant in this behalf. It reads as under :-

“Where action was initiated on anonymous/pseudonymous complaints between the period 11.10.2002 and 25.11.2014, with prior concurrence

of CVC but is pending, further action is permissible on such complaints.”

11. Unfortunately for the applicant, his case falls in this category of cases. The CVC has also kept this in mind and then gave its clearance. Therefore, the contention advanced by the applicant in this behalf cannot be accepted.

12. It is alleged that there was change of opinion in the entire episode. The record discloses that the matter was dealt with, at various levels and at one stage, it was opined that the proceedings be dropped and the proposal was accordingly, submitted to the CVC. However, the latter, took a different view and held that the inquiry needs to be concluded. Hence, it cannot be said that there was any change of opinion at any stage.

13. We do not find any merit in the OA and the same is accordingly, dismissed. However, since the career of the applicant is involved and he is fairly at a senior level in administration, we direct that the proceedings be concluded within a period of six months from the date of

receipt of a certified copy of this order and the applicant shall not cause any obstruction in the proceedings. We leave it open to the applicant to raise, the factual and legal pleas before the disciplinary authority.

There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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