

**Central Administrative Tribunal
Principal Bench**

OA No.2913/2014

New Delhi, this the 11th day of September, 2019

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

Sh. Parmod Kumar Jain
Aged 59 years
S/o Late Sh. Mahavir Parshad Jain
Ex, Income Tax Officer
R/o 39, Shyam Enclave
Delhi-110092. ... Applicant

(By Advocate : Shri D.S. Mahendru)

Vs.

Union of India through

1. Secretary (Revenue)
Ministry of Finance, Govt. of India
N. Block, New Delhi-110001.
2. The Chief Commissioner of Income Tax Delhi-I
Now Re-Designated as Principal Commissioner
Of Income Tax, New Delhi, Central
Revenues Building, I.P. Estate
New Delhi-110001.
3. The Commissioner of Income Tax, Delhi-XIII
C.R. Building, I.P. Estate
New Delhi. ...Respondents

(By Advocate: Shri C. Bheemanama)

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

The applicant joined the service of the Income Tax Department as a LDC in 1976. He earned various promotions and through an order dated 08.04.2009, he was promoted to the post of Income Tax Officer (ITO). Shortly, thereafter the proceedings under the Prevention of Corruption Act, 1988 were initiated against him by the CBI, alleging that he owned and held properties, disproportionate to his known sources of income. The concerned trial court convicted the applicant through its judgment dated 13.09.2011 and imposed a punishment of rigorous imprisonment for four years and fine of Rs.4 lacs. It is brought to our notice that the applicant filed an appeal before the Hon'ble High Court of Delhi and through an interlocutory order dated 20.10.2011, the sentence was suspended.

2. The applicant was issued a show cause notice dated 19.04.2012 under Rule 19 of the CCS (CCA) Rules, 1965, requiring him to explain as to why the order of punishment be not passed against him in view

of his conviction in the criminal case. After considering the explanation submitted by the applicant, the Commissioner of Income Tax (CIT), Delhi-XIII passed an order dated 16.05.2012 dismissing the applicant from service. An appeal preferred by the applicant to the Chief Commissioner of Income Tax(CCIT) was rejected on the ground that the Appellate Authority, in the case of the applicant, was the President of India.

3. This OA is filed challenging the order dated 16.05.2012, as being *non est* in the eyes of law, on the ground that it was passed by an authority not competent to do so, and to quash the order dated 26.02.2015.

4. The applicant contends that he was appointed as an ITO, with the approval of the CCIT and was also posted in that office and accordingly the CCIT alone could have acted as Disciplinary Authority. He further pleaded that if the CIT were to have been the Disciplinary Authority, the appeal should have been entertained by the CCIT and the very fact that the respondents stated that the appeal lies to the President

of India, proves that the CCIT alone can be the Disciplinary Authority. Other grounds are also urged.

5. The respondents filed a detailed counter affidavit opposing the OA. It is stated that the applicant was promoted to the post of ITO by the competent authority. It is stated that in the context of Disciplinary Authority the Gazette Notification dated 05.10.1988 becomes relevant, and according to this, for an ITO who is posted in the office of CCIT, the Disciplinary Authority would be the CCIT himself and if case he is posted in the office of the CIT, the CIT would be the Disciplinary Authority. The respondents further stated that though the applicant was posted in the office of CCIT when he was promoted, he was transferred to the office of the CIT Delhi-XIII vide dated 21.06.2011 and in that view of the matter, it cannot be said that the impugned order is passed by an incompetent authority. As regards the rejection of appeal, it is stated that the same was done as per the relevant provisions of law.

6. We heard Shri D.S. Mahendru, learned counsel for the applicant and Shri C. Bheemanama, learned counsel for the respondent.

7. The basis on which the applicant was dismissed from service, is the conviction which the Trial Court ordered against the applicant, under the provisions of the Prevention of Corruption Act. As of now, the appeal preferred by the applicant is pending in the High Court.

8. Proceedings were initiated against him under Rule 19 of the CCS (CCA) Rules. The Disciplinary Authority is hardly left with any discretion in such cases, and an order of conviction in a criminal case, invariably entails in dismissal of the employee.

9. The principal ground urged by the applicant is that the CIT is not competent to pass order of dismissal and according to him, the Disciplinary Authority is only the CCIT. In this behalf, it becomes necessary to refer to the Notification dated 05.10.1988, which maintains a dichotomy in the context of prescribing the Disciplinary Authority, in respect of the Commissioner of Income Tax. The relevant columns read as under:-

Description of Post	Appointing Authority	Authority competent to impose penalties and the penalties which it may impose (with reference to item number in Rule)
(i) Income-Tax Officers	Chief Commissioner of	Chief Commissioner of

Group 'B' when posted in the offices of Chief Commissioners of Income Tax/Directors General of Income Tax	Income-Tax/ Director	Income Tax/Director General of Income-Tax Deputy commissioner of Income Tax (Headquarters, Administration)/ Deputy Director of Income Tax (Headquarters, Administration)
(ii) Income Tax Officers Group 'B' when posted in offices other than those of the Chief Commissioners of Income Tax/Directors General of Income Tax	Commissioner of Income Tax/Director of Income Tax	Commissioner of Income Tax/Director of Income Tax Deputy Commissioner of Income/Tax/ Deputy Director of Income Tax (Administration)
(iii) All Group 'B' posts in the Directorates under the Central Board of Direct Taxes, other than posts of Income Tax Officers, Group 'B'	Director of Income Tax	Director of Income Tax Deputy Director of Income Tax (Administration)

From this, it becomes evident that the Disciplinary Authority for an ITO changes depending upon the place of his working. It can be the CCIT, CIT or Director of Income Tax depending upon the place where he is posted. Though the initial posting of the applicant, on promotion, was in the office of CCIT, through an order dated 21.06.2011, he was posted in the office of CIT Delhi-XIII. Hence, the plea of the applicant that the CIT is not competent to pass order of punishment, cannot be accepted.

10. Argument is also advanced as to the very identification of the Appellate Authority. While, according to the applicant, the CCIT is the Appellate

Authority, the respondents took the view that the Appellate Authority is the President of India. This issue does not depend upon the interpretation placed by anyone, and one has to go by the relevant rules.

11. We are of the view that the only step which the applicant has to take is to await the outcome of the appeal preferred by him. As long as the order of conviction stands, no authority under the relevant service rules can grant any relief to the applicant. Further, the applicant has since retired from service,

12. We, therefore, dismiss the OA, however, leaving it open to the applicant to approach the Disciplinary Authority in case the order of conviction passed against him, by the Trail Court, is set aside by the Hon'ble High Court.

There shall be no order as to costs.

(Mohd. Jamshed)
Member(A)

(Justice L. Narasimha Reddy)
Chairman

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