

**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A. No.3157/2017

Wednesday, this the 17th day of July 2019

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

Shri Sushil Kumar Aggarwal
Aged about 60 years
s/o late Laxmi Chand

Permanent Residence of:

r/o 501 Panchvati Apartment
Near Tilk School, Adjacent to Rama Bai School
Hanuman Road, Ville Parle East
Mumbai

Presently residing at :

301, Nidhi Nikunj
Income Tax Colony
Magura Gate, Surat, Gujarat

..Applicant
(Mr. S K Gupta, Advocate)

Versus

Union of India through

1. Secretary, Department of Revenue
Ministry of Finance
North Block, New Delhi

2. Chairman
Central Board of Direct Taxes
Department of Revenue
Ministry of Finance
North Block, New Delhi

3. Pr. Director General of Income Tax (Vig.)
1st Floor, Dayal Singh Library
1, Deen Dayal Upadhyay Marg
New Delhi – 110 002

..Respondents
(Mr. Manjeet Singh Reen, Advocate)

O R D E R (ORAL)**Justice L. Narasimha Reddy:**

The applicant is an Indian Revenue Service (IRS) officer of 1985. In the year 2009, he was working as Commissioner of Income Tax (Appeals) at Patiala, Punjab. He was promoted in the year 2015 as Principal Commissioner of Income Tax and was posted at Jalandhar. On 30.06.2015, he was transferred to Surat, Gujarat. The applicant retired from service on 30.04.2017. Two days before his retirement, i.e., 28.04.2017, he was issued a charge memo. It was alleged that while functioning as Commissioner of Income Tax (Appeals) at Patiala, he passed an order on 30.04.2009 allowing undue relief to an assessee by the name, Mr. Raj Kumar Wadhwa, for the assessment year 2006-07. It was also stated that the assessing authority disallowed the claim of Rs.41,14,518/- made by the assessee, but the applicant reversed that. This O.A. is filed challenging the charge memo.

2. The applicant contends that timing of issuance of the charge memo clearly discloses *mala fide* intention on the part of the respondents and that though the issue related to the year 2009, the charge memo was issued two days before his retirement. He submits that the order passed by him in quasi judicial capacity was, in fact, the subject matter of further appeal before the Income Tax Appellate Tribunal (ITAT) and thereafter before the concerned High Court, and at no stage

before issuance of the charge memo, any allegation as to lack of integrity on his part was made. It is also his case that had he retired from service in usual course, it would have become impossible for the respondents to issue charge memo since it is related to an issue, which is more than four years old.

3. The respondents filed a detailed counter affidavit opposing the O.A. It is stated that though the applicant passed the order of 30.04.2009 in exercise of powers under the Income Tax Act, it is competent for them to initiate disciplinary proceedings when the order is tainted with any objectionable factors. It is stated that the truth or otherwise of the articles of charge needs to be established only in the disciplinary inquiry and that the charge memo cannot be challenged. Reliance is placed upon certain decided cases.

4. We heard Mr. S K Gupta, learned counsel for applicant and Mr. Manjeet Singh Reen, learned counsel for respondents, at length.

5. The applicant was issued a charge memo dated 28.04.2017, two days before his retirement. It is stated that 29.04.2017 was Saturday and 30.04.2017 was Sunday. The only article of charge is in relation to an order passed by the applicant on 30.04.2009, in appeal. The timing of issuance of charge memo becomes relevant in view of the provisions of CCS (Pension) Rules, 1972. Had the charge memo not been issued

on 28.04.2017, the situation would have been governed by the provisions of CCS (Pension) Rules, 1972. In such an event, it would not have been possible or permissible to inquire into any issue, which took place more than four years before the date of retirement.

6. It is not as if the incident took place at a particular time and soon after the disciplinary authority came to know about it, the charge memo was issued. The order in appeal was passed on 30.04.2009 and was the subject matter of further appeals over the years. The fact that such an order was passed by the applicant did not come in the way of his promotion to the post of Principal Commissioner of Income Tax in the year 2015. However, two days before his retirement, the charge memo was issued. This tends to become a case of colourable exercise of power, only to overcome the impact of the CCS (Pension) Rules, 1972.

7. It is true that there is no bar in law to initiate disciplinary proceedings as regards functioning of an officer in his quasi judicial capacity. Much would depend upon the circumstances under which the proceedings are to be initiated.

8. In **Keshavlal Trikamlal Maru v. Union of India & others** (O.A. No.4149/2014) decided on 26.09.2018, this Tribunal took note of the judgment of Supreme Court in **Union of India v. K K Dhawan**, (1993) 2 SCC 56 and **Union of**

India v. A N Saxena, (1992) 3 SCC 124, and the principles laid down therein. On finding that there was a clear allegation against the applicant therein about the gravity of charges, we refused to interfere with the same.

9. In the instant case, however, except making an allegation that the order was passed by the applicant on 30.04.2009, with *mala fide* intention, nothing was stated. In the eight years period, which preceded the issuance of charge memo, the respondents could have ascertained whether there was any objectionable exercise of power by the applicant or whether he entertained any idea to benefit the assessee. If an assessee got the benefit as a result of adjudication, that need not necessarily lead to a conclusion that the officer acted with *mala fide* intention. The revenue felt aggrieved by the order passed by the applicant and it is brought to our notice that the ITAT has reversed the order passed by the applicant. However, at that stage, no doubt was expressed about the bonafides of the applicant. It was only at the verge of retirement of applicant, that the charge memo was issued. On account of long lapse of time, it becomes difficult for anyone to refer to the relevant facts.

10. In **V K Puri v. Union of India** (O.A. No.839/2014) decided on 08.08.2018, this Tribunal dealt with almost a similar situation. The aspect of delay with reference to the

judgment of Supreme Court in **State of Madhya Pradesh v. Bani Singh & another**, 1990 (Supp) SCC 738 and judgment of Delhi High Court in **Union of India & another v. Hari Singh** (W.P. (C) No.4245/2013) decided on 23.09.2013, were taken note of. In paragraph 8, we observed as under:-

“8. In the instant case, the allegations against the applicant pertain to the nature of the orders passed by him as an adjudicating authority. Assuming that the view taken by the applicant while adjudicating a dispute was not correct and the order passed by him was set aside by the appellate or reviewing authority, it hardly constitutes the basis for initiation of the disciplinary proceedings. It is a different matter if the allegation is that the result of the adjudication, albeit, strictly in accordance with law, was tainted with acts of fraud or illegal gratification. Such is not the case here.”

Almost same situation arises in the present case also.

11. We, therefore, allow the O.A. and set aside the impugned orders. If the retiral benefits of the applicant have been withheld on account of issuance of charge memo, the same shall be released, within a period of two months from the date of receipt of a copy of this order.

There shall be no order as to costs.

(Mohd. Jamshed) (Justice L. Narasimha Reddy)
Member (A) Chairman

July 17, 2019
/sunil/