

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI**

O.A. No.453 of 2017

This the 31st day of May, 2019

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

Anil Kumar Thakur
s/o Shri Harbans Lal
R/o 30/938, Madan Gir,
D.D.A. (Janta Flat) New Delhi-110062

....Applicant

(By Advocate :Shri Sanjeev Kumar)

VERSUS

1. Union of India
Through Revenue Secretary,
(Central Board of Direct Taxes),
Department of Revenue, North Block,
New Delhi-110001.
2. Principal Chief Commissioner of Income Tax,
Delhi-I, Central Revenue Building, I.P. Estate,
New Delhi-110002.

.....Respondents

(By Advocate :Shri Manish Kumar)

ORDER (Oral)

Hon'ble Justice L. Narasimha Reddy, Chairman :

The applicant was working as Income Tax Inspector. FIR No.188/2013 was instituted against him alleging that he has committed theft of judicial records pertaining to the case of Sneh Lata vs. Anil Kumar Thakur in the Saket Courts. He was tried for the said offence by the Court of Additional Chief Metropolitan Magistrate, South District, Saket, New Delhi. Through its judgment dated 15.7.2015, the trial court convicted the applicant for the offence of theft of judicial

records and sentenced him to undergo rigorous imprisonment of four years. Fine of Rs.2000/- was also imposed. Appeal preferred by the applicant before the Court of Additional Session Judge was dismissed on 8.9.2015. The applicant filed Criminal Review Petition No.722/2015 before the Delhi High Court feeling aggrieved by the judgment of the Trial Court, as affirmed by the Appellate Court. The Review Petition is still pending. The sentence imposed upon the applicant, however, was stayed during the pendency of the said Criminal Review Petition.

2. On receipt of the information about the conviction of the applicant in the criminal case, the Disciplinary Authority issued a notice under Rule 19 of the CCS (CCA) Rules, 1965 read with Rule 3(1) (iii) of the CCS (Conduct) Rules, 1964 on 14.12.2015, requiring him to show cause as to why the punishment of dismissal from service be not imposed upon him. The applicant submitted his explanation to the show cause notice. Not satisfied with that, the Disciplinary Authority passed order dated 4.4.2016 dismissing the applicant from service.

3. Earlier the applicant filed OA 3338/2016 challenging the order of dismissal. The said OA was disposed of on 30.9.2016, leaving it open to the applicant to avail the remedy of appeal and requiring the Appellate Authority to pass orders thereon. The Appellate Authority passed order dated 29.11.2019 rejecting the appeal. Hence, this OA.

4. The principal ground urged by the applicant is that the order of dismissal is passed by an authority, below the rank of the Appointing Authority. According to him, the order of appointment was issued with the approval of the Chief Commissioner of Income Tax, whereas the order of dismissal was passed by the Commissioner of Income Tax. Other grounds are also pleaded.

5. The respondents filed detailed counter affidavit opposing the OA. It is stated that the applicant was dismissed from service on account of his being convicted by the criminal court for an offence involving moral turpitude and that the prescribed procedure was followed. It is also stated that according to the Recruitment Rules, the Appointing Authority for the post of Income Tax Inspector is the Commissioner of Income Tax and accordingly, the order of dismissal is passed by the said authority.

6. It is further stated that the approval for the proposal for the punishment by the Chief Commissioner of Income Tax does not alter the situation.

7. We heard Shri Sanjeev Kumar, learned counsel for the applicant and Shri Manish Kumar, learned counsel for the respondents.

8. It is not in dispute that the applicant was convicted by the criminal court for an offence of committing theft of judicial records, punishable under Section 380 of IPC. The

judgment of the trial court was upheld in appeal and as of now, a review/revision is pending before the High Court.

9. Clause (2) of Article 311 of the Constitution of India permits imposition of punishment on a public servant without instituting or conducting disciplinary enquiry, under the situations mentioned therein. Clause 2 of Article 311 of the Constitution of India reads as under:-

“(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

Provided further that this clause shall not apply -

- (a) where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge; or
- (b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or
- (c) where the President or the Governor, as the case may be, is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry.”

Corresponding provisions in the CCS (CCA) Rules, 1965 is contained in Rule 19, and it reads as under:

“19. Special procedure in certain cases

Notwithstanding anything contained in rule 14 to rule 18-

(i) where any penalty is imposed on a Government servant on the ground of conduct which has led to his conviction on a criminal charge, or

(ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonably practicable to hold an inquiry in the manner provided in these rules, or

(iii) where the President is satisfied that in the interest of the security of the State, it is not expedient to hold any inquiry in the manner provided in these rules,

the disciplinary authority may consider the circumstances of the case and make such orders thereon as it deems fit:

[Provided that the Government servant may be given an opportunity of making representation on the penalty proposed to be imposed before any order is made in a case under clause (i):

Provided further that the Commission shall be consulted, where such consultation is necessary [and the Government servant has been given an opportunity against the advice of the Commission,] before any orders are made in any case under this rule.”]

10. A comparison of Article 311 (2) of Constitution of India with Rule 19 of the CCS (CCA) Rules discloses that additional requirement of giving an opportunity to an employee for making representation, in the context of deciding the nature of punishment is contained in the first proviso to Rule 19. It is in this context, that notice was issued to the applicant requiring him to explain as to why the punishment of dismissal be not imposed. Applicant did not challenge the

authority of the Commissioner of Income Tax at that stage. After undertaking extensive discussion on the pleas in 14 typed pages, the Commissioner dismissed the applicant from service. The relevant facts and various judgments relied upon by the applicant were discussed at length. The appeal preferred by the applicant was also rejected. As many as 24 grounds were raised before the appellate authority and all of them were dealt with. The plea of competence of Commissioner was not raised before the appellate authority also. It is pleaded for the first time in the OA.

11. The plea of the applicant is that he was appointed by the Chief Commissioner of Income Tax and therefore he could not have been dismissed by an authority, other than the Chief Commissioner itself. The order of punishment dated 18.4.2012 was, no doubt, issued by the office of the Chief Commissioner of Income Tax. However, it was signed by the Additional Commissioner of Income Tax (HQRS-PERS), New Delhi.

12. Under the Recruitment Rules, the Commissioner of Income Tax is mentioned as Appointing Authority for the post of Income Tax Inspector. The show cause notice to the applicant was issued by the same authority, i.e., the Commissioner of Income Tax and order of punishment was also passed by that very authority. Therefore, the plea of the applicant that the Appointing Authority was Chief Commissioner of Income Tax, cannot be accepted.

13. So far as merits are concerned, the offence held to have been committed by the applicant is very serious. He committed theft of the records of the Court of law. The trial court held the charge as proved on the basis of the oral and documentary evidence. Appellate Authority has also upheld the same. As of now, the case is pending before the High Court in the form of review/revision. It is a different matter that in case the applicant is acquitted of the offence, he can avail remedy with the Disciplinary Authority.

14. As the things stand now, we do not find any basis to interfere with the order imposing the punishment, as upheld by the Appellate Authority.

15. OA is accordingly dismissed. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

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