

**CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH : BANGALORE**

ORIGINAL APPLICATION No. 170/00243/2017

TODAY, THIS THE 01st DAY OF AUGUST, 2019

HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

HON'BLE SHRI C.V.SANKAR, ADMINISTRATIVE MEMBER

Shri.T.C Gupta,
S/o Shri.Gyan Chand Gupta,
Aged about 62 years,
R/o S-77, Golden Enclave,
Old Airport Road,
Bangalore – 560017
(Retired on 30.9.2014
as Joint Commissioner of
Income Tax, Bangalore).

...Applicant

(Party-in-person)

Vs.

1. Union of India
through the Secretary Finance,

Ministry of Finance

Department of Revenue,

Government of India

New Delhi-110 001.

2. The Pr. Chief Commissioner

of Income Tax,

Karnataka & Goa Region,

C.R. Building

Bangalore – 560001.

...Respondents

(By Advocate Shri V.N. Holla, Sr.PC for CG)

ORDER

(PER HON'BLE SHRI C.V.SANKAR, MEMBER (ADMN))

The case of the applicant is that he joined the service in Income Tax Department on 17.12.1979 as Inspector of Income Tax and retired on 30.9.2014 after completing continuous service of about 35 years. On his date of retirement i.e. on 30.09.2014, he was served with a memorandum dated 28.09.2014 by the CBDT on the following articles of charge:

Article-I: The CO while functioning as the ACIT(Hqrs) to the CIT, Bikaner, issued an exemption certificate u/s 10(23C) on 21.12.2005 to M/s Nosgay Public School, Sriganganagar when the powers to issue the certificate u/s 10(23C) were vested in the CCIT, Jodhpur and he had no authority to issue the certificate in the name of the CIT, Bikaner.

Article-II: The CO while functioning as ACIT, Circle-1 Bikaner signed the authorizations for conducting survey u/s 133A in the cases of M/s Fun 'N' Food Bikaner, M/s Amit Gum Industries, Bikaner and M/s Goyal Agro Product, Bikaner even though the said assesses were not assessed by him and he had no authority under law to survey their business premises.

Article-III: The CO while functioning as DCIT, Circle 2, Jodhpur, had gone to Sirohi on 12.2.2010 when a search was being conducted in the case of his assessee M/s Adarsh Co-operative bank Ltd. At Sirohi and visited the control room in an unauthorized manner even though he was not called for the search and seizure duty on that day. His unauthorized presence in the control room during the search raises serious suspicions as he was also the Assessing Officer of the group being searched.

Article-IV: The CO while functioning as DCIT, Circle-2, Jodhpur was requested by the investigation wing several times to provide the assessment records of M/s Adarsh Co-operative bank Ltd. to them after the search action was

conducted on the said assessee, but he deliberately delayed the handing over of the assessment records by more than a month, thereby impeding the investigation in that case.

Article-V: The CO while functioning as DCIT, Circle 2, Jodhpur recorded the conversation he had with Mrs.Naina Soin Kapil, Jt.DIT(Inv.) and Shri Raja Sengupta, ADIT(Inv.)-II, Jodhpur during the course of discharge of his official duties without the knowledge of the said officers.

After regular enquiry, the respondents vide order dtd.21.3.2017(Annexure-A1) imposed penalty of withholding of 25% of his monthly pension otherwise admissible for a period of three years. Aggrieved by the same, he filed the present OA praying for quashing of the penalty order dtd.21.3.2017.

2. The applicant submits that even though he submitted representations dtd.8.3.2017(Annexure-A3) & 9.3.2017(Annexure-A4) against the inquiry report dtd.15.2.2017(Annexure-A2) within 15 days as per the provisions of Rule 15(2) of CCS (CCA) Rules, 1965, the respondents in the penalty order dtd.21.3.2017 have mentioned that the applicant has nothing to state in the matter. Thus the presumption of the respondents is arbitrary and illegal. The rules do not say that the representation should reach the respondents within 15 days. Therefore, the respondents have clearly violated the provisions of rule 15(2) and have passed an illegal order of penalty against the principles of natural justice. As per provisions of Rule 15(3) of CCS(CCA) Rules, it is necessary to consult the Union Public Service Commission (UPSC) for its advice. But the respondents neither consulted the UPSC nor sent the advice of the UPSC to the applicant for his representation and passed the order of penalty withholding of pension. As per proviso to Rule 9(1) of CCS (Pension) Rules, UPSC shall be consulted before any final order is passed by the President for withholding of pension. After the retirement, only the President has the

power to withhold pension. His authority has not been delegated to any other authority. Therefore, any order passed for withholding of pension by any authority other than the President is illegal and without any jurisdiction. As per sub rule (2) and (5)(a) of Rule 14, the Disciplinary Authority(DA) is competent to appoint an Inquiry Officer to inquire in to the matter but in this case, the IO was appointed by the Director General of Income Tax(Vig.) Delhi vide order dtd.10.6.2015(Annexure-A6) which is against the provisions of rule. And thus the whole inquiry conducted and inquiry report submitted by the IO is illegal and non-est.

3. The applicant submits that the IO has failed to examine the legal position of the facts. The conclusion of the inquiry by the IO finding the applicant guilty of charge for delay in handing over records was not correct since he had delivered the records in 17 days even though he was not legally bound to furnish them. The IO's finding about the applicant's surreptitious recording of telephonic conversation he had with Jt.DIT(Inv.) and ADIT(Inv.)-II, Jodhpur is also not correct since there was nothing illegal in his recording nor was it done with any corrupt or malicious motive. The IO's report is distorted, biased and baseless and there was delay in passing final order by the DA as they took 30 months instead of 18 months as required under DoPT instructions dated 14.10.2013. Even though the DA in the memo offered the applicant personal hearing, no personal hearing was allowed. The Tribunal vide order dtd.30.11.2015 in OA.No.604/2015 directed that 'the respondents shall afford him personal hearing if not already provided and thereafter the DA to take a decision whether to proceed with the matter or to desist themselves from the proposed action'. The representation submitted against the memorandum was not considered by the

disciplinary authority but it is considered by the Chairman, CBDT who was not competent for the same. The inquiry conducted by the IO was of 2004 batch of IRS who is much junior to the applicant who was of 2001 batch. As per GOI, CS, DOPT OM dtd.6.1.1971, 'the inquiries should be conducted by an officer who is sufficiently senior to the officer whose conduct is being inquired into, as inquiry by a junior officer against Govt. of India instructions cannot command confidence which is deserved.' Thus the inquiry by the IO/a junior officer is biased. There is no allegation of causing loss to the government and no allegation of grave misconduct or negligence. The Hon'ble Supreme Court in the case of *D.V.Kapoor 1990 AIR 1923* held that 'the grave misconduct or negligence in the discharge of the duty while in office, as defined in Rule 8, Explanation (b), which is an inclusive definition, i.e. the scope is wide of mark, dependent on the facts and circumstances in a given case. In the absence of such a finding, the President is without authority of law to impose penalty or withholding pension as a measure of punishment either in whole or in part, permanently or for a specified period.' As per rule 14 of CCS(CCA) Rules, the charges against the applicant, which have shown to have been proved do not amount to grave misconduct for imposing major penalty. As per note sheet dtd.24-29.9.2014(Annexure-A7), none of the authorities including DGIT(Vig.)/CVO, Member (P&V), Chairman CBDT, Secretary Revenue, MOS(Finance) and FM have recorded their satisfaction, they all have only signed the note sheet while giving approval for initiating the proceedings. The respondents have totally violated the mandate of the Supreme Court given in the case of *UOI vs. B.V.Gopinath in CA.No.7761/2013* holding that 'the FM/DA has been delegated the authority to initiate proceedings in the case of Group 'A' officers by the President of India under Article 77(3) of the

Constitution, therefore, the delegated authority cannot further delegate the powers without express provisions of law. Therefore, the action to be taken by the FM u/r 14(2), 14(3), 14(4) and 14(5) should only be taken by the FM himself'. Therefore the whole action taken u/r 14(2), 14(3), 14(4) and 14(5) without application of mind by any authority deserves to be dropped.

4. The applicant has also filed M.A.No.407/2017 requesting for adding one more additional ground that he was not given an opportunity under Rule 14(18) of CCS (CCA) Rules, 1965. The Enquiry Officer should have given him formal opportunity since he was not personally examined as a witness during the enquiry.

5. Per contra, the respondents in their reply statement have stated that the applicant was given 15 days time to submit reply against the inquiry report and his reply was not received within that time. Regarding consultation with UPSC, the respondents have quoted lack of time due to direction of this Tribunal to finish the inquiry within a stipulated time. They have also cited the judgments in the case of *State of U.P vs. Manbodhan Lal Srivastava, 1958 SCR 533*, and *Ram Gopal Chaturvedi vs. State of Madhya Pradesh, 1979 SCR (1) 472*, wherein it has been held that consultation with UPSC under Article 320(3)(C) is not mandatory, it does not confer any right on the public servant and that absence of consultation does not afford a cause of action. In the cases of officers/officials of Ministry of Finance and its attached/subordinate officers, the powers of Hon'ble President of India are exercised by the Finance Minister. The respondents have produced various office orders showing the delegation of power by which the powers of the President are exercised in various stages of disciplinary action by authorities specified in those orders. The

Min. of Finance, after taking the approval of the competent authority, issued office order dtd.27.10.2016 vide which the Finance Minister is authorized to take final decision on penalty(Annexure-R1). Powers of the DA in respect of Vigilance/disciplinary matter relating to CBDT & CBEC have been delegated by an office order dtd.19.7.2005(Annexure-B). As per item No.9 & 10 of the said order, the power to appoint IO/PO have been delegated to the DA i.e. DGIT(Vig.) after Finance Minister has approved initiation of disciplinary proceedings against the applicant.

6. The respondents submit that the CBDT vide OM dtd.15.2.2017 communicated the tentative view of the DA to the applicant in which DA held the Article of charges I, II & III as 'not proved' and IV and V as 'proved' for the comments of applicant. But the applicant did not utilize the opportunity and did not submit his comments on time. As a result, the disciplinary proceedings were concluded without considering representation of the applicant in view of the paucity of time. All the rules and regulations were followed in the case of the applicant and he was given ample opportunity to defend himself but it is only him who did not utilize the opportunity offered by the DA and hence he has been punished by a reasoned, speaking order.

7. The applicant has filed rejoinder reiterating the submission already made in the OA and submitted that the Business Rules or administrative orders, decisions and instructions do not supersede and take the place of the statutory provisions of CCS(CCA) Rules and CCS(Pension) Rules. Further these rules are applicable in the cases of only Group A officers for proceedings during service period but cases of withholding of pension under Rule 9 of CCS(Pension) Rules are even not covered

under these business rules. Under Rule 9, only the President has a right to withhold pension after retirement in the cases of every Govt. servant from Group 'A' to Group 'D'. As per Rule 14(18), the inquiring authority, may, after the Govt. servant closes his case, and shall, if the Govt. servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Govt. servant to explain any circumstances appearing in the evidence against him. In this case, the IO never questioned or asked the applicant on the circumstances appearing against him in the evidence. Therefore, it is clear that the provisions of Rule 14(18) were not adhered to and complied with by the respondents/IO.

8. We have heard the Learned Counsels for both the parties and perused the materials placed on record in detail. The respondents have filed their written arguments note by citing therewith several orders of Hon'ble Supreme Court. In this case, the charges were initiated under Rule 14 of CCS(CCA) Rules 1965 vide Memo dtd.28.9.2014 i.e. just two days before the retirement of the applicant on 30.09.2014. The proceedings were continued under Rule-9(2) of CCS(Pension) Rules 1972. There are five articles of charge and three are found to be not proved by the inquiry officer and Articles IV & V have been considered to be proved based on which the applicant is punished with the penalty of withholding 25% of his monthly pension otherwise admissible to him for a period of three years considering the applicant to be guilty of grave misconduct as per the rules. The inquiry officer who is appointed to handle the case of the applicant is admittedly junior to the applicant and the respondents would claim that since this is a case of a retired officer, the seniority

does not matter. The applicant also in his replies in the proceedings has not specifically objected to this stating that he wanted the proceedings to be completed quickly. The disciplinary authority forwarded the inquiry officer's report to the applicant for filing his comments within 15 days of the receipt of the letter dtd.15.2.2017. The said report was served on the CO (applicant) on 21.2.2017 and the comments of the CO were received on 10.3.2017. The respondents have taken a view that this was not within 15 days of the service of IO's report on the applicant whereas the applicant would claim that he had sent it within the 14 days but apparently his replies were received only a few days later i.e. after the 15 days deadline. Considering the Articles IV & V were proved against the applicant, the impugned penalty has been issued. The applicant would further claim that under Rule 14(18) of the CCS(CCA) Rules, the inquiry authority should generally question the Govt. servant on the circumstances appearing against him in the evidence for the purpose of enabling the Govt. servant to explain any circumstances appearing in the evidence against him. The respondents would claim that as per the order sheet entry dtd.1.12.2016, the inquiry officer had discussed the matter with the applicant and that would be considered as sufficient opportunity of questioning the applicant on the circumstances appearing against him. The applicant has also stated that as per the proviso to Rule-9 of CCS(Pension) Rules 1972, where the President withholds pension, the UPSC shall be consulted before any final orders are passed. Thus for withholding pension, consultation with UPSC is mandatory. The respondents would claim vide para-4 of their reply that they had filed MA.8/2017 for extension of time in OA.No.767/2015 before this Tribunal. After hearing on 12.1.2017, this Tribunal had granted 3 months' time to comply with the order and to conclude the disciplinary

proceedings i.e. by 23.3.2017. They, therefore, assert that since a reference made to UPSC will take a minimum period of 4 months and time being short as per the directions of this Tribunal to conclude the disciplinary proceedings by 23.3.2017, the reference to UPSC was not made and the order of penalty was passed on 21.3.2017 just two days before the stipulated date of 23.3.2017 as mandated by this Tribunal. The respondents would also say that when the matter was put up to the disciplinary authority, the Union Finance Minister, a reference was made to precedents in which under compelling circumstances, the penalties were imposed on the charged official without making reference to UPSC. They have also cited certain cases in their reply stating that absence of consultation with State Public Service Commission does not afford a cause for action.

9. From the above, it is very clear that the respondents had made up their minds to punish the applicant somehow and therefore created some charges purportedly having happened in the year 2010, after four years just two days before the retirement of the applicant. The charges nowhere cite any malafide action or corrupt practice or any other conduct of the applicant which could be considered as grave misconduct. Even out of five charges, the respondents had themselves considered three as not proved and taken up the further proceedings only on two charges. The two charges related to a purported delay on the part of the applicant to provide assessment records of M/s.Adarsh Co-operative Bank Ltd. to them after the search action was conducted on the said assessee with the charge that the applicant deliberately delayed the handing over of the assessment records by more than one month, thereby impeding the investigation in that case. As can be seen from the

detailed reply given by the applicant, the delay was only 17 days and not more than a month as claimed by the respondents. Further the respondents have nowhere stated or proved in their inquiry report or otherwise that the so called delay on the part of the applicant impeded the investigation as was mentioned in the charge. The applicant had in fact written to his superior on 25.10.2010 regarding the furnishing of the records and thereafter had forwarded the same within 17 days and the same has not been disputed by the respondents. The last charge relates to his recording of the conversation he had with two other officials during the course of discharge of his official duties without the knowledge of the said officers. The applicant himself has not denied this charge but has raised a pertinent point whether any accusation of malpractice or corruption or malafide intentions had been attributed to him since he had recorded his own conversation presumably with a view to protect himself in case of later proceedings. Considering these two charges as grave misconduct appears to be totally unwarranted and done with the sole motive of punishing the applicant somehow for reasons best known to the respondents. A charge memo is filed for an incident of almost four years just two days before the retirement of the applicant. The inquiry officer who is appointed is admittedly a junior officer who takes almost 30 months to finalize his report on the charges which on the face of them appear to be quite flimsy. The inquiry officer's report is furnished to the applicant and his reply just being a day or two late is not even considered. The mandatory consultation with the UPSC as provided under Rule 9(2) of CCS(Pension) Rules 1972 is given a go by placing the blame on the period of extension granted by this Tribunal to finalize the disciplinary proceedings. It could have been well within the realm of the respondents to have come back to this Tribunal that the mandatory consultation with the UPSC

cannot be avoided and therefore seek further extension of time which they never did. They would claim that this is on compelling circumstances and it is obvious that the final order of penalty issued by the respondents is vitiated by malafide and abuse of process of law on the part of the respondents.

10. The OA is therefore allowed and the penalty imposed by the respondents vide Annexure-A1 is quashed with the cost of Rs.25000/- for having so blatantly gone after the applicant for reasons best known to them violating the norms of normal disciplinary proceedings.

(C.V.SANKAR)
MEMBER(A)

(DR. K.B. SURESH)
MEMBER(J)

/ps/

Annexures referred to by the applicant in OA.No.170/00243/2017:

Annexure-A1: Copy of Penalty order dated 21.3.2017

Annexure-A2: Copy of respondent report dated 15.2.2017 along with
enquiry report

Annexure-A3: Copy of application representation dated 8.3.2017

Annexure-A4: Copy of Supplementary representation dated 9.3.2017

Annexure-A5: Copy of the Note Sheet dated 6.2.2017 to 14.2.2017

Annexure-A6: Copy of order dated 10.6.2015 with RTI reply dated 28.9.2015

Annexure-A7: Copy of the note sheet dated 24.9.2014

Annexures with MA.No.407/2017 filed by the applicant:

Annexure-A8: Copy of DOPT OM dtd.18.2.2015

Annexures with reply statement:

Annexure-R1: Copy of office order No.50/10/2005-Ad.1/Vig dated 27.10.2016

Annexure-R2: Copy of the office order

Annexures with rejoinder:

-NIL-
