

CENTRAL ADMINISTRATIVE TRIBUNAL  
MADRAS BENCH

Dated the Wednesday 8<sup>th</sup> day of February Two Thousand And Seventeen

PRESENT:

THE HON'BLE MR. JUSTICE A. ARUMUGHASWAMY, MEMBER (J)  
THE HON'BLE MR. R. RAMANUJAM, MEMBER (A)

O.A./310/00741/2015

S. Ganapathy Iyer,  
S/o. R. Subramani,  
Aged 67 years,  
(Retd. As Addl. Commissioner of Income-Tax),  
No. 20, I Cross Street,  
Bharathi Nagar, Ambattur,  
Chennai- 600 053.

....Applicant

(By Advocate : M/s. S. Sridharan)

-versus-

1. Union of India Rep. by its,  
Secretary, Ministry of Finance,  
Department of Revenue,  
Central Board of Direct Taxes,  
North Block, New Delhi- 110 001.

...Respondent

(By Advocate: Mr. V. Vijaya Shankar)

**ORAL ORDER**

(Pronounced by Hon'ble Mr. Justice A. Arumughaswamy, Member (J))

The case of the applicant is that he joined as Inspector of Income Tax on 16.03.1971 and was gradually promoted by seniority cum fitness to the grade of Addl. Commissioner of Income Tax in due time. He retired on superannuation on 30.4.2007. While working as Additional Director of Income Tax (Pros), Chennai, he was issued with a charge memorandum dated 23.02.2006 under Rule 14 of CCS (CCA) Rules 1965 finding fault with his completing the assessments in the cases of (i) M/s. Zip Industries (P) Ltd., A.Y.1990-92 to 1994-95 (ii) M/s. Aero Fashions Fasteners (P) Ltd., A.Y. 1991-92 and 1992-93, (iii) M/s. Janapriya Builders, A.Y. 1992-93 to 1994-95 and (iv) Smt. Vijaya Inbasagaran A.Y. 1994-95 which he passed as Assistant Commissioner of Income Tax, Central Circle I (2) Chennai during the year 1994-97. He submitted his explanation. Inquiry was conducted and the applicant participated and submitted his written brief in the enquiry. The inquiry authority in his report held Article I (i) as proved, Article I(ii) & (iii) as partly proved Article I (iv) as not proved.

2. Since the Disciplinary Authority disagreed with the findings of the Inquiry Officer, the case was referred to UPSC for its advice. It was suggested by UPSC that it was a fit case for imposing a penalty of cut in 20% (Twenty Percent) of the monthly pension for a period of five years. Thereafter, a memorandum dated 10.10.2014 was issued to the applicant that the Disciplinary Authority had accorded formal approval on 08.10.2014 to issue of the Charge Memorandum dated 23.2.2006 in view of the Supreme Court judgment in the case of Union of India Vs. B.V.

Gopinath & Others in SLP No. 6348 of 2011 which was received had been issued on 10.10.2014. However, penalty was imposed on the applicant under Rule 9 of the CCS(Pension) Rules imposing a penalty of withholding 20% cut in monthly pension for a period of five years by the order dated 27.11.2014. Challenging the said order, the applicant has approached the Tribunal seeking the following relief:-

"to set aside Order No F No. C-14011/6/2006-V&L dated 27.11.2014 issued by the Respondent and pass such further or other orders as may be deemed fit and proper."

3. Respondents filed their reply contesting the O.A. Respondents state in the reply that Inquiry Authority submitted his report holding Article I (i) as proved Article I(ii) & (II) as partly proved and Article I (iv) as not proved. Since the Disciplinary Authority disagreed with the findings of the inquiry officer, matter was referred to UPSC for its advise. On 27.11.2014, the Disciplinary authority after taking into consideration of all the facts relevant to the case including the report of the inquiry officer, imposed a penalty of 20% cut in a monthly pension for a period of 5 years, under Rule 9 of CCS (Pension) Rules 1972 and directed that the gratuity amount admissible to him is not to be released till the finalization of the other disciplinary proceedings pending against the applicant.

4. The respondents further submit that though the original charge sheet dated 23.2.2006 was not approved by the Disciplinary Authority, in pursuance of the decision of the Hon'ble Supreme Court in the case of Shri B.V. Gopinath & Ors. in SLP 6348/2011, the disciplinary authority had later given formal approval of the charge sheet on 08.10.2014. The

said approval of the Disciplinary Authority was communicated to the applicant vide OM dated 10.10.2014. Hence they pray for dismissal of the O.A.

5. Heard. It is not in dispute that Inquiry Authority submitted his report holding Article I(i) as proved Article I(ii) & (II) as partly proved and Article I (iv) as not proved. Since the Disciplinary authority was not satisfied with the inquiry report, matter had been referred to the UPSC for its advise. It is also not in dispute that though the original charge sheet dated 23.2.2006 was not approved initially by the Disciplinary Authority, the same had been approved by the Disciplinary Authority by formal approval of charge on 08.10.2014 in pursuance of the decision of the Hon'ble Supreme Court in the case of Shri B.V. Gopinath & Ors in SLP No. 6348 of 2011. While looking at the charges framed against the applicant, it is for the department to take it forward from that stage in terms of the approval of the competent authority dated 08.10.2014. The previous charge sheet and the enquiry that followed are non est in the eyes of law as per law laid down by the Hon'ble Supreme Court in Gopinath supra. If the department feels necessary to probe into any matter, it is always open to the department to do so. But prior approvals and formalities have to be completed within the stipulated time, otherwise the applicant shall be entitled to all his dues.

6. Considering the limitation period, it is for the department to decide to probe into the matter and dispose of the matter. As the applicant has already retired from service, period of limitation might be attracted. If no enquiry is possible under rules, the respondents would have no option but

to release the amounts due to the applicant. Penalty already imposed in pursuance of the earlier findings is set aside.

7. With the above observations, the O.A. is disposed of. There shall be no order as to costs.