CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION No.210/00500/2019

Dated this Wednesday, the 07th day of August, 2019

CORAM: DR. BHAGWAN SAHAI, MEMBER (A)
R.N. SINGH, MEMBER (J)

Madhavi Chavan, wife of Manohar Chavan, aged about 55 yrs, presently working as Income Tax Officer, Audit-II, Qureshi Mansion, Thane West and residing at Flat No.105-106, Shivshankar CHS Ltd, Tilak Rd, Dombivili East, Thane.-***Applicant***
(By Advocate Shri A.A.Manwani)

VERSUS

1. Union of India, through its Secretary, Ministry of Finance, Department of Revenue, North Block, New Delhi 110 001.

2. Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, North Block, New Delhi 110 001.

3. Comissioner of Income-tax, Audit II, Pune, 12, Aayakar Bhavan, Sadhu Vaswani Chowk, Pune 411 009.

4. Inquiry Officer, Mr. Mahendra Bishnoi, JCIT, Range 4, Thane, 6th Floor, Akshar I T Park, Wagle Estate, Thane West 400 604. ... ***Respondents***

ORDER (Oral)

Per : R.N.Singh, Member (Judicial)

Heard Shri A.A.Manwani, learned counsel for the applicant.

2. The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 seeking the following reliefs :-

> "8(a). That this Hon'ble Tribunal will be graciously pleased to call for the records and proceedings leading to passing of Impugned Order dated 28.06.2019 rejecting Applicant's

representations in Letter dated 08.05.2019 requesting for inspection of documents and Stay of Inquiry and be pleased to set aside the same.

8(b). That this Hon'ble Tribunal will be further pleased to quash & set aside Memorandum of Charges dated 27.01.2015 (Annexure A-2) issued by Respondents.

8(c). That this Hon'ble Tribunal will be further pleased to direct Inquiry Officer to provide inspection of Original Documents & also supply authenticated English translation of the documents in Hindi & Marathi & all other additional documents (vlz. CDs on the basis of which transcription were made as may be demanded by the Applicant after inspection of the Original documents demanded by the Applicant.

8(d). That pending the hearing and final disposal of the O.A, this Hon'ble Tribunal will be graciously pleased to Stay the Inquiry commenced in pursuance of the Impugned Memorandum of Charges dated 27.01.2015 (Annexure A-2) during the pendency of Special Case No.37 of 2013 pending before Hon'ble Special Judge at Thane.

8(e). That the costs of the Application be awarded in favour of the Applicant; And

8(f). That such other and further reliefs as are expedient be granted in favour of the Applicant."

3. The applicant in paragraph No.9 of the OA has prayed for the interim relief in the form of an order of stay against the inquiry commenced in pursuance of the impugned charge memorandum dated 27.01.2015 during the pendency of the Special Criminal Case No.37/2013 under Sections 7 and 13(2) read with 13(1)(d) of P.C. Act, 1988, pending before the learned Special Judge, Thane.

4. The applicant earlier approached this Tribunal by way of OA No.383/2019 alleging therein that the charge memorandum under Rule 14 of CCS (CCA) Rules, 1965 had been issued vide memorandum dated 27.01.2015 and on receipt of the applicant's reply dated 02.02.2015 denying the charges and her request for being heard in person, the respondents appointed the Inquiry Authority and the Presenting Officer vide orders dated 08.11.2016 to conduct the disciplinary inquiry.

5. Thus, the inquiry officer started the enquiry. The applicant made representations dated 25.10.2017, 27.11.2018 (pages 85-87) for supply of certain documents and the Respondents have supplied the same vide their letter dated 08.02.2019 (page 88) and required the applicant to submit her written statement of Defence before 15.02.2019 and stated that no further adjournment would be granted in the matter as the charge memo was issued long back.

6. Thereafter the applicant submitted representation dated 14.02.2019 (page 90) requesting therein for inspection / supply

of certain documents and adjournment in the matter. The applicant made further representation dated 08.03.2019 (page 92) to the Disciplinary Authority seeking change of Inquiry Officer which was rejected by the Disciplinary Authority vide order dated 15.03.2019 (page 102). The applicant has further made representation dated 25.03.2019 (page 103) to the Disciplinary Authority requesting him to advise the Inquiry Officer to conduct the Disciplinary Proceedings in accordance with the Rules.

7. However, when the enquiry proceeded further, the applicant again made representation dated 30.04.2019 (page 110 to 112) for certain documents and inspection of documents to enable her to participate in the enquiry. The applicant's such representation was disposed of by the Respondents vide their letter dated 01.05.2019 (page 113) intimating her that matter shall not be adjourned as the applicant is delaying the departmental proceedings.

8. Thereafter the applicant has submitted representation dated 08.05.2019 (page 115 to 123) informing that the Inquiry Officer can

be changed on the grounds other than 'bias' as well and with request to stay the proceedings till criminal case filed by the CBI is concluded. Pending her representation dated 08.05.2019, the applicant filed OA No.383/2019 on 06.06.2019 as the said representation dated 08.05.2019 had not been responded to by the Respondents. The said OA was disposed of by this Tribunal vide order / judgment dated 10.06.2019. In the order / judgment dated 10.06.2019 this Tribunal has disposed of the OA with a direction to be recorded as under :-

> "5. Learned counsel for the applicant prays for interim relief by way of stay on the disciplinary proceedings. At this stage of the matter, it is apparent that the applicant has herself delayed in approaching this Tribunal after the Inquiry Officer had issued a letter of notice on 16.04.2019 and made out the representation only on 08.05.2019 on the legal issue before the respondents. Further it appears that the statements of witnesses who were called on 02.05.2019 may have already been recorded and in which the applicant never participated, appeared or expressed objections. In the facts and circumstances of the matter, we are not inclined to grant any interim orders at the present stage without hearing the respondents who have, as described above, not even considered and expressed their views on the belated objection raised by the applicant."

9. In compliance of the direction of this Tribunal in order / judgment dated 10.06.2019, the respondents have passed the

detailed order dated 28.06.2019 (Annex A-1 impugned) wherein they have relied upon the law laid down by the Hon'ble Apex Court in catena of cases and the OMs issued by the Department of Personnel and Training as well as by the CVC and rejected the request of the applicant for stay of the proceedings in pursuance of the impugned charged memorandum dated 27.01.2015 (Annexure A-2).

10. Aggrieved of the aforesaid impugned order dated 28.06.2019 and the charge memorandum dated 27.01.2015 under Rule 14 of CCS (CCA) Rules, 1965, the applicant has filed the present OA with the prayers, reproduced herein above.

11. When the matter was listed on 24.07.2015 for admission, this Tribunal has ordered notice to the respondents on the OA and have given opportunity to them to file their reply, if any, within two weeks on the point of interim relief claimed by the applicant. The applicant has filed proof of service by way of affidavit. In the said affidavit, it is indicated that the respondent No.4 has been served as dasti notice and dasti notice has also been sent upon the other respondents by Speed Post.

However, there is no representation on behalf of the respondents.

12. The learned counsel for the applicant presses for grant of interim relief. We have heard the learned counsel for the applicant afresh at length. We find that the prayer clause 8(d) i.e. one of the substantial and main relief sought by the applicant and the interim prayer made by the applicant in paragraph No.9 of the OA are identical. It is the settled law that main relief cannot be granted as interim relief. When we have put question to the learned counsel for the applicant as to how this application will be maintainable when the applicant has challenged the charge memorandum dated 27.01.2015 (Annexure A-2), at the threshold the learned counsel for the applicant submits that the allegations against her in the departmental proceeding are identical with those in the criminal proceedings against her and the allegations in both the proceedings are based on similar sets of documents and witnesses.

13. However, it is not the case of the applicant that the impugned charge memorandum has been issued by incompetent

Authority. It is also not the case of the applicant that the impugned charge memorandum dated 27.01.2015 is result of *mala fide*. It is also not the case of the applicant that on a plain reading of the statement of imputation in the impugned charge memorandum, no misconduct is apparent. Thus, challenge to the impugned charge memorandum dated 27.01.2015 at the threshold is not sustainable in the eyes of settled law on this point.

14. On this issue, we refer to the law laid down by the Hon'ble Apex Court in these cases. In **State of Punjab and Others Vs. Ajit Singh reported in (1997) 11 SCC 368** wherein it is held:

> "3. We do not find any ground to interfere with the judgment of the High Court insofar as the quashing of the order of suspension is concerned. We are, however, of the view that the High Court was in error in setting aside the charge-sheet that was served on the respondent in the disciplinary proceedings. In doing so the High Court has gone into the merits of the allegations on which the charge-sheet was based and even though the charges had yet to be proved by evidence to be adduced in the disciplinary proceedings. The High Court, accepting the explanation offered by the respondent, has proceeded on the basis that there was no merit in the charges levelled against the respondents. We are unable to uphold this approach of the High Court. The allegations are based on documents which would have been produced as evidence to prove the charges in the disciplinary proceedings. Till such evidence was produced it could not be said that the charges contained in the charge-sheet were without any

basis whatsoever."

In **Union of India and others Vs. Upendra Singh reported in (1994) 3 SCC 357** wherein it is held:

> "6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal v. Gopi Nath & Sons*. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)
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> > "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

> 7. Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but 5 1992 Supp (2) SCC 312 mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.

In **Dy. Inspector General of Police Vs. K.S.Swaminathan reported in (1996) 11 SCC 498** wherein it is held :

> "It is settled law by catena of decisions of this Court that if the charge memo is totally vague and does not disclose any misconduct for which the charges have been framed, the Tribunal or the Court would not be justified at that stage to go into whether the charges are true and could be gone into, for it would he a matter on production of the evidence for consideration at the enquiry by the enquiry officer. At the stage of framing of the charge, the statement of facts and the charge sheet supplied are required to be looked into by the Court or the Tribunal as to the nature of the charges, i.e., whether the statement of facts and material in support thereof supplied to the delinquent officer would disclose the alleged misconduct. The Tribunal, therefore, was totally unjustified in going into the charges at that stage. It is not the case that the charge memo and the statement of facts do not disclose any misconduct alleged against the delinquent officer. Therefore, the Tribunal was totally wrong in quashing the charge memo."

In **Union of India and Another Vs. Kunisetty Satyanarayana reported in (2006) 12 SCC 28** wherein it is held:

> "13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdesh Kumar Singh and others JTI 1995 (8) SC 331, Special Director and another

vs. Mohd. Ghulam Ghouse and anotherAIR 2004 SC 1467, Ulagappa and others vs. Divisional Commissioner, Mysore and others 2001(10) SCC 639, State of U.P. vs. Brahm Datt Sharma and another AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet."

15. So far the challenge to the order dated 27.06.2019 by the applicant is concerned, the respondents have passed a detailed and reasoned order and after considering the relevant instructions on the subject issued by the nodal Department i.e. DOP&T as well as CVC, and also taking into consideration the law laid down by the Hon'ble Apex Court in **State of Rajasthan Vs. B.K. Meena & Ors. (1996) 6 SCC 417 : AIR 1997 SC 13, Tata Oil Mills Ltd. V. Workman**

(AIR 1965) SC 155 and Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd & Anr, (1999) 3 SCC 679. Besides as noted above in paragraph No.4 above, it is evident that the applicant has been bent upon to delay the departmental proceedings on one ground or the other which is pending for more than four years.

16. In view of the aforesaid facts, circumstances and case laws, though on the last date of hearing i.e. 24.07.2019, notice was issued by this Tribunal, however, after hearing the learned counsel for the applicant again today at length and after perusing the OA, we are of the considered view that the OA is devoid of any merit and the same is liable for dismissal.

17. Accordingly, the same is dismissed. No cost.

(R.N. Singh)
Member (Judicial)

(Dr. Bhagwan Sahai)
Member (Administrative)

*kmg**

28/8/19