CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

...

OA No.1659/2003

New Delhi, this the 19th day of December, 2003

Hon'ble Shri Justice V.S.Aggarwal, Chairman
Hon'ble Shri S.K.Naik, Member (A)

C.L.Ambesh
s/o Late Shri Sukh Ram,
Presently posted as Joint Commissioner,
Income Tax, Alwar Range-I,
P.O. & Distt. Alwar, Rajasthan
Resident of 99, Scheme No. 8
Gandhi Nagar, P.O. & Distt. Alwar,
Rajasthan. ...Applicant

(By Advocate: Sh. M.N.Krishnamani, Sr. Advocate with Sh. R.K. Gupta, Sh. Soumyajit and Sh. B.Baruah)

Versus

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

2. Central Board of Driect Taxes through
its Chairman,
North Block,
New Delhi - 110 001.

3. The Director General of Income Tax (Vigilance)
(Dayal Singh Library Building,
Din Dayal Upadhyay Marg,
New Delhi. ...Respondents

(By Advocate: Shri V.P. Uppal)

ORDER (ORAL)

Justice V.S. Aggarwal, Chairman -

Applicant (C.L.Ambesh) is a Joint Commissioner in the Income Tax Department. By virtue of the present application, he seeks to assail the order passed on 28.05.2003 imposing a penalty on the applicant of withholding of three increments for a period of three years with cumulative effect. The various grounds that

have been taken shall be dealt with hereinafter to assail the said order.

2. Some of the relevant facts are that the applicant had been served with the following statement of articles of charge:-

> (a) That the said Shri C.L.Ambesh, while functioning as A.D.I.T. (Investigation), Jaipur during the year 1989, was incharge of the search carried out in the case of Shri Bankey Behari Lal Agarwal, Bharatpur on 14 September, 1989 which was concluded on 20th September, 1989. During the course of the search, certain documents numbering 1 to 23, as per Annexure A-1 of Panchnama dated 20th September, 1989, were seized by the authorized Officers and were handed over to Shri C.L. Ambesh on the same date. Shri C.L. Ambesh has lost these documents.
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> However, in order to shift the responsibility for the loss of these documents, Shri Ambesh obtained a note that 13.12.1989 from Shri M.L. Sharma, I.T.O., who was one of the authorized officers at the residence of Shri Bankey Bihari Lal Aggarwal, by misleading him and exercising undue pressure to the effect that these documents had, in fact, not been seized by the authorized officers during the course of the aforesaid search.
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> (b) Moreover, Shri Ambesh forwarded the appraisal report on the search in the above case without the approval of the D.D.I.T. (Investigation).
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> (c) It has also coApplicant to light that Shri Ambesh had unauthorisedly kept certain books of accounts belonging to the SaApplicant assessee in the almirah constructively in his custody. The detailed facts in this regard have been given in Annexure-II of this memorandum.
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> 2. Thus, Shri Ambesh committed serious lapses with malafide intentions in the discharge of his official duties which he was expected to perform with responsibility, diligence and carefulness.
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> 3. Shri Ambesh has thus displayed lack of integrity, devotion to duty and exhibited conduct unbecoming of a Government Servant and thereby violated Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules."

(11)

3. The applicant had denied the charges and, therefore, an enquiry had been instituted. The Enquiry Officer, vide his report dated 31.12.1997, had opined that the charges were not proved. After the matter had been referred to the Central Vigilance Commission, the disciplinary authority had recorded a note of disagreement and thereupon, while considering the case, differed from the report of Enquiry Officer. It is in this backdrop that it was concluded that the charges against the applicant had been proved which resulted in the imposition of the penalty to which we have already referred to above.

4. The application has been contested. According to the respondents, the applicant was in the Search Party. There was enough circumstantial evidence to show that he was moving about from one premises to another. It is denied that the applicant could not be held responsible for the misconduct regarding which the charges had been drawn. The averments made by the applicant on the contrary had been denied.

5. Needless to state that on an earlier occasion, the applicant had filed O.A. No. 1010/2002 which was decided on 18.09.2002. Certain pleas raised by the applicant in the earlier O.A. were considered and this Tribunal dismissed the petition holding that at the inter-locutory stage, it will not be proper to interfere and the same had been dismissed.

(12)

6. At the outset, learned counsel for the applicant assailed the order in question contending that the incident pertained to the year 1989. There has been inordinate delay in initiation and conduct of the disciplinary proceedings and, therefore, the same are liable to be quashed.

7. We do not dispute the proposition that if there is inordinate delay in conduct of the disciplinary proceedings or in conclusion of the same, whether at the initial stage or subsequently, a person concerned can always assail the same on that ground. The rider how-so-ever would be that prejudice must be caused to delinquent.

8. In the case of **State of Madhya Pradesh vs. Bani Singh,** 1990(Suppl.)SCC p.738, the Supreme Court in an unambiguous terms concluded that if there is inordinate delay in this regard, which is not explained and prejudice is caused, the proceedings can be quashed. The logic and reasoning of the said conclusion are based on the fact that when there is inordinate delay or a stale claim is picked up, the concerned persons may not be in a position to defend the charges.

9. In the present case, the incident pertained to the year 1989 and the chargesheet had been issued in the year 1994. We have already pointed above that subsequently there has been a report submitted by the

Enquiry Officer on 31.12.1997 holding that the charges were not proved. The matter was referred to the Central Vigilance Commission for advice. The advice was returned on 19.3.1998. It was followed by a note of disagreement and thereupon,after consulting the Union Public Service Commission, the impugned order had been passed.

10. Can,in such circumstances, it be stated that prejudice is caused to the applicant or not? The question as to if prejduice is caused or not varies from facts and circumstances of each particular case. There cannot be any hard and fast rule that can be laid on that count. The applicant had contested the matter fully aware of the nature of the misconduct attributed to him. Once he was conscious of the same and contested fully aware of the controversy, then it is obvious that no prejudice is caused. In that backdrop, the plea, so much thought of by the learned counsel, cannot be accepted to prevail. The decision rendered by the Supreme Court in **Bani Singh (supra),** therefore, will not come to his rescue.

11. Confronted with this position, the learned counsel had urged that the consultation of the Central Vigilance Commission is unnecessary. It has no authority to interfere. The said question has already been raised by the applicant before this Tribunal in the earlier litigation. The same had been considered

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by this Tribunal, which reads:

> " 14. In so far as the issue of consultation with the CVC is concerned, we find that as per the vigilance Mannual and moreover the Government of India CVC letter dated 28.2.2000 it is incumbent upon to serve upon the CVC s second stage advice which has accordingly been complied with by the respondents by communicating the same to the applicant.
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> 15. In so far as objection as to referring the matter to disciplinary authority by the enquiry officer and not to the CVC is concerned, in view of the provisions of CVC Vigilance Man ual in case the proceedings are conducted by the Commissioner of Departmental Enquiries the finding of the Enquiry Officer is to be sent to the CVC and their advice shall be submitted to the disciplinary authority for its onward appropriate action. As the vigilance Man ual is the compendium of instructions by the Government and in no manner conflict or supplanting CCS (CCA) Rules, 1965 the decisions cited by the applicant shall not apply and are distinguishable."

12. Otherwise also, the Central Vigilance Commission has the only role, which is recommendatory. The advice cannot bind the Govt. unless there are specific rules to the contrary. Once the matter has already been adjudicated, there is no ground for us to re-appraise and again go into the same controversy.

13. It was urged that during the intervening period, the applicant even had been promoted and this fact cannot be lost sight of. We have no hesitation in rejecting the said plea, eloquently putforth by the learned counsel, for the reason that the promotion, if any, has nothing to do with the present order, which is under the gaze of this Tribunal. The applicant had been promoted before even the articles of charge were served. In view of this fact, the authorities at that time even could not withhold the same.

14. A feeble attempt even was urged to contend that the statement of the applicant had not been recorded in terms of the CCS(CCA) Rules but we are not dwelling further in detail into this controversy because the matter has been concluded by a decision of the Apex Court in the case of **Sunil Kumar Banerjee vs. State of West Bengal,** 1980(3)SCC 304. In the cited case also the delinquent had not been examined under the All India Services (Disciplinary & Appeal) Rules, 1969. The Supreme Court held that when no prejudice is caused, on that count, enquiry will not be vitiated. The same is the situation herein. There is no prejudice shown to have been caused. Resultantly, even the said argument is without any merit.

15. Great stress, however, further was led on the fact that it is a matter of 'no evidence'. According to the learned counsel, it has been concluded that the applicant had been handed over the documents while in fact as per the instructions no receipt even had been taken. According to the learned counsel, documents had never been handed over nor it is established.

16. We know from the decision of the Supreme Court in the matter of **Bank of India & Anr. vs. Degala Suryanarayana,** JT 1999(4) SC p.489, that the scope for intereference by this Tribunal in disciplinary proceedings is limited. This Tribunal will not sit as a court of appeal and could only interefere, if there were mala fides or perversity or no evidence on record.

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In paragraph 11 of the judgement, the Supreme Court held:

> "11. Strict rules of evidence are not applicable to the departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and with objectivity may arrive at a finding upholding the gravamen of the charge against the delinquent officer. Mere conjecture or surmises cannot sustain the finding of guilt even in departmental enquiry proceedings. The Court exercising the jurisdiction of judicial review would not interfere with the findings of fact arrived at in the departmental enquiry proceedings excepting in a case of malafides or perversity i.e., where there is no evidence to support a finding or where a finding is such that no man acting reasonably and with objectivity could have arrived at that finding. The court cannot embark upon reappreciating the evidence or weighing the same like an appellate authority. So long as there is some evidence to support the conclusion arrived at by the departmental authority, the same has to be sustained. In Union of India vs. H.C. Goel, 1964 (4) SCR 718 the Constitution Bench has held:
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> > "the High Court can and must enquire whether there is any evidence at all in support of the impugned conclusion. In other words, if the whole of the evidence led in the enquiry is accepted as true, does the conclusion follow that the charge in question is proved against the respondent? This approach will avoid weighing the evidence. It will take the evidence as it stands and only examine whether on that evidence legally the impugned conclusion follows or not."

17. In the present case before us though it had been poined that applicant was on duty only at one particular place whereas the raid was held at three places, still it had been pointed that the documents,

that were seized, had been handed over to the applicant at the residence of Dau Dayal Saraf where search was also being conducted. It cannot, in this view of the matter, be stated that it was a case of no eivdence. Once there is some material, conclusion, on preponderance of probabilies, in this regard can be arrived at. We find no ground to interfere.

18. Another limb of the argument advanced was that the report/opinion of the Central Vigilance Commission was not handed over to the applicant. But even on this count, the contention has to be rejected before going into the facts. A glance on the legal provisions would be in the fitness of things. In the case of **Sunil Kumar Banerjee (Supra),** a similar argument had been advanced. It was found that conclusion of the disciplinary authority was not based on the advice tendered by the Vigilance Commission but was independent one. It was held that if the report of the Central vigilance Commission had not been supplied, it cannot be termed that there was prejudice that had been caused. A similar argument came up before the Supreme Court in the **State of U.P. vs. Harendra Arora**, (2001) 6 SCC p.392. The Supreme Court held that if such a report is not supplied, it must be shown that prejudice has been caused otherwise non-supply of the report by itself will not be a ground to quash the proceedings. It was concluded relying upon the following passage of the earlier judgement:

> "Hence, in all cases where the enquiry officer's report is not furnished to the

delinquent employee in the disciplinary proceedings, the courts and tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the paties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal Appellate or Revisional Authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment." (emphasis added)".

19. Same was the view later expressed in the case of **Union of India vs. Vishwa Mohan,** 1998(1) SC SLJ p.616.

20. In the present case before us, the Central Vigilance Commission had opined contrary to the report of the Enquiry Officer. The disciplinary authority had referred the matter again to the Central Vigilance Commission. The Central Vigilance Commission had re-iterated the earlier opinion. It is the second opinion, re-iterating the earlier opinion, which had not been supplied. In such a situation, no prejudice can be termed to have been caused to the applicant

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because there were precious little on the record of the applicant to chase the bogie of prejudice.

21. The last argument, which requires to be considered in the backdrop, was that when there was a note of disagrement, it was not a tentative note but a final finding and, therefore, according to the learned counsel, the orders so passed cannot be sustained. The applicant had raised this plea in the earlier Original Application in this Tribunal which we have referred to above in paragraph 13. This Tribunal rejected the same contention holding:

> "13. If one has regard to the aforesaid decision the contention of the applicant that the disciplinary authority in the disagreement note relying upon the advice of CVC disagreed with the finding of enquiry officer where the applicant was exonerated and proved the cahrge. The issue is pre-decided, showing the pre-determined mind of the disciplinary authority to impose the penalty upon the applicant, cannot be countenanced. Though the disagreement note is not happily worded but in view of **Degla Surya Narain's** case (supra) disciplinary authority has come to its own conclusion by recording finding on the charges and obseving the same to be accorded an opportunity to the applicant to represent. A final decision is to be arrived at after the matter has been consulted with the UPSC and after meticulously dealing with the contentions of the applicant taken in his representation in response to the disagreement note. The disciplinary authority is yet to take a final decision in the matter. The apprehension of the applicant and his contention is imaginary and is not well founded."

22. Learned counsel for the applicant urged that since the applicant had not challanged the said order of this Tribunal, he can again raise the same plea. We

do not find any merit in this argument, the reason being that when a coordinate Bench between the parties had opined, it cannot be re-agitated in the same Tribunal. The said finding, subject to the right of the applicant in law to challenge the same, must bind the applicant so far as this Tribunal is concerned. No other arguments had been raised.

23. For these reasons, the O.A., being without merit, must fail and accordingly is dismissed.

(S.K.Naik)
Member (A)

(V.S.Aggarwal)
Chairman

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