(2021) 01 DEL CK 0108

In the Delhi High Court

Case No : Civil Writ Petition No. 333 Of 2021, Civil Miscellaneous Application No. 877 Of 2021

Avinash Kishore Sahay APPELLANT

Vs

Union Of India And Ors RESPONDENT

Date of Decision : 11-01-2021

Acts Referred:

Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14, 15, 19, 29

Central Civil Services (Conduct) Rules, 1964 — Section 3(1)(i), 3(1)(ii), 3(1)(iii)

Citation : (2021) 01 DEL CK 0108

Hon'ble Judges : Manmohan, J;Asha Menon, J

Bench : Division Bench

Advocate : Arvind Kumar, Naginder Benipal, Harithi Kambiri

Final Decision : Dismissed

Judgement

Manmohan, J

1. The present petition has been heard by way of video conferencing.

2. Present writ petition has been filed challenging the order dated 26th October, 2020 passed by the Central Administrative Tribunal (hereinafter

referred to as â??CATâ??) whereby CAT refused to quash the charge memo issued to the petitioner.

3. Learned counsel for the petitioner states that the CAT has failed to appreciate that the charge memo issued to the petitioner is for the role

performed by him as a disciplinary authority, which admittedly is a quasi-judicial function and therefore, it was imperative that the contents of the

charge memo were examined to ascertain whether there was any prima facie material to show misconduct or dishonesty.

4. During the course of hearing, we have perused the articles of charge. The same are reproduced hereinbelow:

â??ARTICLE-I

While serving as Commissioner of Income Tax, Gandhinagar, Shri Avinash Kishore Sahay was the Disciplinary Authority (DA) in the

disciplinary proceedings under Rule 14 and 15 of CCS (CCA) Rules, 1965 in the case of Shri B.A. Dave, ITOI.n his capacity as DA, Shri

Sahay passed an order dated 27/03/2014 exonerating the Charged Officer (CO). The order was passed without consulting Zonal

Directorate despite there being disagreement with the Inquiry Report wherein 2 charges were partly proved and the CO having been

convicted by the Spl. Judge of CBI Court vide order dated 16/03/2012. Shri Sahay also questioned the judgment of the Special Judge of

CBI despite not being competent to do so.

Thus, Shri Avinash Kishore Sahay exceeded authority by violation of prescribed norms thereby failing to maintain absolute integrity,

devotion to duty and exhibited conduct unbecoming of a Government servant. Thus, he violated the provisions of Rules 3(1)(i), 3(1)(ii) and

3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That Shri Avinash Kishore Sahay, while serving as Commissioner of Income Tax, Gandhinagar, passed a second order dated 10/11/2014,

once again exonerating the Charged Officer, Shri Dave when Sahay had no administration jurisdiction over the ITO. Mehsana as Shri

Sahay was DA only till 26/08/2014. The issue of administrative jurisdiction over a subordinate is a factual matter. The fact that Shri Sahay

held such jurisdiction till 26.08.2014 has also been accepted by him in his reply dated 12.06.2019 to the CFV.

Thus, by the aforesaid acts, Shri Avinash Kishore Sahay passed an order on 10.11.2014,, i.e. at a time when he ceased to be the DA by

virtue of transfer of the CO to the office of CIT (Audit) who was in the new DA of the CO, thereby failing to maintain absolute integrity,

devotion to duty and exhibited conduct unbecoming of a Government servant. Thus, he violated the provisions of Rules 3(1)(i), 3(1)(ii) and

3(1)(iii) of the CCS (Conduct) Rules, 1964.

ARTICLE-III

That Shri Avinash Kishore Sahay, while serving as Commissioner of Income Tax, Gandhinagar, passed a second order dated 10/11/2014.

Vide this order, he once again exonerated the Charged Officer, Shri Dave. Even while passing this order, Shri Sahay, for the second time,

failed to follow the established procedure of consulting the Zonal Directorate disregarding the directions contained in the Order under Rule

29 of the CCS (CCA) Rules, 1965 and failing to rectify the lapses/flaws discussed therein. Not only this order was passed without

jurisdiction, but also by not consulting the Zonal Directorate.

Thus, by his aforesaid acts, Shri Avinash Kishore Sahay passed an order on 10.11.2014 disregarding the directions contained in the Order

under Rule 29 of the CCS(CCA) Rules, 1965, thereby failing to maintain absolute integrity, devotion to duty and exhibited conduct

unbecoming of a Government servant. Thus, he violated the provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules,

1964.

ARTICLE-IV

That Shri Avinash Kishore Sahay, while serving as Commissioner of Income Tax, Gandhinagar, failed to initiate proceedings under Rule 19,

in the capacity as DA in the case of Shri Daveâ??s Disciplinary Proceedings. Shri Sahay ought to have involved the provisions of Rule 19

which is mandatorily warranted since he was aware of the conviction order passed by the Special Judge, CBI and the said Shri B.A. Dave,

having intimated the office of the CCIT, Ahmedabad-2 about his conviction for the first time on 10/07/2014 through CIT. Gandhinagar

which is after a period of more than two years after the actual conviction. The claim by Shri Sahay about the Charged Officer having

intimated about his conviction vide letter dated 30.04.2012 is without any sustainable corroborative evidence. Besides, in his reply dated

12.06.2019 to the Calling For Version, Shri Sahay has stated that he joined Gandhinagar in July, 2014. The posting profile of Shri Sahay,

available on the portal which is accessible to the Officers of the Department on â??www.irsofficersonline.gov.inâ?? reflects data which is

contrary. As per the said profile, Shri Sahay joined as CIT, Gandhinagar on 01st

July, 2013.â??

(emphasis supplied)

5. Keeping in the aforesaid serious charges, this Court is of the view that the following observation of the Supreme Court in Union of India & Others

Vs. K.K. Dhawan (1993) 2 SCC 56 is attracted to the present case:-

28. Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer

undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear

in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of

the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned

in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary

action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a Government servant;

(iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago â??though the bribe may

be small, yet the fault is greatâ??.

29. The instances above catalogued are not exhaustive. However, we may add that for a mere technical violation or merely because the

order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a

word of caution. Each case will depend upon the facts and no absolute rule can be postulated.

(emphasis supplied)

6. Consequently, we are of the view that the charge memo is warranted in the facts and circumstances of the present case and it has neither been

issued without jurisdiction nor in the absence of any established procedure. In fact, none of the exceptions stipulated in the aforesaid judgment is

attracted to the present case, as admittedly, the petitioner was aware of the conviction of the charged officer by the CBI Court while exonerating him,

even when, he was not his disciplinary authority.

7. Accordingly, the present writ petition being bereft of merit is dismissed.

8. It is, however, clarified that the IO shall decide the matter without being influenced by any observations made by this Court.

9. Accordingly, the present petition bereft of merits is dismissed.

10. The order be uploaded on the website forthwith. Copy of the order be also forwarded to the learned counsel through e-mail.