(2002) 07 DEL CK 0183

In the Delhi High Court

Case No : C.W.P. No. 1383 of 2002

M.R. Iqbal APPELLANT

Vs

Union of India (UOI) and Others RESPONDENT

Date of Decision : 12-07-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Central Civil Services (Conduct) Rules, 1964 — Rule 3, 3(1)
Income Tax Act, 1961 — Section 154, 185, 44AA

Citation : (2002) 99 DLT 672 : (2003) 3 SLJ 274

Hon'ble Judges : S.B. Sinha, C.J;A.K. Sikri, J

Bench : Division Bench

Advocate : B.S. Banthia, for the Appellant; Sanjeev Kumar and Rajiv Shakdhar, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—The petitioner at all material times was working as an Assistant Commissioner of Income Tax. On the ground of alleged irregularities in discharge of his official duties he was charge-sheeted for violation of Rule 3(1)(i)(ii)(iii) of Central Civil Services (Conduct) Rules, 1964. A departmental proceeding was held, wherein he was found guilty. A copy of the enquiry Report was served upon him and he made a representation there against on 15th December 1997. No action was taken thereon for a long time. He, Therefore, filed an Original Application before the Central Administrative Tribunal, which was marked as O.A. No. 949/00. The said application was disposed of on 21st November 2000 directing the respondent to pass appropriate orders in the disciplinary proceedings. Union Public Service Commission (in short ''UPSC'') was, Therefore, consulted by the disciplinary authority, whereupon the impugned order dated 21st March 2001 was communicated to him on 19th April 2001, whereby and whereunder, a penalty of reduction of pay by three stages till the date of his retirement i.e. 31st June 2002 was passed.

2. Questioning the said order an Application u/s 19 of the Administrative Tribunal Act, 1985 was filed by him before the learned Tribunal, inter alia, contending therein: (a) although a complaint filed by the Tax practitioners'' Association was the basis of initiation of the departmental proceedings, neither the same was made a part of the charge-sheet nor a copy thereof was served on him; (b) the delay in finalizing the disciplinary proceedings has vitiated the ultimate order of imposition of penalty; (c) in the meantime, as he had been promoted in the year 1994 the misconduct on his part, if any, was condoned; and (d) In any event, the quantum of penalty is disproportionate to the charges leveled against him.

3. The learned Tribunal by reason of the impugned judgment, inter alias held: (i) some delay in completion of the disciplinary proceeding could not result in holding the same to be an illegal one; (ii) as he was promoted at a point of time when no charge-sheet had been issued and as at that point of time his vigilance clearance could not have been denied having regard to the DOPT''s instructions dated 12th September 1992, the same cannot be treated as having nullified the validity of the proceeding; and (iii) the disciplinary proceeding was otherwise valid in law.

4. Mr. B.S. Banthia learned counsel appearing on behalf of the petitioner would submit that the impugned judgment cannot be sustained as a copy of the recommendation of the UPSC had not been served upon the petitioner which was the basis of passing the order of penalty by the disciplinary authority.

5. According to the learned counsel, it was obligatory on the part of the respondent to give him an opportunity of showing cause, in the light of the recommendation made by the UPSC. Seven Articles of charge were made as against the petitioner. The Enquiry Officer observed that Rule 3(i)(iii) of the Rules was violated in the cases where he issued deficiency notice u/s 139(9) even though returns were not filed and notice u/s 142(i) issued for filing the returns but calling various details if it is seen from technical angles. It was noticed:

"75. On going through the facts submitted by the C.O. it is seen that he has processed 4069 returns out of 4375 within 9 months and exceeded the action plan target of 90%. Similarly he exceeded the target of 120 cases under selective scrutiny assessment by completing 143 cases and also exceeded the target of 28% less of brought forward figures in the area of reduction of entries in DCR by achieving 75% i.e. 55% more. In such circumstances whatever technical lapse he has committed mainly due to pressure of work load in his charge and prevailing practices followed by other assessing officer at Indore during that time. There has been no mala fide intention of the C.O. behind all these commissions. Moreover, when he had come to notice the lapses, he had corrected the same.

In case of violation of Rule 3(1)(i) the prosecution has not been able to establish the facts of integrity of the Charged Officer being doubtful. Even if the Rule preponderance of probability is applied the same could be based on proven facts only and not on mere presumption. Thus, in any of the Article of Charges the violation of Rule 3(1)(i) is not proved.

76. The violation of Rule 3(1)(ii) does not arise at all as the same is disproved on the facts mentioned in para 75 above and the facts and submissions made by the C.O."

6. The UPSC, however, in its recommendation dated 12th January 2001 noticed all the charges and referred to the complaint ''made by the Tax practitioners'' Association against the petitioner alleging harassment by using all sorts of illegal means of frightening the assessed, resulting in initiation of the said proceeding. The said Articles of charge are as under:

ARTICLES OF CHARGE

Article-I

That the said Shri M.R. Iqbal, ACIT, while posted as ITO, Ward-1(4), Indore, had issued notices u/s 142(1) of the IT Act, 1961, in many cases for the return/ production of books of accounts for 3 years/bank statement and purchases and sales vouchers etc. with mala fide intention, although the relevant assessment year was not over and the cases were not selected for scrutiny. The said notices were not placed on record nor entry was made in the order sheet. Thus he displayed back of integrity, lack of devotion to duty and conduct unbecoming of Govt. servant, and thereby, violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-II

That the said Shri M.R. Iqbal, while functioning in the aforesaid office had, with mala fide intention, issued deficiency letters in many cases and called for certain documents/details in violation of CBDT instructions. Thus he displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant, and thereby, violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-III

That the said Shri M.R. Iqbal, while functioning in the aforesaid office had, with malafide intention, issued notices u/s 142(1) and 143(2) without examination of records. Thus he displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant, and thereby, violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-IV

That the said Shri M.R. Iqbal, while functioning in the aforesaid office had, with mala fide intention, initiated penalty proceedings u/s 271A in cases where there was no income from business/profession requiring maintenance of books of account u/s 44AA of I.T. Act, 1961. This action was not in accordance with the law. Thus he displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant, and thereby, violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-V

That the said Shri M.R. Iqbal, while functioning in the aforesaid office had, with mala fide intention, made uncalled for investigation purportedly passing order u/s 185 of the IT Act, 1961, whereas the period of six months having already expired from the date of filing of return, the grant of registration was automatic. Thus he displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant, and thereby, violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-VI

That the said Shri M.R. Iqbal, while functioning in the aforesaid office had, with mala fide intention, issued illegal notice u/s 154 of the IT Act and exceeded his jurisdiction though there was no mistake apparent from records and the assessment could not be rectified in accordance with law. This resulted in harassment to the assessed. Thus he displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant, and thereby, violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) Rules, 1964.

Article-VII

That the said Shri M.R. Iqbal while functioning in the aforesaid office had with mala fide intention accepted substantial amount of Agricultural income in Modi Group of cases without making necessary inquiries which had resulted in loss of revenue to the Government. Thus he displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a Govt. servant, and thereby, violated Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS (Conduct) rules, 1964.

7. As regards Articles I, II and III of the charge, it was held:

"3.6 The CO in his defense has stated that calling for such details was routine matter and a common practice at Indore. This plea of the CO cannot be accepted as he was required to follow the provisions of the IT Act and Rules framed there under and as such above 3 charges against the CO are partly proved to the extent that he violated the above instructions of the CBDT, while dealing with the cases of some assessed.

8. So far as Article-V is concerned, it was held to have been partly proved. As regards Article-VI it was observed:

3.11 Though the IO has held that lack of integrity and devotion to duty has not been proved in all the charges discussed above and only conduct unbecoming of a Govt. servant viz. Rule 3(1)(iii) of Conduct Rules, has been violated, it is observed that mala fides as per charges framed cannot be ruled out, as the disciplinary proceedings have been initiated on the basis of written complaint from Tax practitioners'' Association alleging harassment for ulterior motives etc. in 24 cases. Regarding plea of the CO that calling for details while issuing notices for filing returns and pointing out the deficiency was a routine practice in Indore Division and there was a very heavy workload under his charge, it is observed that when an officer is overworked, he hardly finds time to issue notices for submission of uncalled for details from assessed in a number of cases and as such mala fide intention in issue of such notices cannot be ruled out.

9. On the basis of such findings the UPSC recommended:

"4. In the light of their findings as discussed above and after taking into account all other facts relevant to the case, the Commission advice that the ends of justice would be met in this case if the penalty of reduction of pay by three stages till the date of the retirement of the CO i.e. viz. 30.6.2002 with the stipulation that he will not earn increments during the period of reduction and the reduction will be with cumulative effect is imposed upon Shri M.R. Iqbal. The Commission advise accordingly."

10. Relying on or on the basis of the said recommendation of the UPSC the President passed the following order:

"10. After taking into account all the relevant aspects of the matter, the President is pleased to accept the advice of the UPSC and impose a penalty of reduction of pay by three stages till the date of retirement of CO i.e. 30.6.2002 with the stipulation that he will not earn the increments during the period of reduction and the reduction will be with cumulative effect."

11. The UPSC, as noticed hereinbefore, for all intent and purport disagreed with the findings of the Enquiry Officer. The Enquiry Officer for all intent and purport found the petitioner not guilty of the charges except technical violation about application of law.

12. The allegations of misconduct were not personal in nature. Such misconduct allegedly was committed in discharge of official duties. It is observed that while differing with the findings of the Enquiry Officer, the Disciplinary Authority has relied upon the advice of the UPSC. However, before doing so, it was obligatory on the part of the disciplinary authority, to give an opportunity to the petitioner to show cause there against. The same having not been done the impugned judgment cannot be sustained. It is now well settled principle of law that, in the event, the disciplinary authority disagrees with the findings of the Enquiry Officer he is bound to record reasons therefore. It is also obligatory on the part of the disciplinary authority to set forth the grounds on the basis of whereof such disagreement is expressed so as to enable the delinquent officer to meet the said points in terms whereof he can file an effective representation. Denial of such opportunity would be vocative of the principles of audi alteram partem. Any action taken in violation of the principles of natural justice would be a nullity. In that view of the matter, impugned judgment cannot be sustained. It is set aside accordingly. Furthermore, the disciplinary proceedings was not completed within

a period of three months in terms of the order of the Tribunal dated 21st November 2000.

13. We, Therefore, are of the opinion that the judgment of the learned Tribunal as also that of the disciplinary authority cannot be sustained. They are set aside accordingly. This writ petition is allowed. No order as to costs.

