
(2016) 12 CAL CK 0002
In the Calcutta High Court
Case No : W.P.C.T. No. 226 of 2016

Mr. Satyendra Kumar Ray

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 12-12-2016

Acts Referred:

Citation : (2017) 1 CalJ 533 : (2017) 2 WBLR 283

Hon'ble Judges : Nishita Mhatre, ACJ. and Tapabrata Chakraborty, J.

Bench : Division Bench

Advocate : Mr. Joydip Kar, Mr. Kishore Dutta and Ms. Chaitali Bhattacharyya, Advocates, for the Petitioner; Mr. Kaushik Chanda, Ld. Addl. Solicitor General and Mr. Nripesh Nath Mondal, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Tapabrata Chakraborty, J.—The short point which arises for consideration in the instant appeal is as to whether the allegations levelled against the petitioner in the charge sheet constitute any misconduct and as to whether the conduct of the petitioner in discharging of his duties as an Income Tax Officer warrants disciplinary action.

2. The said issue needs to be considered in the backdrop of the facts that a charge sheet was issued against the petitioner on 26th March, 1990. The petitioner prayed for inspection of certain relevant documents and as no inspection was granted, the petitioner approached the learned Tribunal through an original application being OA 1385 of 1993. Pursuant to the order passed in the said application on 24th December, 1993 some documents were supplied to the petitioner. Thereafter, the petitioner filed a further application before the learned Tribunal being OA 21 of 1997, inter alia, praying for cancellation of the charge sheet. However, the inquiry report was ultimately filed on 29th January, 1999. The petitioner replied to the inquiry report and thereafter the disciplinary authority passed a final order on 23rd March, 2001 imposing a punishment of reduction to a lower stage with effect from 26th March, 1990. Aggrieved by the

said final order the petitioner preferred a statutory appeal under Rule 29 of the Central Civil Services (Classification Control and Appeal) Rules, 1965. During pendency of the said statutory appeal the petitioner received a letter dated 22nd/23rd August, 2001 intimating that upon revision the President has proposed to revise the punishment order passed by the disciplinary authority so as to make it effective prospectively, i.e., from the date of order of imposing penalty. However, the said appeal and the revision case have not been disposed of till date. The order dated 23rd March, 2001 passed by the disciplinary authority was challenged through an original application being OA 1188 of 2001. Both the original applications being OA 21 of 1997 and OA 1188 of 2001 were heard analogously and an order was passed on 10th August, 2007 by which the respondent authorities were directed to consider the petitioner's promotion in accordance with rules and regulations and the other reliefs prayed for by the petitioner were rejected. The petitioner challenged the said order before this Court and upon contested hearing the WPCT No.1 of 2008 was disposed of by a judgment dated 15th January, 2009 remanding the matter for consideration of the issue as to whether the allegations in the charge sheet issued against the petitioner constitute any misconduct. Pursuant to the said order the original applications were heard and an order was passed on 7th April, 2010 observing, inter alia, that the allegations made against the petitioner in the charge sheet do not cast any stigma on his decisions as a quasi judicial authority. Aggrieved by the said order dated 7th April, 2010 the petitioner has approached this Court.

3. Mr. Kar, learned senior advocate appearing for the petitioner submits that the issue as to whether the allegations in the charge sheet constitute any misconduct has not been appropriately decided by the learned Tribunal taking into consideration all the materials on record and particularly the fact that charges mentioned in Articles I, II and III were not totally proved against the petitioner. It could not be established in the proceedings that the petitioner's acts or omissions cast a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the service. The alleged charges levelled against the petitioner do not disclose any culpability nor is there any allegation of taking any bribe or trying to favour any party. The petitioner conducted the assessment proceedings in exercise of the powers vested under the statute and while discharging the aforesaid functions, if any erroneous order was passed the authorities concerned should have approached the superior forum instead of initiating disciplinary proceedings against the petitioner.

4. Mr. Kar argues that there is no allegation to the effect that the petitioner had taken any decision with any corrupt, improper or illegal motive to oblige someone or to take revenge upon someone and that it would be explicit from the inquiry report that the allegations of undue benefit as referred to in the Articles of charges could not be established in the inquiry proceedings.

5. Drawing the attention of this Court to the order dated 7th April, 2010, Mr. Kar argues that the learned Tribunal upon perusal of the charges along with the

imputations arrived at a finding to the effect that the charges mainly relate to procedural lapses and making assessments dehors the guidelines and that the allegations do not cast any stigma on his decisions as a quasi judicial authority. On the basis of such findings the learned Tribunal abruptly concluded by observing that "we find that the disciplinary authority has given his finding in a great detail and held the applicant guilty of the charges and accordingly issued the punishment. The applicant has also filed an appeal which is pending decision before the Hon'ble President. We do not intend to make any other observation which may prejudice the applicant in the pending appeal". From such findings and observations it is explicit that the learned Tribunal has not decided the issue as remanded for consideration.

6. He further argues that the charges levelled against the petitioner on 26th March, 1990 are stale inasmuch as the same pertains to assessments made during the period from 1st April, 1983 to 31st March, 1984 and that the disciplinary authority himself in his order dated 23rd March, 2001 has observed "that the proceedings against the Charged Officer have been going on for the last 11 years. The Charged Officer has been working in the same post as Income-tax Officer for the last 23 years and have already suffered considerably in respect of his career, mental peace and social prestige". The punishment ultimately imposed upon the petitioner is not compatible with the observations made in the order of punishment. Due to long pendency of the disciplinary proceeding initiated on the basis of allegations which do not constitute any misconduct, the petitioner has been made to suffer and he was not granted due promotion though his juniors were promoted. The petitioner was promoted to the post of Income-tax Officer from the post of Inspector on 2nd February, 1978 and in the gradation list of 1990 the position of the petitioner was 51 and that of Debnath Mukhopadhyay was 52. The petitioner retired from the post of Deputy Commissioner on 31st December, 2006 and Debnath Mukhopadhyay retired from the post of Additional Commissioner in May, 2007 and that it would be evident from the affidavit-in-opposition filed by the Union of India in WPCT No.1 of 2008 that during disciplinary proceedings the sealed covered process was maintained. As the charges levelled against the petitioner do not constitute any misconduct, the entire proceeding needs to be quashed and the respondents should be directed to grant all consequential benefits including the benefits of promotion availed by his next junior.

7. In support of his arguments, Mr. Kar has placed reliance upon the judgments delivered in the case of Union of India and others v. K.K. Dhawan, reported in AIR 1993 SC 1478, in the case of Ramesh Chander Singh v. High Court of Allahabad & Anr., reported in (2007) 4 SCC 247 and upon an unreported judgment delivered in the case of Koushik Pattanayak v. The State of West Bengal and others.

8. Per contra, Mr. Kaushik Chanda, learned Additional Solicitor General submits that by the order dated 15th January, 2009 passed in WPCT No.1 of 2008 the

issue which was remanded for consideration was as to whether the allegations in the charge sheet constitutes any misconduct. A bare perusal of the charge sheet itself would reveal that the allegations contained therein do constitute misconduct. A prima facie consideration of the same would reveal that the petitioner has passed ex-parte assessment orders without issuance of proper notices and in a highly disproportionate number of cases with an intent to harass the assessee for illegal gains and that some proceedings were reopened with a view to confer undue benefits to some of the assessees. The said allegations are instances of negligent and reckless exercise of quasi judicial powers and that as such the authorities had every right to conduct the disciplinary proceeding since the allegations do constitute misconduct being violative of the provisions of Central Civil Services (Conduct) Rules, 1964.

9. Mr. Chanda further submits that it would be explicit from the order passed by the disciplinary authority that the petitioner had passed the assessment orders arbitrarily and contrary to law. The orders were passed without any adequate ground and the estimation of income by the petitioner was neither reasonable nor judicious or rational. The petitioner has also not followed the instruction issued by the CBDT. Such acts and omissions of the petitioner constitute misconduct and the issue as remanded for consideration has been rightly decided by the learned Tribunal.

10. He further argues that even in the absence of an element of culpability the authorities have every right to conduct disciplinary proceeding for negligent and reckless exercise of quasi judicial powers in violation of the statutory provisions and guidelines. In support of such contention reliance has been placed upon the judgments delivered in the case of Union of India and others v. K.K. Dhawan, reported in AIR 1993 SC 1478 and in the case of Union of India and others v. Duli Chand, reported in (2006) 5 SCC 680.

11. In reply, Mr. Kar submits that the issue remanded cannot be construed to be restricted only to the extent as to whether the allegations in the charge sheet on the face of it constitute misconduct. The measure and magnitude of the issue remanded for consideration has not been properly appreciated by the learned Tribunal and such infirmities in the decision making process warrants interference of this Court.

12. Heard the learned advocates appearing for the respective parties and considered the materials on record.

13. Indisputably, the allegations of having earned undue benefit and of having made illegal gains were not found to have been proved against the petitioner as would be explicit from the inquiry report. As regards the charge in Article I, the inquiry officer has observed that "no other material or evidence has been cited on behalf of the Disciplinary Authority to establish the charge that the assessments were completed ex parte without adequate ground, arbitrarily and contrary to the provisions of the Income-tax Act with a view to harass the

assessee for illegal gains". As regards the charge in Article II, the inquiry officer has observed that "however, the charge that those assessments were re-opened with a view to conferring undue benefit on the assessee is not proved since most of the re-opened assessments were completed by a successor of Sri S.K. Roy, the C.O. and there is no instance of passing the reopened order by the C.O. in a manner beneficial or favourable to the assessee". As regards the charge in Article III, the inquiry officer has observed that "however, that part of the charge which speaks of re-opened the assessment to be completed afresh with a view to conferring undue benefit on the assessee is not proved". As regards the charge in Article IV, the inquiry officer has observed that "however, the last part of the charge that Sri Roy violated the instruction with improper motives has not been established since not a single case could be cited in which the re-opened assessment has been finalised by him conferring undue benefit in favour of the assessee". Such findings as arrived at by the inquiry officer have not been disturbed by the disciplinary authority and even after observing "that the proceedings against the Charged Officer have been going on for the last 11 years. The Charged Officer has been working in the same post as Income-tax Officer for the last 23 years and have already suffered considerably in respect of his career, mental peace and social prestige", the disciplinary authority abruptly imposed the punishment of reduction to a lower stage with retrospective effect from 26th March, 1990.

14. A composite reading of the inquiry report and the order of punishment would reveal that the assessment orders passed by the petitioner were not fortified with appropriate reasons and that there had occasioned some procedural lapses but such lapses were not smeared with any intent to avail undue benefit or to heckle and harass the assessees. Any erroneous order passed in exercise of quasi judicial function can always be corrected by way of appeal or revision as provided under the statute and for such erroneous order, if any disciplinary action is resorted to, it would jeopardise the exercise of quasi judicial functions and the immunity attached to the officer while exercising quasi judicial functions would be lost. There is no allegation to the effect that the petitioner has acted in abuse of his power. There is also no material on record to establish that the petitioner has acted negligently with an intent to earn or to confer undue benefit. In the case of Duli Chand (Supra) the employee was punished on the ground that he had negligently allowed claims for refund to an applicant on three different occasions. On the rudiments of such facts, the Court held that disciplinary action can be taken against an officer discharging judicial functions even if no culpability is involved. The said judgment has no manner of application since in the instant case there is no evidence whatsoever that the petitioner had shown any favour to the assessee.

15. The Supreme Court of India in the case of Union of India and others v. K.V. Jankiraman and others reported in (1991) 4 SCC 109 noted with approval the government circular of "the sealed cover procedure". According to the said procedure, cases of officers against whom disciplinary proceedings are pending

should, also, be considered for promotion at the appropriate time, but the findings of the selection committee are to be kept in a sealed cover to be opened after conclusion of the disciplinary proceeding. On the conclusion of the disciplinary proceedings, if the officer concerned is completely exonerated, the sealed cover is to be opened and the recommendations of the selection committee are to be acted upon.

16. For the reasons discussed above, we are of the opinion that the allegations contained in the charge sheet do not constitute any misconduct. The order of punishment dated 23rd March, 2001 passed by the respondent no.5 along with the charge sheet are set aside and quashed. The respondents are directed to grant all consequential benefits to the petitioner as if no disciplinary proceeding was at all initiated against the petitioner. Needless to observe in the event the petitioner had become entitled to promotion during the period from the date of issuance of charge sheet till the date of his superannuation on 31st December, 2006, the respondents shall notionally treat the petitioner to have been promoted on and from the date from which his immediate junior was promoted, in accordance with law and shall refix the petitioner's scale of pay accordingly and on the basis of the revised last pay of the petitioner, the respondents shall release the arrear pension, gratuity and other retiral benefits within eight weeks from the date of communication of this order.

17. The order dated 7th April, 2010 passed by the learned Tribunal is, accordingly, set aside and the writ petition is disposed of. There shall, however, be no order as to costs.

Urgent Photostat certified copy of this judgment, if applied for, be given to the parties, as expeditiously as possible, upon compliance with the necessary formalities in this regard.

Nishita Mhatre, A.C.J.—I agree