(2011) 11 GUJ CK 0051

In the Gujarat High Court

Case No : Special Civil Application No. 4373 of 2006

Pinakin Ajitray Jani APPELLANT

Vs

Union of India and Others RESPONDENT

Date of Decision : 09-11-2011

Acts Referred:

Citation : (2011) 11 GUJ CK 0051

Hon'ble Judges : V.M. Sahai, J;K.S. Jhaveri, J

Bench : Division Bench

Advocate : M.S. Trivedi, Ms. Pranjalm Trivedi, for the Appellant; Shakeel A Qureshi, for the Respondent

Final Decision : Dismissed

Judgement

Honourable Mr. Justice K.S. Jhaveri

1. By way of filing this petition the petitioner - original applicant challenged the judgment and order dated 30th August 2005 passed in Original Application No.121 of 2004 by the Central Administrative Tribunal, Ahmedabad Bench at Ahmedabad whereby the application filed by the petitioner has been dismissed and the order of imposition of penalty of 10% cut in pension on a permanent basis is confirmed.

2. The short facts of the present case are that the petitioner was issued charge-sheet on 26th August 1993 few days prior to the date of his retirement from service. The charge-sheet was issued in respect of assessments made by the petitioner in respect of M/s Adani Agency, M/s Adani Exports and M/s Adani Associates. After holding the departmental enquiry, the Enquiry Officer has submitted his report dated 21.4.1995 holding that two of the charges relating to lack of integrity as not proved. The Central Vigilance Commission vide its letter dated 23.10.2007 proposed a cut of 10% in pension for five years whereas the GPSC has proposed a cut of 10% in pension permanently. The petitioner challenged the same by filing Original Application No.121 of 2004 before the

Tribunal, which was confirmed by the Tribunal.

3. Heard learned counsel for the parties and perused the record.

4. Mr Trivedi, learned counsel for the petitioner contended that the petitioner has not been supplied with the copy of the Enquiry Report and thereby he has been deprived of his right to file an effective reply to the proposal of the UPSC which proposed a cut of 10% in his pension on permanent basis. He further contended that the proposal of the UPSC is advisory in nature and it cannot have an overriding effect of the advice of the CVC. He next contended that the petitioner has exercised only quasi judicial power under the income tax Act and such an action cannot be termed as misconduct. He further contended that the delay in passing the final orders has vitiated the enquiry proceedings.

5. Mr Shakeel Qureshi, learned counsel for the respondents supported the judgment and order of the Tribunal and submitted that no interference is called for.

6. While considering the case of the petitioner, the Tribunal has observed in paragraphs 5 and 6 of its judgment as under:

5. It has been contended by the applicant that though the said order has been passed in quasi judicial capacity, disciplinary action has been recommended. The findings of enquiry officer have also been assailed. A copy fo the representation submitted against the enquiry officer''s report is not on record. We cannot ascertain as to what grounds had been taken before the disciplinary authority. The Apex Court in Devkinandan Sharma v. UOI, 2001 SCC (L&S) 1079 has not permitted raising of ground not raised before the concerned authorities in a disciplinary matter. The said principle applies in the instant case also. This contention has accordingly to be rejected.

6. It is now well settled by decisions of Supreme Court in a number of cases including Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, that the charge-sheet can be issued in respect of the manner of exercise of power. Hence this contention has also to be rejected.

7. We are in complete agreement with the view taken by the Tribunal. Looking to the misconduct, the punishment imposed by the department is just and proper and no interference is called for from this Court. The petition is devoid of any merits and the same is dismissed. Rule is made absolute with no order as to costs.

