

(2023) 05 DEL CK 0494

In the Delhi High Court

Case No : Civil Writ Petition No. 2499 Of 2018

Pradeep Kumar Sinha

APPELLANT

Vs

Union Of India & Ors.

RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

Income Tax Act, 1961 — Section 234A, 234B, 234C
Central Civil Service (Pension) Rules, 1972 — Rule 9, 9(2), 9(2)(a)
Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 15
Central Civil Services (Conduct) Rules, 1964 — Section 3(1)(i), 3(1)(ii), 3(1)(iii)

Citation : (2023) 05 DEL CK 0494

Hon'ble Judges : V. Kameswar Rao, J;Anoop Kumar Mendiratta, J

Bench : Division Bench

Advocate : D.K. Malhotra, Rajesh Kumar Malhotra, Harish Vaidyanathan
Shankar, Srish Kumar Mishra, Sagar Mehlawat, Alexander Mathai Paikaday

Final Decision : Disposed Of

Judgement

V. Kameswar Rao, J

1. The challenge in this writ petition is to an order dated July 28, 2017, passed by the Central Administrative Tribunal Principal Bench, New Delhi ('Tribunal', in short) in Original Application No.2634/2015 whereby the Tribunal has dismissed the OA filed by the petitioner herein.

2. The challenge in the OA by the petitioner was to an order dated August 29, 2014 passed under Rule 9 of CCS (Pension) Rules, 1972 read with Rule 15 of CCS (CCA) Rules, 1965 imposing the penalty of withholding of 30% of monthly pension, otherwise admissible, for a period of 5 years and also in withholding the entire amount of Gratuity permanently, on the petitioner.

3. The brief facts which are necessary for a decision in the writ petition are that while the petitioner was working as Chief Commissioner of Income Tax-II, Hyderabad, the respondents vide letter dated October 7, 2004 had issued

Vigilance Inspection note to him and directing him to submit his reply on the irregularities mentioned therein. The petitioner submitted his reply on November 2, 2004.

4. Pursuant thereto, a Charge sheet dated March 31, 2005, was issued to the petitioner wherein two Articles of charge were framed in the following manner:

"Article-I:-

That the said Shri P.K. Sinha, while working as Chief Commissioner of Income Tax-II, Hyderabad, Andhra Pradesh, from 24.7.2003 onwards, showed favour to the assesseees and caused wrongful loss of revenue to the Government of India, by allowing waiver of interest charged under sections 234A, 234B and 234C of the Income Tax Act, 1961 in the cases of twenty five assesseees, in gross violation of the order of the Central Board of Direct Taxes, New Delhi in F.No.400/234/95-IT(B) dated 23.05.1996.

By his above acts, Shri P.K. Sinha failed to maintain absolute integrity and devotion to duty and displayed conduct unbecoming of a Government servant, thereby violating the Rules 3(1)(i), 3 (1) (ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

Article-II:-

That the said Shri P.K. Sinha, Chief Commissioner of Income Tax-II, Hyderabad, on 5.5.2004 ordered the release of Rs.4.39 crores, out of the amount held under lien by the Income Tax Department, to HEH The Nizam's Jewellery Trust in an irregular manner and in unseemly haste, even before ascertaining the exact quantum of arrears of tax due from the Trust.

Shri P.K. Sinha, thus, failed to maintain absolute devotion to duty and displayed conduct unbecoming of a Government servant, thereby violating Rules 3(1)(ii) and 3(1)(iii) of the Central Civil Services (Conduct) Rules, 1964."

5. The petitioner submitted his reply to the said Charge-sheet on April 04, 2005. As the respondents were not satisfied with the reply to the said Charge sheet, disciplinary proceedings were initiated against the petitioner. The Inquiry Officer submitted his report. The petitioner was furnished with a copy of the inquiry report along with CVC Advice dated April 01, 2009 and called upon the petitioner's to make representation on the same. The representation was submitted by the petitioner on March 11, 2011. The respondents vide Office Memorandum dated August 19, 2013, again furnished the UPSC Advice dated July 23, 2013, to the petitioner and called for his representation. Pursuant to and on consideration of representations, the aforesaid penalty was imposed on the petitioner, as by that time he had attained the age of superannuation.

6. The case setup by the petitioner before the Tribunal was that the charge memo dated March 31, 2005, was issued without the approval of the Finance Minister, who is the Competent Disciplinary Authority and, hence, all the

consequential disciplinary proceedings including the Penalty Order dated August 29, 2014 are vitiated and liable to be quashed in view of the decision of the Supreme Court in Union of India & Ors. v. B.V. Gopinath, (2014) 1 SCC 351.

7. It was also stated that post-facto approval for initiation of the disciplinary proceedings; for the draft charges and to the Charge-sheet shall not make the disciplinary proceedings, valid. It was also stated that Proviso to Rule 9(2)(a) of the CCS (Pension) Rules, 1972 has not been followed.

8. The respondents herein justified the action against the petitioner, inasmuch as the judgment in B.V. Gopinath (supra) shall not be applicable to the proceedings initiated against the petitioner as the same were initiated prior to the pronouncement of the judgment in B.V. Gopinath (supra).

9. In any case, it was stated that the competent Disciplinary Authority has approved all the disciplinary proceedings in respect of the petitioner after the pronouncement of the decision in B.V. Gopinath (supra) and hence, all the impugned orders are valid and legal and cannot be interfered with.

10. Further, it was stated that proviso to Rule 9(2) of the CCS (Pension) Rules, 1972 has no application to the petitioner's case as the Charge-sheet was issued while he was in service. The Tribunal while rejecting the OA has in paragraphs 13 to 15 stated as under:

"12. Admittedly, in the instant case, the Charge Memorandum, which was issued prior to the pronouncement of the decision in the B.V. Gopinath (supra), was without the prior approval of the competent Disciplinary Authority. However, after the pronouncement of B.V. Gopinath (supra), the Disciplinary Authority has approved the initiation of the disciplinary proceedings, the draft charge sheet and the final charge sheet and thereafter only the impugned Penalty Order was passed. Hence, the issue whether post facto approval of the competent authority to various disciplinary proceedings will make them valid is before us.

13. The Division Bench of the Hon'ble High Court of Judicature at Patna in Civil Appeal No. 422 of 2016 dated 26.10.2016 (supra), on which the learned counsel for the respondents has placed reliance, examining the identical issue held that since the final order of punishment has the approval of the Finance Minister, even if it is assumed that the charge sheet is not approved by the Finance Minister at an earlier stage, will not confer any cause to the petitioner to dispute the order of punishment as with the approval of the final order, the entire proceedings are deemed to be "approved". Hence, the contention of the applicant's counsel that the post facto approval cannot make the charge sheet and the penalty order valid, is rejected.

14. Proviso to Rule 9(2)(a) of CCS (Pension) Rules, 1972 reads as under:

"Provided that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording its findings to the President."

As observed above, the proviso to Rule 9(2)(a) provides that where the departmental proceedings are instituted by an authority subordinate to the President, that authority shall submit a report recording his findings to the President.

15. In the instant case, the departmental proceedings were instituted when the applicant was in service. Though the applicant contends that the said proviso to Rule 9(2)(a) has been violated, it is not his case that the entire departmental proceedings were not submitted to the President before his consideration and passing of the impugned penalty order.

Hence, this contention of the applicant is also unacceptable.”

11. Mr. D.K. Malhotra, learned counsel for the petitioner reiterates the submissions as were made on behalf of the petitioner before the Tribunal, inasmuch as the post facto approval of all the disciplinary proceedings, Charge-sheet by the Competent Disciplinary Authority cannot validate the proceedings already held, being non-est in law.

12. He in this background, relied upon the judgment in B.V. Gopinath (supra) and also Sunny Abraham v. Union of India, (2021) 15 Scale 505 to contend the Supreme Court has clearly held, any non-est proceedings cannot be validated by ex-post facto approval. In this respect, he has referred to paragraphs 11 and 12 of the judgment in the case of Sunny Abraham (supra), which we reproduce as under:

“11. We do not think that the absence of the expression “prior approval” in the aforesaid Rule would have any impact so far as the present case is concerned as the same Rule has been construed by this Court in the case of B.V. Gopinath (supra) and it has been held that chargesheet/charge memorandum not having approval of the Disciplinary Authority would be non est in the eye of the law. Same interpretation has been given to a similar Rule, All India Services (Discipline and Appeal) Rules, 1969 by another Coordinate Bench of this Court in the case of State of Tamil Nadu vs. Promod Kumar, IPS and Another [(2018) 17 SCC 677] (authored by one of us, L. Nageswara Rao, J). Now the question arises as to whether concluded proceeding (as in the case of B.V. Gopinath) and pending proceeding against the appellant is capable of giving different interpretations to the said Rule. The High Court’s reasoning, referring to the notes on which approval for initiation of proceeding was granted, is that the Disciplinary Authority had taken into consideration the specific charges. The ratio of the judgments in the cases of Ashok Kumar Das (supra) and Bajaj Hindustan Limited (supra), in our opinion, do not apply in the facts of the present case. We hold so because these authorities primarily deal with the question as to whether the legal requirement of granting approval could extend to ex-post facto approval, particularly in a case where the statutory instrument does not specify taking of prior or previous approval. It is a fact that in the Rules with which we are concerned, there is no stipulation of taking “prior” approval. But since this

very Rule has been construed by a Coordinate Bench to the effect that the approval of the Disciplinary Authority should be there before issuing the charge memorandum, the principles of law enunciated in the aforesaid two cases, that is Ashok Kumar Das (supra) and Bajaj Hindustan Limited (supra) would not aid the respondents. The distinction between the prior approval and approval simplicitor does not have much impact so far as the status of the subject charge memorandum is concerned.

12. The next question we shall address is as to whether there would be any difference in the position of law in this case vis-à-vis the case of B.V. Gopinath (supra). In the latter authority, the charge memorandum without approval of the Disciplinary Authority was held to be non est in a concluded proceeding. The High Court has referred to the variants of the expression non est used in two legal phrases in the judgment under appeal. In the context of our jurisprudence, the term non est conveys the meaning of something treated to be not in existence because of some legal lacuna in the process of creation of the subject-instrument. It goes beyond a remediable irregularity. That is how the Coordinate Bench has construed the impact of not having approval of the Disciplinary Authority in issuing the charge memorandum. In the event a legal instrument is deemed to be not in existence, because of certain fundamental defect in its issuance, subsequent approval cannot revive its existence and ratify acts done in pursuance of such instrument, treating the same to be valid. The fact that initiation of proceeding received approval of the Disciplinary Authority could not lighten the obligation on the part of the employer (in this case the Union of India) in complying with the requirement of sub-clause (3) of Rule 14 of CCS (CCA), 1965. We have quoted the two relevant sub-clauses earlier in this judgment. Sub-clauses (2) and (3) of Rule 14 contemplates independent approval of the Disciplinary Authority at both stages – for initiation of enquiry and also for drawing up or to cause to be drawn up the charge memorandum. In the event the requirement of sub-clause (2) is complied with, not having the approval at the time of issue of charge memorandum under sub-clause (3) would render the charge memorandum fundamentally defective, not capable of being validated retrospectively. What is non-existent in the eye of the law cannot be revived retrospectively. Life cannot be breathed into the stillborn charge memorandum. In our opinion, the approval for initiating disciplinary proceeding and approval to a charge memorandum are two divisible acts, each one requiring independent application of mind on the part of the Disciplinary Authority. If there is any default in the process of application of mind independently at the time of issue of charge memorandum by the Disciplinary Authority, the same would not get cured by the fact that such approval was there at the initial stage. This was the argument on behalf of the authorities in the case of B.V. Gopinath (supra), as would be evident from paragraph 8 of the report which we reproduce below:-

“8. Ms Jaising has elaborately explained the entire procedure that is followed in each and every case before the matter is put up before the Finance Minister for seeking approval for initiation of the disciplinary proceedings. According to the

learned Additional Solicitor General, the procedure followed ensures that entire material is placed before the Finance Minister before a decision is taken to initiate the departmental proceedings. She submits that approval for initiation of the departmental proceedings would also amount to approval of the charge memo. According to the learned Additional Solicitor General, CAT as well as the High Court had committed a grave error in quashing the departmental proceedings against the respondents, as the procedure for taking approval of the disciplinary authority to initiate penalty proceeding is comprehensive and involved decision making at every level of the hierarchy.” (emphasis supplied)

13. He states in view of the above position of law, the order of the Tribunal and the disciplinary proceedings are liable to be set aside.

14. Mr. Harish Vaidyanathan Shankar, learned counsel for the respondents would not contest the position of law as laid down by the Supreme Court in the case of Sunny Abraham (supra) more specifically paragraphs 11 and 12 which we have reproduced above.

15. There is no dispute pursuant to the judgment of the Supreme Court in B.V. Gopinath (supra) post facto approval was given by the Competent Disciplinary Authority on March 14, 2014 in respect of the Charge-sheet / disciplinary proceedings initiated against the petitioner. In other words, they intended to validate the proceedings already held against the petitioner. The Tribunal in paragraphs 12 and 13 of the impugned Judgment had approved this action of the respondents, by referring to a Judgment of the Patna High Court. It is also a fact that, on the date when the Tribunal passed its Judgment, the Judgment in the case of Sunny Abraham (supra) had not been rendered by the Supreme Court. The fact is, as of today, there is an authoritative pronouncement of the Supreme Court in Sunny Abraham (supra), and the issue in hand is covered by the said Judgment.

16. So, it must be held that the action of the respondents cannot be sustained. The order of the Tribunal dated July 28, 2017 is set aside. The Charge-sheet dated March 31, 2005 and proceedings held thereafter including the penalty order dated August 29, 2014 are also set aside.

17. Having said that, in view of the order of the Supreme Court in paragraph 16 which we reproduce as under, in the eventuality, the department wants to continue with the matter, and on producing the material, the Disciplinary Authority is satisfied that a fresh Charge memorandum ought to be issued, such Charge memorandum shall be issued not beyond a period of three months from today and thereafter proceedings shall take its own course as per law.

“16. Considering the fact that the proceeding against the appellant relates to an incident which is alleged to have taken place in the year 1998 and the proceeding was initiated in the year 2002, we direct that in the event the department wants to continue with the matter, and on producing the material the Disciplinary Authority is satisfied that a fresh charge memorandum ought to be

issued, such charge memorandum shall be issued not beyond a period of two months, and thereafter the proceeding shall take its own course.”

18. The writ petition is disposed of. No costs.