(2018) 11 CAT CK 0064

In the Central Administrative Tribunal

Case No : Original Application No. 3287 Of 2014

Rakesh Kumar Jain APPELLANT

Vs

Union Of India Through Secretary And Anr RESPONDENT

Date of Decision : 28-11-2018

Acts Referred:

Income Tax Act, 1961 — Section 264
Central Civil Services (Classification, Control And Appeal) Rules, 1965 — Rule 14(3), 15

Citation : (2018) 11 CAT CK 0064

Hon'ble Judges : L. Narasimha Reddy, J;Pradeep Kumar, Member (A)

Bench : Division Bench

Advocate : Krishna Kumar, Rajesh Katyal

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J

1. The applicant was an officer of the Indian Revenue Service of the 1974 batch. In 2006, he was working as Commissioner of Income Tax (Appeals) [CIT (Appeals)] at Allahabad. Through an order dated 31.05.2006, he was transferred from the post of CIT (Appeals) to the one of CIT (Departmental Representative) [CIT (DR)], Income Tax Appellate Tribunal (ITAT), Allahabad. Here itself, it needs to be mentioned that the applicant was issued a charge memorandum dated 01.05.2006, alleging that while functioning as CIT (Appeals) and adjudicating a revision Under Section 264 of the Income Tax Act in the case of M/s Labh Construction & Industries Ltd. for AY 1997-98, he facilitated the assessee to understate his income in excess of Rs.2 crores.

2. The applicant filed OA No.624/2006 before the Allahabad Bench of the Tribunal. An interim order is said to have been passed on 08.06.2006, directing that the applicant shall not be given any other posting till his representation is considered. It is stated that he was subjected to medical examination to consider his plea that he cannot discharge duties of DR, which require standing, and

thereafter the Chief Commissioner of Income Tax (CCIT) rejected his representation through order dated 26.09.2006. The applicant filed OA No.1067/2006 before the Allahabad Bench challenging the order dated 26.09.2006. An interim order was passed on 27.09.2006 directing the respondents to maintain status quo.

3. The applicant passed an order on 03.10.2006 in an appeal filed by one M/s Kamdhenu Sweets, in the capacity of CIT (Appeals). The disciplinary authority issued a charge memorandum on 08.12.2008 to the applicant stating that he passed order in appeal on 03.10.2006, though he stood relieved from the post of CIT (Appeals) on 25.09.2006, and by refusing to hand-over charge to his successor on that day. This OA is filed challenging the memorandum dated 08.12.2008.

4. The applicant contends that he was continuing as CIT (Appeals) at Allahabad on the strength of the interim orders passed by the Tribunal in OA No.1067/2006, and that there was no basis for issuing the charge memorandum to him. It is also stated that the charge memorandum is unsustainable in law, because it does not contain any list of witnesses. Other grounds are also urged.

5. The respondents filed a counter affidavit denying the allegations made in the OA. It is stated that the applicant committed a patent illegality in passing an order in appeal on 03.10.2006, though he stood relieved from the post of CIT (Appeals) by that date. It is stated that on the one hand, he instituted proceedings one after the other before the Tribunal, challenging the orders of transfer, and on the other hand, proceeded to pass orders, despite the fact that he stood relieved. As regards the absence of list of witnesses, it is stated that the disciplinary authority has every right to examine the witnesses, in case the necessity arises during the course of disciplinary proceedings, and that no illegality has crept into the proceedings.

6. The only allegation against the applicant in the impugned charge memorandum is that he passed an order in appeal, acting as CIT (Appeals) on 03.10.2006. Since the applicant has vehemently contended that he had every right to pass orders on that day, we are a bit constrained to undertake discussion on that aspect, in a limited sense. The question is ultimately required to be decided in the disciplinary proceedings.

7. It has already been mentioned that the applicant was transferred from the post of CIT (Appeals) to the post of CIT (DR), ITAT, on 31.05.2006. In OA No.624/2006 filed by him challenging the said order, the only interim order that was passed on 08.06.2006, was to the effect that he shall not be given any other posting. It is not even stated by the applicant that on the basis of the said interim order, he continued to work as CIT (Appeals). On the other hand, he was said to be undergoing treatment for the so called illness for ?varicose veins?. His effort was to establish that he would not be able to stand for long time, and thereby he cannot be entrusted with the duties of Departmental Representative.

A medical board was constituted in this behalf, and the CCIT passed order dated 26.09.2006 posting the applicant to Varanasi.

8. In the second OA No.1067/2006 filed by him, an interim order of status quo was obtained. While the plea in the earlier OA was that he cannot be required to discharge duties which needed standing for a long time, in the second OA, the plea was that he cannot be shifted from Allahabad to a different place as CIT (Appeals). The net result was, the applicant was insisting on being continued at Allahabad, that too, as CIT (Appeals), and not in any other capacity. Rarely one comes across such an attitude on the part of an officer at that level.

9. It is a well recognized norm, cutting across all institutions, and involving adjudication of cases, that once the Judge or Member is transferred, the incumbent would not pass any orders. Many a time, one does not even await the receipt of a formal order, and even knowledge thereof would be sufficient for this purpose. In the instant case, however, having obtained an order of status quo, the applicant proceeded to pass orders in the appeal. It was not as if he was discharging those duties, immediately before 26.09.2006. By the time the order of status quo was passed, the incumbent posted in the place of the applicant, had already reported. The applicant chose to pass order in an appeal, even while refusing to hand-over charge.

Under these circumstances, it cannot be said that there was no basis for the charge memorandum at all. However, our discussion in this behalf cannot be treated as any finding on the charge.

10. The other ground urged by the applicant is that the charge memorandum does not contain any list of witnesses, and thereby a clear violation of rule 15 of the CCS (CCA) Rules, 1965 exists. This very question was considered by this Bench in its order dated 26.09.2018 passed in OA No.4149/2014 - Keshavlal Trikamlal Maru v Union of India & others. Para 15 thereof reads as under:

"15. The list of witnesses mentioned in sub-rule (3) of rule 14 is not exhaustive or final. Rule 15 permits the disciplinary authority as well as the employee to adduce further evidence. The evidence, naturally, can be oral or documentary, and if the inquiry officer is satisfied about the relevance thereof, he can permit persons, whose names did not figure in the list furnished along with the charge memorandum, to be examined, subject to the right of cross examination by the other party. Once there exists a facility to examine witnesses whose names did not figure in the list appended to the charge memorandum, there is no reason to take the view that if no list of witnesses is enclosed to the charge memorandum, the witnesses cannot be permitted to be examined at a later stage, depending on the satisfaction of the inquiry officer."

Same situation obtains in this case also.

11. Though it is pleaded at one stage that the charge memorandum was not issued with the approval of the appointing authority, i.e., the Finance Minister,

and thereby it is hit by the judgment of the Supreme Court in B. V. Gopinath & others v Union of India & others [(2014) 1 SCC 351], it becomes clear that the charge memorandum has since been approved by the Finance Minister through a memorandum dated 06.01.2017, which is filed as one of the documents in the OA.

12. We do not find any merit in this OA. The same is accordingly dismissed. There shall be no order as to costs.

