

(2016) 10 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 20054 and 20190 of 2016

Union of India

APPELLANT

Vs

Dr. Uppuleti Devi Prasad

RESPONDENT

Date of Decision : 26-10-2016

Acts Referred:

Citation : (2017) 1 AndhLD 644

Hon'ble Judges : V. Ramasubramanian and G. Shyam Prasad, JJ.

Bench : Division Bench

Advocate : Sri B. Narasimha Sarma, Advocate, for the Petitioners; Sri C.V. Mohan Reddy, Senior Counsel and M. Karuna Sagar, Advocate, for the Respondents

Final Decision : Disposed Off

Judgement

V. Ramasubramanian, J. - The Union of India has come up with the present writ petitions challenging two different orders passed on the same day viz., 14-07-2015, allowing the applications filed by the 1st respondent in these writ petitions, quashing a charge memo and declaring the deletion of the name of the 1st respondent from the approved list of officers for promotion to the post of Principal Commissioner of Income Tax in the HAG Scale.

2. Heard Sri Narasimha Sarma, learned senior standing counsel for the writ petitioners and Sri C.V. Mohan Reddy, learned senior counsel appearing on behalf of Sri M. Karunasagar, learned counsel for the 1st respondent.

3. When the 1st respondent was working as Commissioner of Income Tax (Appeals)-V, Hyderabad, a Charge Memorandum dated 31-12-2014 was issued under Rule 14 of the Central Civil Services (CCA) Rules, 1965. The charge memorandum contained 3 Articles of Charge, which respectively were:

1) that the 1st respondent disposed of an appeal filed by one L. Madhusudhan Rao relating to the Assessment Year 2012 by treating the same as current appeal and disposing the same out of turn without obtaining the approval of the Chief

Commissioner of Income Tax as per the Board's norms and acted with an ulterior motive to confer undue favour upon the assessee;

2) that while disposing of the appeal filed by the assessee L. Madusudhan Rao, the 1st respondent did not even forward the appeal memo in Form-35 and the copy of the hearing notice to the Assessing Officer, despite there being a statutory requirement; and

3) that the appeal filed by the assessee was disposed of by the 1st respondent in favour of the assessee, by admitting fresh evidence without affording opportunity of hearing to the assessing officer as required under Rule 46A and without giving a finding of fact on issues raised before him.

4. Challenging the Charge Memorandum dated 31-12-2014, the 1st respondent herein filed an application in O.A. No. 021/00080/ 2015 on the file of the Central Administrative Tribunal, Hyderabad. During the pendency of the said Original Application, the name of the 1st respondent was deleted from the approved list of candidates fit for promotion to the post of Principal Commissioner of Income Tax. Therefore, challenging the deletion of his name, the 1st respondent filed another application in O. A. No. 021/00174/2015.

5. By two independent orders dated 14-07-2015, the Central Administrative Tribunal, Hyderabad, allowed both the applications, quashing the charge memorandum as well as the order of deletion of the name from the panel for promotion and directing the writ petitioners to promote him to the post of Principal Commissioner of Income Tax. It is against these orders that the Union of India is before us.

6. The main ground on which the Central Administrative Tribunal quashed the charge memorandum was that the Articles of charges revolved around the manner in which the 1st respondent performed quasi-judicial functions as the Commissioner of Income Tax (Appeals) and that therefore, no disciplinary proceedings could have been initiated against the 1st respondent, as per the dictum of the Supreme Court in *Union of India and others v. K.K. Dhawan*, (1993) 2 Supreme Court Cases 56 and reiterated in *Zunjarrao Bhikaji Nagarkar v. Union of India and others*, AIR 1999 Supreme Court 2881. But the grievance of the Union of India is that the case of the 1st respondent would not fall within the parameters of the decisions of the Supreme Court in *K.K. Dhawan's* case and *Nagarkar's* case. According to the writ petitioners, the charges did not revolve around the decision rendered by the 1st respondent as a quasi-judicial authority, but they revolved around the manner in which he proceeded to dispose of the statutory appeal of a particular assessee, exhibiting his ulterior motives.

7. Mr. C.V. Mohan Reddy, learned senior counsel appearing for the 1st respondent submitted that this is a clear case of victimisation of the 1st respondent for extraneous reasons. According to the learned senior counsel, the 1st respondent disposed of more than about 500 appeals during the relevant period of time. The petitioners could pick up only one out of those 500 appeals to fix the 1st

respondent and to deprive him of promotion to the next higher post that he was legitimately entitled to. It is also contended by Mr. C.V. Mohan Reddy, learned senior counsel for the 1st respondent that the case of the 1st respondent would not fall under any of the mischiefs listed in para 28 of the decision in K.K. Dhawan's case.

8. It is also contended by Mr. C.V. Mohan Reddy, learned senior counsel that the order passed by the 1st respondent on the appeal filed by the assessee, was also confirmed by the Income Tax Appellate Tribunal, showing thereby that the 1st respondent cannot be accused of showing any undue favour to the Assessee. In so far as the charge relating to the failure of the 1st respondent to provide an opportunity to the Assessing Officer with regard to the additional evidence produced by the Assessee is concerned, it is contended by the learned senior counsel that the First Appellate Authority had powers to independently examine the records relating to assessment and that the question of lack of opportunity to the Assessing Officer did not arise at all.

9. We have carefully considered the above submissions. It is interesting to note that both sides rely only upon the very same decisions of the Supreme Court viz., K.K. Dhawan and Nagarkar.

10. Since the propositions laid down in Nagarkar, reiterated the principles laid down in K.K. Dhawan, it is sufficient to extract the relevant portion of the paragraphs 28 and 29 of the decision in K.K. Dhawan, which read as follows:

"....Certainly, therefore, the officer who exercises judicial or quasi-judicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases:

- (i) where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
- (ii) if there is prima facie material to show recklessness or misconduct in the discharge of his duty;
- (iii) if he has acted in a manner which is unbecoming of a Government servant;
- (iv) if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi) if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago "though the bribe may be small, yet the fault is great".

11. The case of the 1st respondent may not fall within clauses (ii), (iv) or (vi) of paragraph 28 of the decision in K.K. Dhawan. The Union of India contend that the charges framed against the 1st respondent may fall within the clauses (i), (iii) and (v).

12. To test whether the Articles of Charges against the 1st respondent would fall within any one or more of the above clauses, it is necessary to have a look at some portions of Annexure-II to the Charge Memorandum dated 31-12-2014. It is needless to state that Annexure-II to the charge memorandum contains the imputations of the misconduct. The Articles of charges contained in Annexure-I to the charge memorandum cannot be read in isolation, but have to be read in the context of the statement of imputations contained in Annexure-II.

13. It is sufficient for us to extract only very limited portions of Annexure-II to the charge memorandum.

"1. Dr. U. Devi Prasad, while functioning as CIT (A)-V, Hyderabad, passed the appellate order in the case of Shri L. Madhusudan Rao for the assessment year 2011-12 in ITA. No. 0427/ DDIT (Intl. Tax)-1/CIT(A)-V/2013/14 on 30.05.2014. The appeal was stated to have been filed on 31.03.2014 which was a Monday and a Closed Holiday on account of Ugadhi (Telugu New Year Day). However, the CBDT issued an Order under Section 119 (1) of the Income Tax Act, 1961 on 24.03.2014, directing the "field Income Tax Offices" throughout India to remain open and the "receipt counters" to work during normal office hours on 29th 30th and 31st of March, 2014 (i.e. Saturday, Sunday and Monday). The Board also instructed that special arrangements may also be made by way of opening "additional receipt counters", wherever required on 29th, 30th & 31st March, 2014 to facilitate filing of return of income and other related work of tax payers. Though the Board has issued the aforesaid direction/instruction for the purpose of administrative convenience, it cannot be treated that the holidays on 29th, 30th & 31st March, 2014 were converted into "working days" for all the offices.....

2..... But, it is claimed by Dr. U. Devi Prasad that he came to the office on 31.03.2014 to see that his office was functioning on that day. He has also certified that his office functioned on 31.03.2014 and an appeal in the case of Shri L. Madhusudan Rao for the assessment year 2011-12 was filed by the assessee and the same was received by Shri S. Srinivas, Sr. P.S., but not by the Sr. T.A. or O.S. of his office. It is ascertained that Dr. U. Devi Prasad had availed permission to leave the Headquarters from the evening of 28.03.2014 to the morning of 01.04.2014 and in such circumstances, he could not have visited the Income-tax Office on 31.03.2014. Further, there was no entry in the visitors

register on 31.03.2014 for the entry gained either by Shri Srinivas, Sr. P.S. or the assessee or his representative into the office of the Income Tax Department which clearly shows that the appeal could not have been filed/ received on 31.03.2014....."

"3.An analysis of the meta data of the hard disk of the computers used in the office of Dr. U. Devi Prasad revealed that the appellate order passed in the case of Shri L. Madhusudan Rao for the assessment year 2011-12 was found to be transferred from a pen drive into the computer of the P.S. Shri S. Srinivas on 24th June, 2014 at 10.54.40 a.m. Therefore, the appellate order shown as passed on 30.05.2014 could not have been passed either on 30.05.2014 or before 24.06.2014. This makes it clear that the date of the order as mentioned in the appellate order was actually ante-dated as 30.05.2014. Further, the order was not prepared in the O/o the CIT (A)-V, Hyderabad, but has been brought from outside in pen-drive and copied into the computer of the P.S. and issued. But, the record is maintained in such a way that as if the appellate order was dictated by Dr. U. Devi Prasad by affixing a stamp in the order sheet bearing the words "As dictated the appellate order is typed and put up within seven working days from the date of last hearing". This stamp has been affixed by Sr. P.S. with his signature and the same is endorsed by CIT (A). However, the Sr. P.S. has affirmed in his statement that the appellate order was not dictated by the CIT (A), instead the same was given to him in a pen drive by the CIT (A) for the purpose of preparing a hard copy of the appellate order and submitting the same to the CIT(A). Thus, the appellate order obtained by the CIT (A) from an outsider in a pen drive is migrated into the computer of Sr. P.S. and converted into hard copy. This is in violation of the DGIT(V)'s direction in F.No.DGIT (Vig.) (Admn.)/ Misc.Corr./2010- 11/58(P)/IV?1986 dated 14.07.2014 which forbids outsourcing of assessment or appeal work to outsiders."

4. As per the provisions of Section 250 (7) of the I.T. Act, 1961, on disposal of the appeal, the CIT (A) shall communicate the order passed by him to the assessee and to the Chief Commissioner and Commissioner. This is a statutory requirement. However, the appellate order shown to have been passed on 30.05.2014 in the case of Shri L. Madhusudan Rao for the assessment year 2011-12 was not communicated to the DGIT (IT), New Delhi and DIT (IT & TP), Hyderabad. In fact, the Assessing Officer was not even aware of the appeal proceedings and came to know of the appellate order only when informed by the assessee during the course of enforcement of the collection of demand raised in the assessment order. Considering the issue involved and the magnitude of demand raised in this case, the Assessing Officer has, vide letter dated 10.07.2014, requested the CIT(A)-V Dr. U. Devi Prasad for an opportunity of being heard and he has informed that hitherto no intimation of the hearing was received by him in the form of statutory Form No. ITNS 35 which has to be sent by the CIT(A) to the Assessing Officer against whose order the appeal is filed. Besides, the DIT (IT&TP) has also written a letter on 30.07.2014 to Dr. U. Devi Prasad wherein he had observed that the Assessing Officer was not in receipt of

Form 35 (appeal papers and grounds of appeal filed by the assessee). The facts narrated above clearly show that both the Assessing Officer as well as the DIT (IT& TP) was in dark about the appeal filed by the assessee and the disposal of the same by Dr. U. Devi Prasad. And it was only on 8.8.2014 that the Sr. PS to CIT(A)-V forwarded a copy of Form No.35, grounds of appeal and other papers filed before the CIT(A)-V to the DIT (IT & TP) i.e. more than two months after the date of appellate order shown as passed on 30.05.2014."

14. The statement of imputations of misconduct contained in Annexure-II to the charge memorandum, portions of which we have extracted above, are sufficient to come to a conclusion that the case of the 1st respondent can be brought within the ambit of (i) acting in a manner reflecting upon the reputation for integrity or good faith or devotion to duty; (ii) acting in a manner unbecoming of a Government servant; and (iii) acting in a manner so as to unduly favour of a party. But unfortunately, the Tribunal simply extracted the Articles of charges contained in Annexure-I to the charge memo. The Articles of charges are framed like theorems and the same alone are not sufficient to come to a conclusion as to whether the 1st respondent is liable to face the enquiry or not.

15. The Supreme Court has cautioned time and again that once a charge memorandum is quashed, a person is let off without even an enquiry. But if a charge memo is not quashed, the maximum damage that is done to an officer is to compel him to face an enquiry and come out clean in a test of fire. In the light of the imputations of misconduct alleged against the 1st respondent, we are of the considered view that however valid and good defence he may have to the charge memo, he is liable to face the enquiry. The Tribunal faulted in quashing the charge memo at the threshold without properly appreciating the imputations of misconduct. Therefore, we are of the considered view that the order of the Tribunal quashing the charge memo is liable to be set aside.

16. Once the order of the Tribunal quashing the charge memorandum is set aside, the order of the Tribunal directing the re-inclusion of the name of the 1st respondent in the panel for promotion to the post of Principal Commissioner of Income Tax should also go. The only reason why the name of the 1st respondent was deleted from the panel for promotion was the issue of the charge memo. The only ground on which the Tribunal granted the relief of promotion to the 1st respondent was the setting aside of the charge memo. Therefore, the order in the next writ petition should naturally follow the order in the first writ petition.

17. Accordingly, both the writ petitions are allowed and the orders of the Tribunal are set aside. However, the petitioners are directed to complete the enquiry within a period of three (3) months so that the issue does not linger longer.

18. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.