

(2014) 08 DEL CK 0264

In the Delhi High Court

Case No : W.P. (C) 5113/2014 & CM No. 10192/2014

Union of India

APPELLANT

Vs

S. Rajguru

RESPONDENT

Date of Decision : 13-08-2014

Acts Referred:

Constitution of India, 1950 — Article 235
Income Tax Act, 1961 — Section 145(3)

Citation : (2014) 08 DEL CK 0264

Hon'ble Judges : Vibhu Bakhru, J;S. Ravindra Bhat, J

Bench : Division Bench

Advocate : R.V. Sinha, Advocate for the Appellant; P.P. Khurana, Sr. Advocate and Rajesh Singh Chauhan, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Vibhu Bakhru, J.

CAV No.672/2014

The respondent has entered appearance. Caveat stands discharged.

W.P.(C) 5113/2014 & CM No.10192/2014

1. The present petition impugns the order dated 01.02.2013 passed by the Central Administrative Tribunal, Principal Bench, New Delhi, in O.A. No.2815/2012, setting aside the Charge Memorandum dated 26.04.2012. The said order is hereinafter referred to as the "impugned order".

2. Briefly stated the relevant facts are as under:-

3. The respondent was working as a Commissioner of Income Tax (Appeals) (in short "CIT(Appeals)") at Cochin from November 2005 to February 2007. The Central Board of Direct Taxes (in short "CBDT") received a Secret Note from Sh. B. Ravi Balan, the reporting officer of the respondent from June to October, 2005, stating that the respondent in his capacity as CIT (Appeals), had allowed

certain appeals without properly appreciating the facts or going through the records. Shri Balan had noted that this "gives birth to strong suspicion with regard to his integrity, however there is no specific evidence in this regard". Shri Balan retired in October 2005 and the ACR of the respondent was written in November 2005. It was asserted that the same was not reviewed. Further, in the latter part of the said year (November 2005 to March 2006) the reporting officer, as well as the reviewing officer, did not record any adverse comment in the respondent's ACR.

4. By letter dated 06.05.2010, a copy of the said Secret Note was forwarded for examination to Director of Income Tax (Vigilance), who in the reports dated 03.01.2012 and 18.01.2012 stated that out of nineteen appellate orders passed by the respondent and inspected by him, irregularities were noticed in six appellate orders.

5. By a letter dated 02.02.2012, the respondent was asked to provide explanation in respect of the orders passed in six appeals in which irregularities were noticed. The respondent, by his letter dated 01.03.2012 replied to the said letter dated 02.02.2012, providing explanations in respect of six appellate orders passed by him and requested for closing of the matter. The DIT (Vigilance) examined the reply of the respondent and submitted his reports dated 06.03.2012 and 15.03.2012, stating that the explanations provided by the respondent were unconvincing in respect of four appellate orders.

6. Thereafter, on 26.04.2012 - just four days prior to the date of superannuation of the respondent - a Charge Memorandum was issued formulating four Articles of Charge against the respondent. The said four Articles of Charge are as follows:

"ARTICLE-I

Shri S. Rajguru, while functioning as Commissioner of Income Tax (Appeals)-II, Kochi, committed irregularity in the appeal order passed by him on 01.09.2005 in the case of M/s. Bhageeratha Engineering Ltd. (Block Period 01.04.1996 to 09.10.2002) by deleting additions which had been made by the assessing officer without proper verification of the facts and examination of records.

By his aforesaid act, Shri S. Rajguru failed to maintain devotion to duty and thereby contravened the provisions of Rule 3(1)(ii) of the CSS (Conduct) Rules, 1964.

ARTICLE-II

Shri S. Rajguru, while functioning as Commissioner of Income Tax (Appeals)-II, Kochi committed irregularity in the appeal order passed by him on 25.08.2005 in the case of M/s. Skyline Builders (AY 2002-03) by allowing the assessee's appeal in disregard of the provisions of section 145(3) of the I.T. Act, 1961.

By his aforesaid act, Shri S. Rajguru failed to maintain devotion to duty and thereby contravened the provisions of Rule 3(1)(ii) of the CCS (Conduct) Rules,

1964.

ARTICLE-III

Shri S. Rajguru, while functioning as Commissioner of Income Tax (Appeals)-II, Kochi committed irregularity in the appeal order passed by him on 23.08.2005 in the case of Shri M.M. Rasheed (Block Period- 01.04.1989 to 17.09.1998) by deleting additions which had been made by the assessing officer without proper verification of the facts and examination of records.

By his aforesaid act, Shri S. Rajguru failed to maintain devotion to duty and thereby contravened the provisions of Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964.

ARTICLE-IV

Shri S. Rajguru, while functioning as Commissioner of Income Tax (Appeals)-II, Kochi committed irregularity in the appeal order passed by him on 01.09.2005 in the case of Shri Jose Cyriac (Block Period- 01.04.1989 to 23.09.1998) by allowing the assessee's appeal in disregard of the directions given by the Income Tax Appellate Tribunal (ITAT) in its order dtd. 30.07.2003.

By his aforesaid act, Shri S. Rajguru failed to maintain devotion to duty and thereby contravened the provisions of Rule 3(1)(ii) of the CCS (Conduct) Rules, 1964."

7. The respondent submitted his written statement of defense dated 07.05.2012, requesting for a personal hearing and for the charges leveled to be dropped. Thereafter, on 19.06.2012, the respondent sent another letter requesting for release of his retirement benefits. Since, the said requests of the respondent were not accepted, he filed an application with the Central Administrative Tribunal (in short "the Tribunal"). The Tribunal considered the contention of the parties and framed the following questions for its consideration:-

"14. The controversies for our consideration and determination are:

(i) Whether the applicant has been charged on the decision taken by him as a quasi-judicial authority while discharging quasi-judicial functions and whether the issue of Charge Memo is legally sustainable?

(ii) Whether there are procedural infirmities in issuing the impugned charge memo against the applicant? (iii) Can the ground of delay be justified to quash and set aside the charge memo?"

8. With respect to the first question, the Tribunal examined the Articles of Charge and held that they imputed that the respondent had committed certain errors of law or mistakes and in such cases, treating the same as misconduct was not warranted. The Tribunal further observed that in absence of any malafide intention and with no allegation of dishonest action, the decisions taken by the respondent could not be considered as lack of devotion to duty.

9. The Tribunal referred to the decision of the Supreme Court in *Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others*, and held that since a CIT (Appeals) functions as a quasi-judicial authority and discharges quasi-judicial functions, in absence of any allegation of malafide motive, arbitrary action or any question with respect to the integrity, the respondent was not liable to disciplinary action. The Tribunal was persuaded by the decision of the Supreme Court in the case of *Nagarkar (supra)*, wherein it was reiterated that quasi-judicial authorities are to function independently, without fear or favour. The fear of facing a disciplinary action, in the event a decision goes against the Government, cannot be permitted to be instilled in the minds of quasi-judicial authorities. In the present case, since the misconduct alleged was in respect of an action of a quasi-judicial nature, the Tribunal held that an error in delivering a decision could not form the basis of alleging misconduct and initiating disciplinary proceedings.

10. With respect to the second question, the Tribunal held that there were procedural infirmities because the initiation of disciplinary proceedings and the issue of charge memo against the respondent had been done at one go. The Tribunal held that this procedure was not in conformity with the procedure prescribed which envisaged that the disciplinary authority had to decide as to whether a disciplinary action was called for and, once such decision had been taken, the disciplinary authority had to consult an independent agency like CVC to seek independent advice. It is only after the independent agency agreed with the disciplinary authority that charges could be framed against the delinquent official. The Tribunal observed that the procedure prescribed was to ensure proper application of mind by the disciplinary authority. The inputs that come between the first and second stage of the decision making process would be a guide to the disciplinary authority to take an informed decision in the matter. Since in this case this procedure had been truncated, the Tribunal found, that there was a procedural infraction, which in the given circumstances, had worked to the detriment of the respondent. It was further observed by the Tribunal that the charge memo had originated from a secret note given by the reporting officer, raising doubts as to the applicant's integrity. In this respect also the prescribed procedure was not adopted. A secret note is required to be properly inquired into, after which the Government servant is to be given an opportunity to defend himself and only thereafter, a proper decision is to be taken by the competent authority on such secret note and whether the same should be kept in the ACR of the employee. In the present case, no such inquiry had been conducted and the respondent had no opportunity to respond to the secret note before it was placed in his ACR.

11. With regard to the third issue as to whether there was delay in initiation of the proceedings, the Tribunal found that there was no delay and the authorities had acted, once the note had been forwarded, in the shortest possible period.

12. The learned counsel for the petitioner argued that the Tribunal had erred grossly in relying on the decision in *Nagarkar (supra)* as the said case had not

correctly appreciated a decision by a larger Bench of the Supreme Court in the case of Union of India and Others Vs. K.K. Dhawan, . The learned counsel for the petitioner referred to the decision in the case of Union of India v. Duli Chand: (2006) 5 SCC 680, wherein the Supreme Court had held that the decision in Nagarkar's (supra) does not correctly represent the law and the view expressed in K.K. Dhawan (supra) would prevail.

13. The learned counsel for the petitioner submitted that even though in the present case, there was no allegation that the respondent had acted in a manner which reflected on his integrity or that the respondent had shown any undue favour to the assesseees in the four cases in respect of which misconduct had been alleged, nonetheless, a lack of devotion to duty was sufficient ground for alleging misconduct. In the present case, it was alleged that the respondent had shown a lack of devotion to duty and, accordingly, disciplinary proceedings against the respondent could not be faulted.

14. The learned counsel for the respondent stated that even in cases, such as Inspector Prem Chand Vs. Govt. of N.C.T. of Delhi and Others, as well as Ramesh Chander Singh Vs. High Court of Allahabad and Another, , which were decided subsequent to the decision in the case of Duli Chand (supra), the Supreme Court had referred to the decision in the case of Nagarkar (supra) with approval. In the case of Ramesh Chander Singh (supra), the Supreme Court after referring to the case of Nagarkar (supra) held that if the court were to initiate disciplinary proceedings based on a judicial order they should have been strong ground to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality.

15. We have heard the learned counsel for the parties.

16. The short question that arises for consideration is whether in the facts of the present case, the Tribunal had erred in holding that the Articles of Charge were not sustainable since they were based on quasi-judicial orders passed by the respondent in his capacity as CIT (Appeals).

17. The Tribunal, after examining the facts and allegations, came to the conclusion that as there were no allegations that the respondent had acted malafide or for extraneous considerations, the allegations leveled only on the basis of the merits of the decisions rendered by the respondent in his capacity as CIT (Appeals), could not be sustained.

18. In the facts and circumstances of the present case, the question whether the decision rendered by the Supreme Court in Nagarkar (supra) was at variance with the law stated by the Supreme Court in K.K. Dhawan (supra) is not relevant because even if the tests as laid down by the Supreme Court in K.K. Dhawan (supra) are applied, the facts of the present case clearly indicate that disciplinary proceedings against the respondent are not maintainable. In the case of K.K. Dhawan (supra), the Supreme Court held as under:-

"28. 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 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."

19. In K.K. Dhawan (supra), the Article of Charge framed against the employee mentioned that he had completed certain assessments "(i) in an irregular manner, (ii) in undue haste, and (iii) apparently, with a view to confer undue favour upon the assessee concerned". The Supreme Court had emphasised the allegation of undue favour upon the assessee concerned, and held that an 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 Court held that the employee, even though acting in a quasi-judicial capacity, would be subject to proceedings for misconduct. It was explained by the Supreme Court that it is not the correctness or legality of the decision that was being examined but the conduct of the employee in discharge of his duty as an officer.

20. In the present case, a plain reading of the Articles of Charge as well as the statement of imputations clearly indicate that the sole basis for making the charges is the correctness of the decisions rendered by the respondent while he was acting as CIT (Appeals).

21. The first Article of Charge relates to the decision rendered by the respondent in the case of M/s Bhagirath Engineering Ltd. In that case, the Assessing Officer had framed an assessment order whereby certain unaccounted payments had

been added to the income of the assessee. A sum of Rs. 14,78,500/- which was seized from one Anoop Kumar Shah was also added as unexplained income. Sh. Anoop Kumar Shah stated that he had received the income from the vice president of the assessee company and on the basis of this statement, the said income was brought to tax. The respondent held that the additions made by the Assessing Officer on the basis of notings and seized papers was without confronting the directors and managers and accountant of the assessee company. Similarly, the cash seized, which was held to be unaccounted money of the company, was brought to tax without recording any statement of the assessee company's directors, accountant or the cashier. It is alleged, in the statement of imputations, that the respondent did not take into account the statement of Sh. Anoop Kumar Shah while deleting the additions made by the Assessing Officer. Apart from this statement, there is no other indication why the charge (that the respondent had acted without devotion of duty) had been levelled. A bare perusal of this charge indicates that it is entirely based on the decisions rendered by the respondent, which might disclose that he was incautious in his appreciation of the case or at worst were erroneous. There is, however, no other material to indicate that the respondent's conduct was either reckless or that he had acted in a malafide manner or for any extraneous consideration. The allegation remains that the respondent had committed an irregularity in the appeal order passed in that case by deleting the additions which had been made by the Assessing Officer. It is important to note that the respondent had provided reasons for why he had arrived at the decision that the Assessing Officer was in error in making the additions. It is apparent that the first Article of Charge is based purely on the merits of the decision and not the manner in which the respondent had acted.

22. The second Article of Charge relates to a decision whereby the respondent had set aside the assessment made by the Assessing Officer. The AO had rejected the books of accounts of the assessee on the basis that correct profits could not be deduced from those books of accounts and had proceeded to estimate the income of the assessee concerned. The respondent had held that an AO did not have the power to reject the books of accounts of an assessee u/s 145(3) of the Income Tax Act, 1961. On an appeal by the Revenue, the Income Tax Appellate Tribunal had held that the interpretation given by the respondent to the provisions of Section 145(3) of the Act was not correct. It is on this basis, that a charge has been made that respondent acted against the provisions of law. This, at worst, is a case where the respondent committed an error of law. An error of law cannot form the basis of subjecting a quasi-judicial authority to disciplinary proceedings. As held in *K.K. Dhawan (supra)*, it is not the decision rendered by a quasi-judicial authority which is to be tested but the manner in which he had acted. In the case on hand, there is no allegation that there were any attendant features that would indicate that the respondent had acted on extraneous considerations, recklessly or in a manner so as to favour the assessee.

23. The third Article of Charge is based on a decision rendered by the respondent in respect of an assessee where certain income had been brought to tax. The assessee's case was that the additions made by the AO had already been considered in the assessment of the assessee's wife. The respondent accepted the said contention and deleted the additions in income made by the AO. Some of these deletions made by the respondent were reversed in appeal by the Income Tax Appellate Tribunal. It has been alleged that the respondent had deleted the additions made, without proper verification of the facts and the examination of the records. In essence, the allegation is that the respondent had committed an error in fact, by accepting the statement canvassed by the assessee, that the income that was being assessed in his hands had already been assessed in the hands of his wife. It is important to note that the proceedings before the CIT (Appeals) are adversarial proceedings where an assessee asserts a set of facts and/or urges propositions of law; the AO defends the assessment order by controverting the same. It is contended by the respondent that the assessee had produced the assessment orders of his wife and asserted that certain additions that were made in the hands of the assessee had already been made in the hands of his wife. It does not appear that the AO had refuted this contention. The allegation against the respondent is that he did not verify the facts from the assessment records of the wife of the assessee. This too, at worst, is an error of fact. Out of the large number of deletions made by the respondent, some of them were rejected by the Tribunal. The allegations also do not indicate that the respondent lacked devotion to duty or had acted with an ulterior motive. The charge, essentially, is that he had committed an error while rendering his decision as a CIT (Appeals). As pointed out earlier, a mere error of fact or a law cannot be a basis of commencing proceedings against a quasi-judicial authority.

24. The fourth Article of Charge relates to yet another order rendered by the respondent, where he permitted the assessee to take a new ground in appeal. This ground was that no search warrant was issued in the name of the assessee before the block assessment proceedings were initiated and accordingly, those proceedings were invalid. This ground was upheld by the respondent and he set aside the assessment order on the basis that a search warrant had not been issued in the name of the assessee. The Revenue filed an appeal before the Income Tax Appellate Tribunal, which held that the respondent was wrong in allowing the assessee to take a fresh ground for the first time in appellate proceedings. It has been asserted by the respondent that the Tribunal had not given a finding as to whether initiation of assessment proceedings against the assessee without a search warrant in his name was valid. The only limited question, on which the order made by the respondent was set aside was that he was wrong in admitting a new ground. This case too does not indicate that the respondent had acted recklessly, malafidely or with ulterior motives. There is no allegation that the conduct of the respondent was unbecoming of an officer. The charge made against the respondent is only on the basis of a decision which, according to the Revenue, was erroneous.

25. It can be seen from the above that the gravamen of the charges levelled against the respondent are not based on his conduct. Although it has been alleged that certain decisions rendered indicate a lack of devotion to duty, but a bare perusal of the statement of imputation and the Articles of Charge indicate that the gravamen of the charges is only that the respondent had rendered decisions which, according to the Revenue, were erroneous. This is certainly not the basis on which the proceedings for misconduct can be commenced against an officer who is charged with a quasi-judicial function. In K.K. Dhawan's case (supra) there was a specific allegation that the Officer had completed the assessment "apparently with a view to confer to undue favour upon the assessee's concern". The test laid down by the Supreme Court in that case must be read in the context of the facts placed before the Court. Although, the Court had held that where an officer had acted in a manner which would reflect upon his reputation for integrity or good faith or devotion to duty, a disciplinary action could be initiated. However, an act of an Officer which would reflect on his devotion to duty must be read in the context of his conduct and not the correctness of the decisions rendered by him in a multi-tiered appellate structure. The conduct of an officer must be alleged to be one, which reflects recklessness or complete disregard for the function that he is performing. Mere erroneous decisions on account of a mistake of law or facts, cannot be the basis of commencing proceedings for misconduct.

26. The decision in the case of K.K. Dhawan (supra) cannot be read to mean that misconduct proceedings can be commenced, alleging lack of devotion of duty, in cases where the decisions rendered by quasi-judicial authority are alleged to be erroneous. There has to be something more than mere allegation of erroneous decisions to charge an employee for misconduct; the conduct of an employee must be alleged to be reckless or for motives. In absence of such imputations, a charge made solely on the basis of a decision rendered by a quasi-judicial authority would not be sustainable.

27. The decision in the case of Nagarkar (supra) and in K.K. Dhawan (supra) are not at variance in the above respect and a wrong or erroneous exercise of jurisdiction by a quasi-judicial authority or a mistake of law or an error in facts or law, cannot form the basis of initiating disciplinary proceedings.

28. The petitioner's contention that the tribunal erred in relying on the statement of law in Nagarkar (supra) as the law stated by the Supreme Court in that case is no longer good law, also cannot be accepted. In the case of Ramesh Chander Singh (supra) a Bench of three Judges of Supreme Court referred to the decision in the case of Nagarkar (supra) and held as under:-

"17. In Zunjarrao Bhikaji Nagarkar Vs. U.O.I. and Others, this Court held that wrong exercise of jurisdiction by a quasi-judicial authority or mistake of law or wrong interpretation of law cannot be the basis for initiating disciplinary proceeding. Of course, if the judicial officer conducted in a manner as would reflect on his reputation or integrity or good faith or there is a prima facie

material to show recklessness or misconduct in discharge of his duties or he had acted in a manner to unduly favour a party or had passed an order actuated by corrupt motive, the High Court by virtue of its power under Article 235 of the Constitution may exercise its supervisory jurisdiction. Nevertheless, under such circumstances it should be kept in mind that the Judges at all levels have to administer justice without fear or favour. Fearlessness and maintenance of judicial independence are very essential for an efficacious judicial system. Making adverse comments against subordinate judicial officers and subjecting them to severe disciplinary proceedings would ultimately harm the judicial system at the grassroot level."

29. It is relevant to note that the decision in Ramesh Chand Singh (supra) was delivered by a bench of three judges on 26.02.2007, is subsequent to the decision rendered by the Supreme Court in Duli Chand (supra).

30. It is also necessary to bear in mind that a CIT (Appeals), essentially has to decide the cases based on the contentions canvassed before him. Proceedings before a CIT (Appeals) are adversarial proceedings and are bound to be decided in favour of one or the other party. It is necessary to ensure that a CIT (Appeals) or any other quasi-judicial authority is not put under any pressure in discharging his functions. The idea that the Government could commence disciplinary proceedings if, the decisions were rendered against the department, would be pernicious to the effectiveness of the role that is required to be performed by the CIT (Appeals).

31. We concur with the reasoning of the Tribunal that a quasi-judicial authority is to act without fear and levelling charges which are based solely on the decisions rendered by the quasi-judicial authority would certainly instill fear in the minds of the officers and, thus, cannot be permitted.

32. In view of the foregoing, we find no reason to interfere with the decision of the Tribunal. This petition and the application are, accordingly, dismissed. The parties are left to bear their own costs.