
(2005) 01 MAD CK 0113

In the Madras High Court

Case No : Writ Petition No. 20986 of 2004 and W.P.M.P. No. 25266 of 2004 and W.V.M.P. No. 2041 of 2004

Union of India (UOI) and Another

APPELLANT

Vs

Central Administrative Tribunal and Another

RESPONDENT

Date of Decision : 18-01-2005

Acts Referred:

Citation : (2005) 106 FLR 273 : (2005) 2 LLJ 307

Hon'ble Judges : S.K. Krishnan, J;P. Sathasivam, J

Bench : Division Bench

Advocate : C.L. Srilekha, for M.T. Arunan, ACGSC, for the Appellant; Vijay Narayan, for R. Parthibhan, for the Respondent

Final Decision : Dismissed

Judgement

P. Sathasivam, J.—By consent of all the parties writ petition itself is taken up for disposal. Aggrieved by the order of Central Administrative Tribunal, Chennai Bench/first respondent herein dated September 24, 2003 made in O.A.No. 447 of 2003, allowing the said application by quashing the Memorandum dated October 8/10, 2002, and reinstating them from conducting departmental enquiry, Commissioner of Income Tax-VIII, Chennai-34 has filed the above writ petition praying to quash the same on various grounds.

2. The brief facts which are required for the disposal of the writ petition are stated hereunder:

The second respondent herein was working as Income Tax Officer in the Government of India. On January 29, 1985 there was a raid on the applicant and on the basis of subsequent proceedings, criminal action was initiated on April 25, 1988 and the same was taken on file of the 9th Additional Sessions Judge as C.C.No. 6 of 1988 and subsequently the proceedings were transferred to the Court of Special Judge for C.B.I. cases and registered as C.C.No. 19 of 1997. On October 26, 1992, the Department also initiated disciplinary proceedings by

framing four Articles of charges. It is the case of the 2nd respondent/applicant that the charges as contained in the charge memo are identical to the charges framed against him in the criminal proceedings. He challenged the said charge memo by filing O.A.No. 946 of 1993 however, the same was dismissed on October 26, 1993. Thereafter, the second respondent filed another petition before the Central Administrative Tribunal in O.A.No. 778 of 1994 and one of the grounds taken in that case was that in view of the initiation of the criminal proceedings, departmental proceedings could not be continued. By order dated August 5, 1996, the Tribunal has rejected the request of the applicant/2nd respondent herein for staying the departmental proceedings till the disposal of the criminal case in respect of Articles 2, 3, and 4 of the charge memo dated October 26, 1992. However, as far as Article 1 is concerned, the petitioners herein were directed to restrain from holding an enquiry till the disposal of the criminal case. It is the case of the second respondent that though the petitioners were restrained from holding enquiry in respect of Article 1 of the charges, the department did not hold any enquiry in respect of charges 2, 3 and 4.

3. On April 24, 2002, the second respondent was acquitted in the criminal case by the Special Principal Sessions Judge for C.B.I. cases. In spite of this acquittal, by proceedings dated October 8/10, 2002, the second petitioner who claimed to be the disciplinary authority appointed an enquiry Officer to enquiry into the charges. Immediately on October 16, 2002 the second respondent made a representation stating that he had been acquitted of the charges by the Criminal Court and, therefore, the departmental enquiry should be dropped. This representation was not considered by the petitioners and the enquiry officer intimated that the enquiry would be posted on January 20, 2003. The second respondent made another representation on January 4, 2003 for stay of the enquiry, but this was rejected on January 24, 2003. The enquiry was fixed on January 24, 2003. A further representation was made by the second respondent on April 9, 2003. On April 21, 2003 the charge was read over to the second respondent and thereafter the enquiry was postponed and has been fixed on May 29, 2003. At this stage, the second respondent approached the Tribunal by way of O.A.No. 447 of 2003 praying to set aside the order of the Commissioner of Income Tax dated October 8, 2002 and forebear them from conducting any departmental enquiry against the applicant. The Tribunal by the impugned order dated September 24, 2003, after, considering the claim of both parties, quashed the Memo dated October 8/10, 2002 and restrained the petitioners from conducting departmental enquiry against which, the present writ petition has been filed.

4. Heard Ms.C.L. Srilekha, learned counsel for the petitioners and Mr. Vijay Narayan, learned senior counsel for second respondent.

5. Learned counsel appearing for the petitioners, after taking us through the Memorandum dated October 8/10, 2002 and the impugned order of the Tribunal dated September 24, 2003, would contend that there was no delay on the part of

the department and that the Tribunal has committed an error in quashing the Memorandum dated October 8/10, 2002 on the ground of delay. She further contended that the applicant's representation dated October 16, 2002 has been considered and rejected; hence the contrary conclusion arrived at by the Tribunal cannot be sustained. On the other hand, Mr. Vijay Narayan, learned senior counsel appearing for the second respondent, would submit that even though the Tribunal has not stayed the departmental proceedings in respect of Articles 2, 3 and 4 of the charge memorandum dated October 26, 1992, till the disposal of the criminal case in C.C.No. 6 of 1988, the fact remains that the department has not taken any effective steps in respect of charges 2, 3 and 4. According to him, the unexplained and inordinate delay constitute denial of reasonable opportunity to the second respondent to defend himself and that would amount to violation of principles of natural justice. He also contended that the representation dated October 16, 2002 made by the second respondent has not at all been considered and the reference made by the department relates to representation dated January 4, 2003 in which the applicant has prayed for stay of the enquiry. According to him, inasmuch as the case of the 2nd respondent, as mentioned in his representation dated October 16, 2002, has not at all been considered, the Tribunal is justified in quashing the Memorandum dated October 8/10, 2002.

6. We have (sic) carefully considered the rival submissions.

7. It is not in dispute that when the second respondent herein was working as Income Tax Officer on January 29, 1985, there was a raid on that basis, criminal proceedings were initiated against him and ultimately the same was registered before the Sessions Judge as C.C.No. 6 of 1988 and subsequently transferred to Special Judge for C.B.I. cases as C.C.No. 19 of 1997. On October 26, 1992, disciplinary proceedings were initiated by the department by framing four Articles of charges. Though the applicant filed O.A.No. 770 of 1994, stating that in view of initiation of the criminal proceedings, departmental proceedings could not be continued, the same was disposed of by an order dated August 5, 1996 holding that as far as Articles 2, 3 and 4 of the charges continued in the Memorandum dated October 26, 1992 are concerned, the application is rejected and as far as Article 1 is concerned, the department was restrained from holding an enquiry till the disposal of the criminal case. As already pointed out, though the department was permitted to proceed with the departmental enquiry in respect of Articles 2, 3 and 4 of the charges, no inquiry was held. Ultimately, the applicant/2nd respondent was acquitted in the criminal case by the learned Special Principal Sessions Judge for C.B.I. cases by judgment dated April 24, 2002. It is the grievance of the second respondent that in spite of the acquittal, the petitioners issued an order dated October 8/10, 2002 and appointed one Lakshmanan, Deputy Commissioner, Income Tax as the enquiring authority to enquire into the charges. At this stage, the second respondent on October 16, 2002 made a representation highlighting that since he had been acquitted of the charges by the Criminal Court, the departmental enquiry itself should be dropped by pointing out various judicial decisions. The second respondent has also submitted another

representation on January 4, 2003 for staying the enquiry which was rejected on January 24, 2003.

8. It is not in dispute regarding the power of the disciplinary authority to initiate departmental enquiry even after acquittal in the criminal case by the Criminal Court. However, what is strenuously contended by the second respondent is that after the acquittal of the criminal charges, the department and its officers should apply their mind, to the judgment of the Criminal Court and then to decide whether the departmental proceedings are to be continued or not. In this regard, Mr. Vijay Narayan very much pressed into service a decision of the Supreme Court in *Corporation of the City of Nagpur, Civil Lines, Nagpur and another Vs. Ramchandra and others*, The following conclusion is relevant at p. 8 of LLJ:

"7. The other question that remains is if the respondents are acquitted in the criminal case whether or not the departmental enquiry pending against the respondents would have to continue. This is a matter which is to be decided by the department after considering the nature of the findings given by the Criminal Court. Normally and completely exonerated of the charges it would not be expedient to continue a departmental inquiry on the very same charges or grounds or evidence, but the fact remains, however, that merely because the accused is acquitted, the power of the authority concerned to continue the departmental inquiry is not taken away nor is its direction (discretion) in any way fettered. However, as quite some time has elapsed since the departmental inquiry had started the authority concerned will take into consideration this factor in coming to the conclusion if it is really worthwhile to continue the departmental inquiry in the event of the acquittal of the respondents. If, however, the authority feels that there is sufficient evidence and good grounds to proceed with the inquiry, it can certainly do so...."

The above decision makes it clear that even after the acquittal by the Criminal Court, the power of the Authority concerned to continue the departmental enquiry is not taken away. However, before proceeding with the departmental enquiry, the authority concerned has to bear in mind whether it is really worthwhile to continue the departmental enquiry after the acquittal and if there is sufficient evidence and good grounds, the authority is free to proceed with the enquiry. At this juncture, it is relevant to refer the representation dated October 16, 2002 of the second respondent herein. In that representation (which finds a place at page 52 of the typed-set of papers filed by the second respondent), he has furnished the details regarding the occurrence said to have taken place in 1985, initiation of departmental enquiry in 1988, criminal proceedings which ended in acquittal by the Special Court deal with C.B.I. cases in 2002, family status, avocation of the family members and their income etc. It is the categorical case of the second respondent that in spite of furnishing all the relevant details in the said representation dated October 16, 2002, the authority without considering the same proceeded with the enquiry. Though before the Tribunal as well as before this Court the department put-forth a claim that the

representation of the second respondent herein has been considered and rejected, a perusal of the file produced by the department did not contain the disposal of the representation dated October 16, 2002. As rightly pointed out by Mr. Vijay Narayan, the file produced by the department only shows that rejection of stay of the departmental enquiry that is evident from the communication from the office of the Commissioner of Income Tax dated January 24, 2003 and no iota of evidence to show that they had considered his representation dated October 16, 2002. Though learned counsel appearing for the department once again reiterated the stand that they considered and disposed of the representation dated October 16, 2002 even before us, the fact remains that nothing was placed before us to substantiate their stand. In such a circumstance, in the light of the details contained in the representation dated October 16, 2002 and in the absence of any acceptable evidence that the same was considered by the department, we agree with the conclusion arrived at by Tribunal and reject the contra argument made by the learned counsel for the department.

9. With reference to the argument put-forth regarding delay in holding and concluding the enquiry, it is seen from the second respondent, a raid was conducted on November 29, 1985 when the second respondent was working as Income Tax Officer and based on the same, criminal proceedings were initiated on April 25, 1988. Subsequently the criminal case was transferred before the Special Judge for C.B.I. cases and ultimately, the case ended in acquittal by the Special Court on April 24, 2002. Meanwhile, the department initiated a departmental enquiry for which, the second respondent approached the Tribunal for stay of the departmental proceedings till the disposal of the criminal case in C.C.No. 6 of 1988. It is not in dispute that by order dated August 5, 1996 in O.A.No. 770 of 1994, the Tribunal rejected the request in respect of Articles 2, 3 and 4 of the Charge Memo dated October 26, 1992 and insofar as Article 1 is concerned, the department was directed not to hold any enquiry till the disposal of the criminal case. Even though the said order was passed as early as August 5, 1996, the fact remains that the department did not hold any proceedings in respect of Articles 2, 3 and 4 of the charges. It is also worthwhile the normal age of retirement of 58 years on January 31, 1992 and he is more than 70 years as on date. In this regard, it is relevant to refer a decision of the Supreme Court in State of Andhra Pradesh Vs. N. Radhakishan, whereinunder their Lordships have held that in considering whether delay has vitiated the disciplinary proceedings, the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. They also held that if the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. They further held that it could also be seen as to how much the disciplinary authority is serious in pursuing the charge against its employee. According to their Lordships, normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice and delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings.

They finally concluded that the Court is to balance these two diverse considerations. It is clear from the above decision that the Court has to take into consideration all the relevant factors and balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay is abnormal and there is no explanation for the delay.

10. In *B. Loganathan Vs. The Union of India and another*, one of us (P. SATHASIVAM) had an occasion to consider unexplained and inordinate delay in conducting departmental proceedings. In the said decision, after referring to various decisions of Supreme Court and other High Courts and also the decision in *State of A.P. v. N. Radhakrishnan (supra)*, after holding that unexplained and inordinate delay constitute denial of reasonable opportunity to defend himself and violate principles of natural justice, struck down the charge memo. On going through the factual details and the principles laid down, we are in entire agreement with the said decision. As said earlier, the second respondent herein was proceeded with the initiation of memorandum dated October 26, 1992 based on an incident which took place on November 29, 1985 and even after the passage of 19 years, the proceeding has not reached its finality and he continues with mental agony. All the above material aspects have been considered by the Tribunal and rightly found that the disciplinary authority was not serious in pursuing the charge against the applicant and under no circumstances can be allowed to undergo mental agony as well as monetary loss, quashed the Memorandum dated October 8/10, 2002 and restrained the department from conducting enquiry initiated by Memorandum dated October 26, 1992. We agree with the said conclusion and reject the grounds raised by the appellant (sic) as devoid of any merit. Consequently, the writ petition and the same is dismissed. No costs. Connected miscellaneous petitions are closed.