

(2006) 03 GUJ CK 0047

In the Gujarat High Court

Case No : Special Civil Application No. 360 of 2006

Union of India (UOI) and Others

APPELLANT

Vs

D.B. Gohil

RESPONDENT

Date of Decision : 29-03-2006

Acts Referred:

Administrative Tribunals Act, 1985 — Section 20(1)
Constitution of India, 1950 — Article 227

Citation : (2006) 2 GLR 1370

Hon'ble Judges : B.J. Shethna, Acting C.J.; M.C. Patel, J

Bench : Division Bench

Advocate : Mauna M. Bhatt and Manish R. Bhatt, for Petitioners 1-3, for the Appellant; Biren A. Vaishnav, for Respondent 1, for the Respondent

Final Decision : Allowed

Judgement

B.J. Shethna, Actg. C.J.

1. Rule. Learned counsel, Mr. Vaishnav waives service for respondent.
2. At the joint request of the learned counsel for the parties, this matter is taken up today itself for final disposal and disposed of by this order.
3. The respondent will hereinafter referred to as the applicant. The applicant was asked to explain certain actions taken by him as Income Tax Officer by letter dated 9.9.1997. Not satisfied with his reply, he was served with charge sheet dated 9.3.1999. The applicant denied the charges levelled in the charge sheet. Hence, Inquiry Officer was appointed, who submitted his report dated 22.11.2000 in favour of the the applicant by holding that none of the charges was found to be proved. However, the Disciplinary Authority communicated his disagreement note vide his letter dated 4.9.2002 to which the applicant submitted his exhaustive reply dated 24.9.2002. When no decision was taken at this stage, the applicant had approached the Central Administrative Tribunal (for short the Tribunal) by way of O.A. No. 236/03, which was disposed of by an

order dated 13.5.2003 by the learned Tribunal with a direction to the Disciplinary Authority to decide the same within two months. Thereafter, M.A. No. 473/03 was moved by the present petitioners, who were the respondents before the Tribunal, for extension of time till 30.9.2003, which was allowed. It was stated therein that the Disciplinary Authority has recorded his disagreement that the advice of CVC and the same was forwarded to the Directorate of Income Tax (Vigilance). Thereafter, the Disciplinary Authority by notice dated 26.9.2003, issued under Rule 15, asked to explain the position in respect of conclusions arrived in that letter to which the applicant has submitted his detailed reply dated 13.10.2003. Thereafter, the impugned order of penalty was passed. The same was challenged by the applicant by way of O.A. No. 1 of 2004 before the Tribunal on several grounds, namely, delay in issuing the charge sheet, interference by CVC etc. Before the learned Tribunal, the present petitioners-original respondents, had raised preliminary objection about the maintainability of the Original Application. Relying on Section 20(1) of the Administrative Tribunal Act, 1985 (for short the Act), it was submitted that this was not the extra-ordinary case in which the Tribunal should exercise its jurisdiction. It was submitted that when there was a statutory alternative remedy of appeal, then the Tribunal should first relegate the applicant to avail that remedy of appeal. However, over-ruling that objection, the learned Tribunal held that u/s 20(1) of the Act, it can always exercise the jurisdiction and on facts of this case, it had exercised its jurisdiction in favour of the applicant on the ground that para 6 of the circular on which reliance was placed by the Disciplinary Authority was bad in law and liable to be struck down and it had come to the conclusion that at the dictate of the CVC, the impugned order of penalty was passed, therefore, quashed and set aside the same. This impugned judgment and order dated 12.4.2005 passed by the Tribunal allowing the Original Application No. 1 of 2004 filed by the applicant, is challenged in this petition by the petitioners-Union of India and others.

4. Learned counsel, Ms.Bhatt appearing for the petitioners, vehemently submitted that in the instance case, the learned Tribunal was completely in error in exercising its jurisdiction u/s 20(1) of the Act. She submitted that it was not open to the learned Tribunal to come to the conclusion that para 6 of the impugned circular was bad and, therefore, it was liable to be struck down. She submitted that when there was statutory alternative remedy of appeal, this was not an extra-ordinary case, therefore, the Tribunal should not have exercised its jurisdiction in favour of the applicant and hence the impugned order be quashed and set aside. As against that, learned Senior Advocate, Mr. S.N.Shelat appearing with Mr. Vaishnav for the respondent relying on the judgments in cases of (i) L.K. Verma Vs. H.M.T. Ltd. and Another, and (ii) Union of India (UOI) Vs. Hasmukhbhai P. Rajada, submitted that when the learned Tribunal had exercised its jurisdiction in favour of the applicant, then this court should not interfere with such orders in its supervisory jurisdiction under Article 227 of the Constitution of India, as while passing the impugned order the learned Tribunal had not

committed any jurisdictional error which is required to be corrected by this court in its supervisory jurisdiction under Article 227 of the Constitution of India.

5. In case of Hasmukhbhai P. Rajada (*supra*), the question was altogether different. In that case, Inquiry Officer relied on the report of Preliminary Inquiry and put questions to delinquent and thereby acted as prosecutor as well as Judge, by submitting report against the delinquent. This was wholly against the principles of natural justice. Therefore, in such cases, the Tribunal was fully justified in interfering with such orders irrespective of the fact whether it was appealable or not. In case of L.K.Verma (*supra*), the facts were slightly different. In that case, writ petition was entertained on merits and there was a clear breach and violation of principles of natural justice in that case. That is not the case here, where the impugned order of penalty was passed by the Disciplinary Authority at the behest or dictate of the CVC had to be gone into and decided by the appellate authority in the appeal filed by the applicant against the impugned order of penalty. If the appeal was filed, then the entire record could have been produced before the appellate authority and going through the said record, the appellate authority could have come to the conclusion as to whether the Disciplinary Authority has passed the impugned order of penalty on its own or at the dictate of CVC. When such type of matter was there, then in our considered opinion, the learned Tribunal ought not to have exercised its jurisdiction u/s 20(1) of the Act, which clearly provides that ordinarily the Tribunal should not exercise its jurisdiction when there is an alternative remedy of appeal. This type of powers can be exercised by the Tribunal only when there is an extra-ordinary case, which is not there in the instant case.

6. In view of the above discussion, this writ petition is allowed and the judgment and order dated 12.4.2005 passed by the learned Tribunal in O.A. No. 1 of 2004 is hereby quashed and set aside. However, we make it clear that if the respondent-applicant files an appeal before the appellate authority within one month from today, then the same shall be entertained and decided by the appellate authority in accordance with law as early as possible.

7. With these observations, this petition is allowed. Rule is made absolute. No order as to costs.