

(2009) 05 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition No. 5005 of 2008 and Cont. Case (C) No. 161 of 2009

Union of India (UOI) and Others

APPELLANT

Vs

Pravanjan Kishore Dev Varman and Others

RESPONDENT

Date of Decision : 15-05-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14
Income Tax Act, 1961 — Section 269, 269UD, 269UD(1), 269UL(3)
Penal Code, 1860 (IPC) — Section 120B, 420
Prevention of Corruption Act, 1988 — Section 13(1), 13(2)

Citation : (2009) 3 GLT 399

Hon'ble Judges : Jasti Chelameswar, C.J.;Hrishikesh Roy, J

Bench : Division Bench

Advocate : K. Paul, for the Appellant; A.K. Goswami, S. Banik, K. Sarma, K.N. Suri and P. Bhuyan, for the Respondent

Final Decision : Dismissed

Judgement

Jasti Chelameswar, C.J.—The present writ petition is filed on being aggrieved by a decision of the Central Administrative Tribunal, Gauhati Bench in Original Application No. 120/08 dated 19.9.08, by the Respondents therein, who are the Union of India, Central Bureau of Direct Taxes and Ors. .

2. The sole Respondent herein filed the above mentioned Original Application, in substance, praying that the two memoranda of charges dated 4.10.05 and 14.6.06 against the Respondent, alleging misconduct in the employment of the Appellants herein, be quashed and also that the Appellants herein be directed to open the sealed cover of the Departmental Promotion Committee (DPC) proceedings held in the year 2006 as well as 2007 in respect of the applicant's suitability for promotion to the post of Chief Commissioner of Income Tax and to act upon the decision of the DPC proceeding. The said Original Application was allowed by the impugned order. Hence the present writ petition.

3. The factual background of the case is as follows:

The Respondent joined the Indian Revenue Service in the year 1973 as a Group-A Income Tax Officer. In due course he came to be promoted as a Commissioner of Income Tax on 15.9.97. In the year 2002 the Respondent was working as one of the Commissioners of Income Tax at Chennai. While working so, he was also a member of a multi member body called Appropriate Authority functioning under Chapter XXII-A of the Income Tax Act as it existed at that point of time. It may be mentioned here that Chapter XXII-A was inserted by Taxation Laws (Amendment) Act, 1970 w.e.f. 15.11.72 which in substance provided an option to the Union of India to purchase immovable properties of values higher than the ones specified under the above mentioned Chapter and it is also necessary to mention that the value so specified in the Chapter kept on varying from time to time and at the relevant point of time the value specified was Rs. 25 lakhs. The heading of the Chapter was "Acquisition of Immovable Properties in Certain Cases of Transfer to Counteract Evasion of Tax". The purchase such as the one contemplated under Chapter XXII-A came to be called preemptive purchase by the State and eventually the provisions of Chapter XXII-A insofar they are related to Immovable properties ceased to operate after 30.9.86. The Respondent as a member of the above mentioned Appropriate Authority was a signatory to the orders viz. (1) a no objection certificate dated 11.2.02 u/s 269UL(3) of the Income Tax Act and (2) a purchase order u/s 269UD(1) in Anr. case on 27.6.02.

It appears from the record that the CBI lodged an FIR on 14.11.03 in the context of the no objection certificate dated 11.2.02 against the Respondent and Ors. alleging commission of offence u/s 120B read with Section 420 of the IPC and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. A Second case came to be registered by the CBI in the context of the purchase order dated 27.6.02 referred to earlier which was registered as CC No. 26/06 on the file of the Principal Special Judge, CBI, Chennai. Eventually the case came to be registered as CC No. 23/06 before the Principal Special Judge, CBI, Chennai. The Respondent was eventually discharged by an order of the above mentioned court dated 3.4.07.

On 4.10.05 the 4th Appellant issued a memorandum of charge under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 against the Respondent. The charge relates to the issuance of the no objection certificate dated 11.2.02, referred to earlier, the further details of the charge may not be relevant for the present. The Respondent submitted his explanation on 7.11.05. On 24.1.06 the Respondent submitted a representation that an early decision be taken on the charges framed against him as the Respondent was due for promotion as Chief Commissioner of Income Tax and the pendency of the disciplinary proceedings would jeopardise his prospects of promotion. On 31.1.06 the DPC was convened. The decision regarding the suitability of the Respondent for promotion was kept in a sealed cover in view of the pendency of the departmental proceeding. Some other officers were promoted. On 7.2.06 an Enquiry Officer and a Presenting Officer were appointed in the context of the

memorandum of charges dated 4.10.05. At that stage on 14.6.06 Anr. memorandum of charges came to be issued against the Respondent alleging misconduct in the context of the purchase order dated 27.6.02. On receipt of the above mentioned second memorandum of charges the Respondent submitted his reply on 22.6.06. The disciplinary proceedings pursuant to both the above mentioned two memoranda of charges continued without any culmination.

4. In the above mentioned background the Respondent filed OA No. 15/08 before the Central Administrative Tribunal, Gauhati Bench. By an interim order dated 30.1.08 the Tribunal permitted the Appellants to proceed with the disciplinary proceedings and also directed the Appellants to consider the case of the Respondent herein for promotion to the next higher post. The above mentioned Original Application came to be disposed of by an order dated 8.4.08 directing that the disciplinary proceedings initiated pursuant to the two charge sheets referred to above dated 4.10.05 and 14.6.06 be disposed of expeditiously by the end of June, 2008. The order became final.

5. In spite of the above mentioned order the disciplinary proceedings relating to the memorandum of charges dated 4.10.05 is not concluded by the end of June, 2008. On the other hand on 30.6.08 the Appellants chose to appoint an Enquiry Officer and a Presenting Officer in respect of the second memo of charges dated 14.6.06 and the said fact was communicated to the Respondent herein on 7.8.08.

6. In the above mentioned background the Respondent once again approached the Administrative Tribunal by way of Original Application No. 120/08. The Administrative Tribunal by the order under challenge in the present writ petition, on an elaborate consideration of the various facts and circumstances and the legal position, allowed the Original Application and quashed both the memoranda of charges referred to earlier and further directed the Appellants herein to open the sealed cover which contained the assessment of the DPC regarding the suitability of the Respondent for promotion to the next higher post of Chief Commissioner of Income Tax and directed that such exercise be completed within 60 days from the date of the order. The relevant portion of the Tribunal's order is as follows:

14. In any event, the Respondent Department of this case having sat over the matter (in the 1st Departmental Proceeding dated 04.10.2005) for almost 2 years by now without any explanation and having not taken any expeditious action in the 2nd Departmental Proceeding dated 14.06.2006 having not proceeded for over 2 years without any explanation and a Competent Criminal Court having held absence of evidence even to frame charges against the Applicant, we proceed to quash both the Departmental Proceedings (those were drawn up against the Applicant on 04.10.2005 and 14.06.2006) and direct the Respondents to open the opinion of the DPC kept in Sealed Cover and grant necessary consequential relief to the Applicant within next 60 days.

7. The Appellants waited for 60 days and approached this Court by way of the

present writ petition on 21.11.08. At the admission stage a Division Bench of this Court by its order dated 3.12.08 declined to suspend the impugned order of the Administrative Tribunal. However, the Appellants were permitted to conclude the pending departmental proceedings with a rider that the decision, if any, reached in the departmental proceedings shall not be given effect to pending final order in the present writ petition.

8. The Respondent filed Contempt Case (C) No. 161/09 complaining that though there was no suspension of the impugned order the Appellants are not implementing the order of the Tribunal on a wrong interpretation of the order of this Court dated 3.12.08. When the said contempt case was listed on 22.4.09 before this Court it was opined by this Court that it is better that the contempt case and the writ petition be heard together. Accordingly both the matters were directed to be listed in the next week. When the matters were listed on 4.5.09 at the request of the learned Counsel for the Appellants the matters were again adjourned to 5.5.09 to enable him to obtain instructions as to the fate of the disciplinary proceeding against the Respondent.

9. The learned Counsel for the Appellants on 5.5.09 stated that the disciplinary proceedings have not yet been concluded and submitted that the hearing of the writ petition be deferred to enable the Appellants to finalise the disciplinary proceedings against the Respondent. The said request was rejected by this Court for reasons to be signed later in this judgment.

10. The issue in the present writ petition is whether the Administrative Tribunal was right in allowing the OA No. 120/08 on the ground that the disciplinary proceedings were unduly delayed and thereby quashing the two memoranda of charges against the Respondent, referred to earlier, and granting the consequential reliefs. The issue of delay is to be determined with reference to the date of the decision of the Administrative Tribunal. The interim order of this Court dated 3.12.08 permitting the Appellants to proceed with the disciplinary enquiry against the Respondent was to enable the Appellants to expeditiously conclude the proceedings if the Appellants was serious about their allegations against the Respondent and in the event of the Appellants' success in the present writ petition; not to give scope for a complaint that the disciplinary proceedings are further protracted in view of the pendency of the writ petition. The said order cannot be construed as an order entitling the Appellants to continue the disciplinary proceedings against the Respondent ad infinitum. The learned Counsel for the Appellants vaguely suggested that in view of the above interim order the hearing of the writ petition should be deferred until the Appellants conclude the disciplinary proceedings. We are afraid that the Appellants have no such right to ask for deferment of hearing of the writ petition.

The impugned order stands or falls on its own merits and on the correctness of the logic of the order and does not depend upon subsequent events.

11. We have already noticed the events which led to the framing of the two

charges against the Respondent. The impugned order is dated 19.9.08, more than six years after the alleged acts of misconduct. Another important fact is that the Respondent eventually retired on 31.12.08. The progress of the disciplinary proceedings was outlined earlier in this judgment. The Administrative Tribunal in its order elaborately discussed the tardy progress of the disciplinary proceedings. The fact remains that inspite of opportunity given by this Court the Appellants could still not conclude the disciplinary proceedings. The Tribunal also noticed the law laid down by the Supreme Court in *State of Andhra Pradesh Vs. N. Radhakishan*, and came to the conclusion that having regard to the facts and circumstances the delay in the instant case is without any proper explanation and certainly not attributable to anything on the part of the Respondent.

12. The Supreme Court in *State of Andhra Pradesh Vs. N. Radhakishan*, held as follows:

19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight 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 delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. 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, if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic-principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse consideration.

In (2005) 6 SCC 636 *State of A.P. v. N. Radhakishan* the Supreme Court took note of the earlier decision of the Supreme Court on this issue including the decision in *State of Andhra Pradesh Vs. N. Radhakishan*, It can be seen from the above authorities and more particularly from the decision in *State of Andhra Pradesh Vs. N. Radhakishan*, that the relevant consideration for quashing the

charges in a departmental proceeding are - (1) the delinquent employee has a right that the disciplinary proceedings should conclude expeditiously; (2) the nature of the charge, its complexity and the reasons for the delay and (3) whether the delinquent employee is in any way responsible for the delay.

13. The Tribunal by the impugned order gave very elaborate and cogent reasons to establish that the Appellants did not pursue the disciplinary proceedings with sincerity and diligence. We have carefully gone through the impugned order and do not see any reason to take a different view on the conclusions reached by the Tribunal.

14. Coming to the nature of the charges the crux of the first of the two charges is that the Respondent by issuing the NOC dated 11.2.02 enabled the applicant u/s 269 to avoid payment of an amount of Rs. 2,10,20,835/- stamp duty payable to the State of Tamil Nadu. It was a case where the NOC was already granted in favour of the applicant for sale of land and building at the rate of Rs. 26,01,47,327/-. It appears from the charge that the applicant made a second application seeking a fresh NOC indicating the land and building separately and such an NOC was granted by the Appropriate Authority of which the Respondent was one of the members.

15. On a charge like this the enquiry to our mind is purely in the realm of law where the issues would be - firstly, whether the Appropriate Authority, of which the Respondent was a member, had the jurisdiction to issue a fresh NOC and secondly whether the Govt. of Tamil Nadu was bound by the valuation made by the Appropriate Authority in the matter of fixation of stamp duty while registering the transfer of property which is the subject matter of the NOC. It is not the case of the Appellants that by issuing the NOC the Appropriate Authority, of which the Respondent was a member, facilitated the evasion of income tax by the beneficiary of the NOC. As a matter of fact the original NOC was issued by the Appropriate Authority at a point of time when the Respondent was not a member of that body. The decision to issue the NOC by the predecessor body was never considered either inappropriate or illegal and was allowed to become final. Therefore the enquiry, if any, against the Respondent is purely in the realm of law but not of fact. Such being the case pendency of such an enquiry, in our opinion, for a period of three years is certainly protracted and cannot be said to have been diligently pursued by the Appellants.

16. Coming to the second charge, it was a case where the Appropriate Authority (of which the Respondent was a member) issued a purchase order u/s 269UD of a certain property obviously on the belief that by the proposed transaction the applicant was likely to avoid the incidence of a higher amount of income tax. The allegation against the Appropriate Authority appears to be the issuance of the NOC in favour of a person who did not have the requisite title. From the charge it appears that the property which was the subject of the said NOC was allegedly owned by the Tamil Nadu Housing Board. We agree that if the Appropriate Authority passes a compulsory purchase order u/s 269UD thereby leading to a

consequence of payment of money in favour of some person who has no title to the property, such an action would have the consequence of the Govt. of India parting with money in favour of a person who is legally not entitled to receive the money. The enquiry into this issue requires a verification of the fact whether the order was issued bona fide and whether the members of the Appropriate Authority exercised due diligence to ascertain the title of the person seeking the NOC. But with reference to the said charge the Appellants did not even appoint an Enquiry Officer and a Presiding Officer for a period of more than two years from the date of the charge sheet which delay by any standard cannot be said to be a reasonable delay.

17. For all the above mentioned reasons we see no reason to interfere with the order under challenge. The writ petition is dismissed.

18. The Contempt Case is disposed of directing the Respondents therein (Appellants in the writ petition) to forthwith open the sealed cover of the proceedings of the DPC referred to earlier and take all necessary consequential action pursuant to the report.