

* **HIGH COURT OF DELHI: NEW DELHI**

+ **Writ Petition (Civil) No.1648 of 2000**

Judgment reserved on: July 16, 2009

% Judgment delivered on: July 23, 2009

1. Union of India
Through the Secretary Finance
Ministry of Finance
Department of Revenue
New Delhi

2. The Chairman
Central Board of Direct Taxes
Central Secretariat
North Block, New Delhi

...Petitioners

Through Mr. Amit Bansal with
Ms. Manisha Singh, Advocates

Versus

Mr. S.C. Jain
ACIT (Retd.)
H.No.190, Saket
Meerut (U.P.)

...Respondent

Through Mr. S.K. Gupta, Advocate

Coram:

HON'BLE MR. JUSTICE MADAN B. LOKUR
HON'BLE MR. JUSTICE A.K. PATHAK

1. Whether the Reporters of local papers may
be allowed to see the judgment?

Yes

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| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

MADAN B. LOKUR, J.

The question for our consideration is the scope and extent of judicial review available to the Central Administrative Tribunal in respect of the findings recorded in a departmental enquiry. On the facts of the case before us, we are of the opinion that the Tribunal exceeded its jurisdiction in setting aside the report of the enquiry officer and the view taken by the concerned disciplinary authority.

2. At the relevant time, the Respondent (Mr. S.C. Jain) was working as an Assistant Director of Inspection (Intelligence) in the office of the Commissioner of Income Tax, Meerut. In that capacity, he arranged a search operation, sometime in 1982, on the premises owned by one Mansa Ram. The operation disclosed concealment of income and non-payment of taxes thereon by Mansa Ram.

3. According to Mansa Ram, Mr. Jain had later demanded and received an amount of Rs.1,00,000/- from him to decide the case to his (Mansa Ram's) satisfaction. However, since Mr. Jain did not

‘satisfactorily’ decide the case of Mansa Ram, a request was made for return of the amount but Mr. Jain rejected it. On these broad facts, Mansa Ram made a written complaint against Mr. Jain to the Commissioner of Income Tax as well as to the Central Bureau of Investigation.

4. A preliminary enquiry was held into the allegations made and on 10th January, 1985 Mr. Jain was issued a charge sheet containing the following allegation:

“That the said Shri S.C. Jain while posted and functioning as Assistant Director of Inspection (Int.) in the office of the Commissioner of Income-tax, Meerut, during 1982 committed misconduct in as much as he demanded and accepted a sum of Rs. One lakh as bribe from Shri Mansa Ram of M/s. Mansa Ram Sat Prakash, Meerut, as a motive or reward for showing favour to him in the assessment of income-tax on M/s Mansa Ram Sat Prakash and its allied firms and he thereby contravened Rule 3(1)(i) of the Central Civil Services (Conduct) Rules, 1964.”

5. Mr. Jain denied the charge, but before anyone could be appointed to hold a departmental enquiry against him, Mr. Jain superannuated on 31st December, 1986.

6. Eventually, on 28th July, 1988 an enquiry officer was

appointed to hold a departmental inquiry against Mr. Jain and he submitted a report on 18th September, 1989 to the effect that the charge against him was proved. Mr. Jain was given an opportunity to represent against the enquiry report, which he did, but his representation was rejected. It appears that the Petitioner had taken the advice of the Union Public Service Commission (UPSC) who also agreed that the charge against Mr. Jain was proved. As a result of the rejection of his representation, Mr. Jain was visited with a penalty of permanently withholding of his pension benefits.

7. Mr. Jain challenged the punishment awarded to him by filing O.A. No.2065/1992 being an application under Section 19 of the Administrative Tribunals Act, 1985 before the Principal Bench of the Central Administrative Tribunal. The O.A. was allowed by the impugned order dated 1st March, 1999. Feeling aggrieved, the Petitioner is before us with a prayer to set it aside.

8. In the departmental enquiry, several witnesses appeared for the prosecution, including Mansa Ram and another person by the name of D.K. Varshney. He supported the allegation of lack of integrity

alleged by Mansa Ram and deposed against Mr. Jain. The most important evidence in the enquiry against Mr. Jain was some audio cassettes which contained recorded conversations wherein Mr. Jain acknowledged receipt of an amount of Rs.1,00,000/- and rejected the request to return this amount despite his inability to 'satisfactorily' decide the case of Mansa Ram. The enquiry officer relied upon the statements of the witnesses as also the contents of the audio cassettes in giving his report against Mr. Jain.

9. The Tribunal upset the view of the enquiry officer and decided the O.A. in favour of Mr. Jain by concluding, inter alia, that Mansa Ram and D.K. Varshney had some grudge if not an enmity against Mr. Jain and as such, they were not witnesses who could be relied upon. It was observed by the Tribunal that another person who was integrally connected with the "deal", that is, Lekh Raj did not enter the witness box. The Tribunal also concluded that there were material contradictions in the oral testimony of the witnesses and that neither D.K. Varshney nor Mansa Ram had the means to pay Rs.1,00,000/- to Mr. Jain. With regard to the audio cassettes, the Tribunal expressed doubt about their authenticity inasmuch as some of the defence

witnesses stated that they could not recognize the voice of Mr. Jain in the audio cassettes. Moreover, the audio cassettes had long gaps and disturbances and the witnesses stated that they had some difficulty in comprehending the recording in the audio cassettes. The Tribunal relied upon a decision of the Supreme Court in ***Ram Singh & Ors. v. Col. Ram Singh, 1985 Supp SCC 611*** to conclude that the audio cassettes could not be relied upon and so there was no evidence against Mr. Jain. It appears that the contents of the audio cassettes were transcribed and on going through the transcription, the audio recording became intelligible but according to the Tribunal, the transcription was not given to Mr. Jain leading to a violation of the principles of natural justice. Under these circumstances, the disciplinary proceedings against Mr. Jain were quashed and his pension benefits were granted.

10. Learned counsel for Mr. Jain reiterated the submissions that found favour before the Tribunal and submitted that the writ petition filed by the Petitioner deserved to be dismissed. We are not in agreement with him.

11. It is appropriate to first deal with the views expressed by the

Tribunal for setting aside the disciplinary proceedings and then deal with the scope of judicial review that is permissible to the Tribunal in cases such as the present.

12. With regard to the view expressed by the Tribunal that Mansa Ram and D.K. Varshney had some grudge against Mr. Jain, we are of the opinion that even if it is so, at best, their oral evidence would have to be carefully scrutinized before it is accepted. Their oral testimony could not be rejected merely on the ground that they had some grudge against Mr. Jain – something more is required for this. We find support in this conclusion from the decision of the Supreme Court in *Pulicherla Nagaraju @ Nagaraja Reddy v. State of Andhra Pradesh*, (2006) 11 SCC 444 wherein it was held in paragraph 16 of the Report that:-

“But it is well settled that evidence of a witness cannot be discarded merely on the ground that he is either partisan or interested or closely related to the deceased, if it is otherwise found to be trustworthy and credible. It only requires scrutiny with more care and caution, so that neither the guilty escape nor the innocent wrongly convicted. If on such careful scrutiny, the evidence is found to be reliable and probable, it can be acted upon. If it is found to be improbable or suspicious, it ought to be rejected. Where the witness has a motive to falsely implicate the accused, his testimony should have corroboration in regard to material particulars before it is accepted.”

The Supreme Court rendered the above decision in a criminal case, but we have referred to it for the reason that even in a criminal matter, the oral testimony of a witness cannot be discarded merely because of some grouse or grudge. In a departmental inquiry, the standard of proof is much lower than in a criminal case and so the testimony of a witness cannot be rejected solely on the ground of existence of some enmity with the delinquent.

13. If the broad proposition canvassed by the Tribunal is accepted, it would lead to a very strange result inasmuch as in every case the testimony given by a complainant would have to be rejected because that complainant would necessarily have a score to settle with the person complained against. Clearly, the broad proposition laid down by the Tribunal cannot be accepted. The broad proposition would have to be tempered with ground realities that suggest that the evidence of a complainant or anybody closely associated with the complainant may be accepted, though after strict scrutiny.

14. We are also not in agreement with the view expressed by the Tribunal that merely because there are some irreconcilable

contradictions and discrepancies in the depositions given by the witnesses, the enquiry report would stand vitiated. First of all, the Tribunal is not required to weigh the evidence in the manner that it has done. Its limits are circumscribed by judgments of the Supreme Court which we will soon advert to. Even assuming that the Tribunal could analyze and weigh the evidence with a toothcomb, it must be remembered that in a case where several witnesses enter the witness box, there are bound to be some contradictions and discrepancies. The mere existence of some irreconcilable contradictions and discrepancies in the oral evidence does not necessarily mean that a departmental enquiry would stand vitiated. The nature of contradictions and discrepancies is important. What has to be seen is how material are these contradictions and discrepancies and whether they wipe out the substratum of the case of the presenting officer. Unfortunately, the Tribunal has not indicated the irreconcilable contradictions and discrepancies that prompted it to set aside the enquiry report, and so we cannot comment on them one way or the other. Suffice it to say, in the absence of any indication in this regard, it is not possible to accept the conclusion of the Tribunal that the enquiry report deserves to be quashed on the ground of some unspecified contradictions and

discrepancies.

15. To say (as the Tribunal has done) that neither Mansa Ram nor D.K. Varshney could muster the sum of Rs.1,00,000/- that was said to have been paid to Mr. Jain as a bribe is really of no consequence. Their financial status was not the subject matter of enquiry and where they got this amount from or how they managed to get this amount is totally irrelevant. What is of importance is whether the amount was given to Mr. Jain or not. We may only mention, in passing, that the enquiry officer has noted that the money was obtained from M/s National Sugar Industries which was apparently under the control of D.K. Varshney and this company had some issues about the taxability of its income and had a tax liability of about Rs.12,00,000/-. It is possible, under the circumstances, that the amount could have been arranged by Mansa Ram and D.K. Varshney in a manner with which we are not concerned. We need say no more on this aspect, since it would mean weighing the evidence on record, which is not permissible either for the Tribunal or for us in writ jurisdiction.

16. The fact that Lekh Raj, who was integrally connected with

the financial transaction, did not enter the witness box is again not good enough reason to set aside the departmental enquiry against Mr. Jain as long as there is some plausible evidence to bring home his (Mr. Jain's) guilt on a preponderance of probabilities.

17. The more important issue really is about the contents of the audio cassettes. The Tribunal concluded that their authenticity could not be accepted. It has, unfortunately, overlooked the fact that the voice of Mr. Jain was recognized in the audio cassettes not only by Mansa Ram and D.K. Varshney but also by Shri R. Kapoor, the then Commissioner of Income Tax, Meerut and two other witnesses, namely, Shri V.K. Nigam and Shri R.P. Saxena who were apparently familiar with Mr. Jain since they were posted in the office of the Commissioner of Income Tax, Meerut. Although there is an allegation that Mr. Nigam and Mr. Saxena may have been pressurized, there is nothing to suggest that Mr. R. Kapoor, the then Commissioner of Income Tax and an officer superior to Mr. Jain, was under any pressure to identify his voice. It does appear that over a period of time the quality of the audio cassettes had diminished but since the conversation was transcribed, all the witnesses could confirm the contents of the audio cassettes on the

basis of the transcribed material. It may be that the transcriptions were not given to Mr. Jain but the audio cassettes were available with him and he had occasion to hear them. It is not as if the absence of the transcription would have caused any prejudice to Mr. Jain since he had the source of the transcription, namely, the audio cassettes.

18. It appears from the record that there may have been long gaps in the contents of the audio cassettes and some disturbances but as we have noted above, this had occurred due to a lapse of time. There is nothing to suggest, other than a bald submission made by learned counsel for Mr. Jain, that the audio cassettes were tampered with. The record of the case shows that the contents of the audio cassettes carry on for more than two hours and it was the submission of learned counsel for the Petitioner, with which we agree, that it would have been very difficult for anyone to mimic, or even dub the voice of Mr. Jain for such a long period of time and thereby befool at least three persons who were officially associated with Mr. Jain, namely, Mr. R. Kapoor, Mr. Nigam and Mr. Saxena. That apart, there is no dispute that the transcriptions contained what was recorded in the audio cassettes and the conversations clearly indicated that a bribe had been given to Mr. Jain.

19. In our opinion, the material on record does not suggest that it is a case where the enquiry officer as well as the UPSC has taken a perverse view of the matter nor is it a case of no evidence. There is undoubtedly some evidence available – how it is to be evaluated is really for the departmental authorities to decide and unless there is any perversity in the view that they have taken, it would not be appropriate either for the Tribunal or for this Court to interfere in the view taken by them. It is necessary to remember that we are not concerned with a criminal case but are only concerned with a departmental enquiry where the standard of proof required is that of a preponderance of probabilities, rather than proof beyond reasonable doubt. Even if two views are possible on the evidence available, it would not be appropriate either for the Tribunal or for this Court to substitute one view for the other merely because the Tribunal or this Court prefers that view. These conclusions on the issues of law are based upon decisions of the Supreme Court, which we will now advert to.

20. It has been held by the Supreme Court in ***Central Bank of India v. Prakash Chand Jain, AIR 1969 SC 983*** that a finding of a domestic tribunal may be held to be perverse if it is not supported by

any legal evidence. According to learned counsel for Mr. Jain, there was no legal evidence on record to suggest the guilt of his client. We cannot agree with this submission since there was sufficient oral testimony on record to suggest that Mr. Jain had demanded and was given a bribe and this is corroborated by the contents of the audio cassettes. If we take both these factors into account, there is little doubt that the case made out by the prosecuting authority is proved against Mr. Jain on a preponderance of probabilities.

21. In *B.C. Chaturvedi v. Union of India & Ors.*, (1995) 6 SCC 749, the Supreme Court held that judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Significantly, the Supreme Court observed in paragraph 12 of the Report:-

“Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court.....The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as

to make it appropriate to the facts of each case.”

22. In *Government of A.P. & Ors. v. Mohd. Nasrullah Khan*, (2006) 2 SCC 373, the Supreme Court reiterated the principles laid down in *B.C. Chaturvedi*.

23. That the degree of proof required in departmental enquiries is that of a preponderance of probabilities and not proof beyond a reasonable doubt is by now well settled through a series of decisions. We may, in this regard, refer only to *Lalit Popli v. Canara Bank*, (2003) 3 SCC 583 (Preponderance of probabilities and some material on record are necessary to arrive at the conclusion whether or not the delinquent has committed misconduct.) and *Mazdoor Sangh v. Usha Breco Ltd.*, (2008) 5 SCC 554 (Before a departmental proceeding, the standard of proof is not that the misconduct must be proved beyond all reasonable doubt but the standard of proof is as to whether the test of preponderance of probability has been met.)

24. Where two views on the evidence are possible, the Tribunal or the Court should not substitute its view for that of the enquiry officer

is well accepted by the Supreme Court in a large number of cases. For example, in *West Bokaro Colliery (TISCO Ltd.) v. Ram Pravesh Singh*, (2008) 3 SCC 729 it was held:

“In a case where two views are possible on the evidence on record, then the Industrial Tribunal should be very slow in coming to a conclusion other than the one arrived at by the domestic tribunal by substituting its opinion in place of the opinion of the domestic tribunal.”

25. Similarly, in *Union of India v. Harjeet Singh Sandhu*, (2001) 5 SCC 593 it was observed:

“If two views are possible, the court shall not interfere by substituting its own satisfaction or opinion for the satisfaction or opinion of the authority exercising the power.”

26. Learned counsel for Mr. Jain reiterated his reliance upon *Ram Singh* which was taken into consideration by the Tribunal as well. We find from a perusal of this decision that the Supreme Court laid down certain principles for acceptance of a tape-recorded statement in evidence. The first principle laid down is that the voice of the speaker must be identified by the maker of the record or other persons recognizing his voice. As we have noted above, in addition to Mansa Ram and D.K. Varshney, the voice of Mr. Jain was recognized on the

audio cassettes by Mr. R. Kapoor, Mr. Nigam and Mr. Saxena, the last three persons being associates of Mr. Jain in the Income Tax Department. There can, therefore, be little doubt that the voice on the audio cassettes was that of Mr. Jain and the conversations recorded in the audio cassettes were sufficient in the normal course to prove the guilt of Mr. Jain. It may well be that the audio cassettes were not sealed or kept in a safe or official custody and that there was some gaps and disturbance in the recording (as contended by learned counsel for Mr. Jain) but all that we are required to see is whether there is anything to suggest that the audio cassettes were doctored or tampered with. On the record, nothing has been pointed out to us to raise any such doubt except a bald allegation that the audio cassettes have been tampered with. In our opinion, this by itself is not enough. What is important is to show where the alleged tampering has apparently taken place and to what effect. There is no such material pointed out to us from the record of the enquiry officer. Merely to vaguely allege that the audio cassettes have been tampered with, would not be enough.

27. Learned counsel for Mr. Jain referred to *Lachmandas v. Deep Chand*, AIR 1974 Raj 79 to submit that where a tape-recorded

statement is re-recorded, it is quite possible to tamper with the contents of the original statement. While this is true, in the decision relied upon by learned counsel, the High Court had gone through the transcripts and specific portions thereof were sought to be relied upon to suggest tampering. As we have already noted, no such specific instances have been brought to our notice, or the Tribunal or even the enquiry officer to suggest that the audio cassettes had been tampered with. There can be no presumption that merely because a tape recording has been re-recorded, there must be some tampering. We, therefore, cannot accept the bald contention urged by learned counsel for Mr. Jain.

28. Finally, it was submitted by learned counsel for Mr. Jain that there is a violation of the principles of natural justice in as much as the transcribed version of the audio cassettes was not supplied to his client. In this context, we may draw attention to *Haryana Financial Corporation & Anr. v. Kailash Chandra Ahuja*, (2008) 9 SCC 31 wherein the Supreme Court has noted a series of decisions and held that even in those cases where procedural requirements have not been complied with, the act under challenge is not ipso facto illegal, unlawful or void unless it is shown that non-observance of the principles of

natural justice has prejudicially affected the person concerned. In the case that we are concerned with, apart from the fact that no prejudice is shown to have been caused to Mr. Jain, even otherwise since the audio cassettes were in fact supplied to him and were available to him, non-supply of the transcribed version of the recorded conversation would not make any material difference to the case.

29. We find no merit in the submissions made by learned counsel for Mr. Jain. Accordingly, we allow the writ petition and set aside the impugned judgment and order dated 1st March, 1999. Any payments made to Mr. Jain towards pension benefits, during the pendency of this writ petition, will not be recovered from him. No costs.

MADAN B. LOKUR, J

July 23, 2009
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A.K. PATHAK, J

Certified that the corrected copy of the judgment has been transmitted in the main Server.