

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **WP(C) No.7880/2010**

% **Date of Decision: 28.04.2011**

UOI through Sh. S.S.N. Murthy, Chairman, ... Petitioner
Central Board of Direct Taxes

Through Mr. R.V. Sinha, Advocate

Versus

S.K. Srivastava Respondent

Through Mr. S.K. Gupta, Advocate for
respondent No. 1
Mr. Neeraj Choudhary , Advocate for
DOP&T

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE SUDERSHAN KUMAR MISRA

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| 1. | Whether reporters of Local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be
reported in the Digest? | NO |

ANIL KUMAR, J.

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1. The petitioner, UOI through Sh.S.S.N Murthy, Chairman, Central board of Direct Taxes, has challenged the order dated 19th November, 2010 passed in CP 476/2011 & MA 1813/2010 in OA 271/2010 titled as 'S.K. Srivastava Vs. UOI & Ors.', whereby two days time was granted to the petitioner to issue promotion as well as

posting orders of the respondent on the basis of option already given by him, failing which, Chairman, Central Board of Direct Taxes was directed to be present on the next date of hearing, 24th November, 2010.

2. To comprehend the disputes raised in the writ petition, the following facts shall be relevant. The respondent had filed an original application before the Central Administrative Tribunal, praying, inter alia, that the petitioner should hold a review DPC and promote the respondent to the rank of Commissioner, Income Tax w.e.f. 28th August, 2007 as had been done by the petitioner in case of juniors to the respondent or in the alternative to open the sealed cover and to give effect to the recommendations of the DPC, regarding the respondent held on 30th March, 2007 and to promote the petitioner in terms of CBDT order No. 182/2009 dated 15th December, 2009, which was passed promoting Sh. B.V. Gopinath to the rank of Commissioner, Income Tax.

3. The original application of the petitioner being OA No. 271/2010 was allowed by order dated 12th May, 2010, directing the petitioner to open the sealed cover pertaining to the respondent, “and if no adversity is found against him up to the stage of sealed cover”,

the recommendation of DPC be given effect to in the manner as approved in law with all consequences from the date of promotion of his juniors within a period of six weeks from the order dated 12th May, 2010.

4. The order passed on 12th May, 2010 was modified by order dated 17th May, 2010 pursuant to MA 1328/2010 holding that the respondent be considered for promotion from the date when his juniors were promoted, i.e., w.e.f. 28th August, 2007.

5. Consequent to the orders passed by the Tribunal, a status report was filed disclosing that in compliance of the order/directions of the Tribunal, the sealed cover containing recommendations of the DPC regarding promotion to the grade of Commissioner of Income Tax in respect of the respondent had been opened and had been forwarded to DOP&T on 26th August, 2010 for obtaining the approval of the ACC. It was further disclosed that the approval of the ACC was awaited and in the circumstances, it was contended that the petitioner has taken all requisite action at his end.

6. The respondent, however, contended that the order dated 12th May, 2010 has not been complied with and he filed an application

dated 16th July, 2010, contending, inter alia, that though the petitioner had sought additional time to comply with the directions of the Tribunal dated 12th May, 2010 as amended by the orders dated 17th May, 2010 on the ground that inter-ministerial consultation was required and that required time and consequent to that, time was granted up to 9th August, 2010, however, the petitioner was making incorrect and misleading statements as the DOP&T, which is the final authority and nodal ministry of Govt. of India after examination of the orders of the Tribunal had accepted those orders and had advised CBDT/DOR to treat the respondent on duty since 8th November, 2007 and to open the sealed cover and implement the recommendations of DPC held on 30th March, 2007. The respondent also asserted that DOP&T has not found any exceptions from the National litigation policy of Govt. of India in these orders and has not considered it necessary to contest the orders passed by the Tribunal before the Superior Court and therefore, the matter has become final.

7. In the circumstances, it was contended that despite no objection of any type raised by DOP&T, the respondent had not been appointed to the post of Commissioner as the petitioner does not have any respect for rule of law and has been deliberately refusing to comply with the orders of the Tribunal. The respondent, therefore,

sought the presence of the chairman of CBDT in person before the Tribunal.

8. The respondent also filed a contempt petition being CP No. 476/2011 contending, inter alia, that despite the orders passed by the Tribunal and the sealed cover of the respondent being opened and nothing adverse being found as against the respondent, the recommendation of DPC held on 30th March, 2007 had not been implemented and the respondent has not been appointed to the post of Commissioner despite specific orders by the Tribunal.

9. The respondent contended that the petitioner, out of malice and vendetta and in order to settle scores with him, especially as the respondent had detected and reported the theft of public money and public revenue in excess of Rs. 10,000 crores in the Vigilance Wing of CBDT, is deliberately not complying with the orders of the Learned Tribunal. The respondent also contended that even the process of implementation of the order had not been initiated and the matter had not been submitted even to ACC.

10. On the applications of the respondent before the Tribunal, it was contended by the petitioner that the ACC approval to the

promotion of the respondent had been accorded and would be processed and consequent thereto the Tribunal, by order dated 8th November, 2010, directed that not only the promotion order be passed, but the petitioner should issue the posting orders of the respondent as well, failing which, the Tribunal directed that the Chairman of CBDT shall appear before the Tribunal.

11. On 19th November, 2010, on behalf of the petitioner, a letter dated 3rd November, 2010 was relied on, which was issued by DOPT stipulating that the ACC had approved the proposal of the Department of Revenue for accepting the DPC recommendation dated 30th March, 2007 for promotion of the respondent to the grade of CIT for the year 2006-07 in compliance with the orders of the Tribunal. It was, however, further contended that various complaints had been received against the respondent in connection with his promotion, which had been sent to the Department of Revenue for taking appropriate action.

12. By the order dated 19th November, 2010, which is impugned in the writ petition, the Tribunal noted that since DOP&T has already approved the DPC recommendation for promotion of respondent to the grade of CIT for the year 2006-07 in compliance with the

directions of the Tribunal and subsequent thereto the observations of ACC had nothing to do with the promotion of the respondent, as the subsequent observations are based on subsequent events. It was noted that there are neither criminal cases against the respondent nor any disciplinary proceedings have been initiated against him. Therefore, the subsequent order passed by the petitioner dated 16th November, 2010 seeking approval again from the DOPT was misconceived and unwarranted and was a clear cut contempt of the direction of the Tribunal and deliberate attempt to overreach the orders of the Tribunal.

13. The Tribunal, in the circumstances, on the application for contempt held that the Tribunal is not retaliating against the petitioner but is trying to uphold the majesty of law and the prestige of the Tribunal, and therefore, granted two days' time to the petitioner to issue promotion as well as posting order in respect of the respondent on the basis of option already given by the respondent, failing which, it was directed that the Chairman of CBDT shall appear before the Tribunal on 24th November, 2010.

14. Within the time again granted by the Tribunal, the petitioner did not comply with the order but aggrieved by the said order, the

petitioner filed the present writ petition contending, inter alia, that the order of DOP&T dated 3rd November, 2010 shows that while conveying the approval of the ACC, it has also been observed that ACC had directed the Department of Revenue to take appropriate action on account of representation dated 16th August, 2010 received in the office of Cabinet Secretary and to get the said representation disposed of by the Department of Revenue. In the circumstances, it was contended that it was appropriate to seek further advice in the matter from DOP&T on the course of action to be taken on ACC approval for promotion and in the circumstances, there are sufficient reasons for exemption from appearance of Chairman of CBDT on 19th November, 2010.

15. This Court considering the facts and circumstances, by order dated 26th November, 2010 stayed till further orders, appearance of the Chairman, CBDT before the Administrative Tribunal. Subsequently, the application for impleading UOI, through the Department of Personnel and Training, North Block, New Delhi as respondent, was filed and allowed by order dated 14th December, 2010 and notice was issued to DOP&T to appear through a senior officer on 6th January, 2011.

16. On the Department of Personnel and Training, North Block, New Delhi being impleaded as a party, a short affidavit dated 17th February, 2011 was filed contending, inter-alia that the proposal of the respondent was processed and the sealed cover was opened and the proposal was submitted for consideration and order of ACC on 12th October, 2010 was passed. The ACC had approved the proposal and had also brought to the notice of the Department the representation against the respondent. The DOP&T categorically disclosed that it had been clarified by DOP&T to the Department of Revenue that the promotion of the respondent under consideration could not be withheld on account of the grounds mentioned in the department's file under reference and the order of the Tribunal must be implemented.

17. In view of the categorical stand by DOP&T, the petitioner is liable to implement the order passed by the Tribunal. Consequently, on 17th February, 2011, 28th February, 2011, 7th March, 2011, 24th March, 2011 and 5th April, 2011, time was sought by the petitioner to take appropriate steps so that the order of the Tribunal could be complied with forthwith.

18. Today, the learned counsel appearing on behalf of the petitioner, Mr. Sinha, says that he does not have any instructions whether the orders passed by the Tribunal have been implemented or not in respect of the respondent for his promotion in terms of the option already given by him.

19. The Tribunal gave sufficient time to the petitioner to comply with the orders passed by the Tribunal. Even on 19th November, 2010, more time was granted to comply with the order, failing which, the presence of Chairman, CBDT was directed. Since November, 2010, the petitioner has been able to delay the implementation of the orders of the Tribunal on one pretext or the other. The stand of the Department of Revenue and the Chairman CBDT has also not been approved even by DOP&T, which is apparent from the affidavit filed by DOP&T dated 17th February, 2011 categorically stipulating that the promotion of the respondent cannot be withheld on account of the ground mentioned by the petitioner.

20. In the circumstances, on account of consistent and deliberate failure of the petitioner to comply with the orders of the Tribunal, if the Tribunal has directed the presence of an official, the order cannot be termed to be illegal or unsustainable or suffering from any

perversity so as to entail any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

21. The Supreme Court in Civil Appeal No. 5600/2006 titled as R.S. Singh Vs. U.P.Malaria Nirikshak Sangh & Ors. had held that if the orders of the High Court are not complied with, it shall first see whether the order can be complied with without summoning any official and for that purpose it can ask the Advocate General, Additional Advocate General or Chief Standing Counsel to communicate to the concerned official that there are the orders which are to be complied with. Ordinarily, this would suffice, however, in extreme cases if the order has not been complied with and if the orders are not implemented deliberately on one excuse or the other or if the orders of the Court are ignored in a spirit of defiance, it may summon the official to explain why the order has not been complied with. In the present case, the orders of the Tribunal has not been complied with deliberately and willfully. Even before this Court time was taken repeatedly to comply with the orders and it appears that even this Court has been misled as today the Learned counsel for the petitioner states that he does not have any instructions about compliance of the order of the Tribunal or whether the order of the Tribunal would be complied with or not.

22. In the circumstances, it is apparent that the Tribunal was justified in the peculiar facts and circumstances to direct the personal presence of Chairman, CBDT. Consequently, this Court does not find any illegality or any perversity in the impugned order dated 19th November, 2010, which would require any interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The writ petition is, therefore, dismissed. Parties are left to bear their own costs.

23. The Tribunal shall proceed against the petitioner in CP No.476/2010 in OA 271/2010 in accordance with law. Parties shall appear before the Tribunal.

ANIL KUMAR, J.

SUDERSHAN KUMAR MISRA, J.

APRIL 28, 2011.

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