

GAHC010090612021



2024:GAU-AS:10590-DB

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/91/2022

1. THE UNION OF INDIA,
REP. BY THE SECRETARY, GOVT. OF INDIA, MINISTRY OF FINANCE,
DEPTT. OF REVENUE, NORTH BLOCK, NEW DELHI-110001.

2: THE CENTRAL BOARD OF DIRECTOR TEXES,
REP. BY ITS CHAIRMAN,
DEPTT. OF REVENUE,
NORTH BLOCK, NEW DELHI-110001.

3: UNION PUBLIC SERVICE COMMISSION,
REP. BY ITS SECRETARY,
DHOLPUR HOUSE, SHAHJAHAN ROAD, NEW DELHI-110069.

4: THE DEPUTY COMMISSIONER OF INCOME TAX (VIG.),
OFFICE OF THE PRINCIPAL COMMISSIONER OF INCOME TAX,
NER, GUWAHATI, 1ST FLOOR, AAYAKAR BHAWAN,
CHRISTIAN BASTI, G.S. ROAD, GUWAHATI-781005.

5: THE PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX,
WB AND SIKKIM, AAYKAR BHAWAN, P-7 CHOWRIGHEE SQUARE,
KOLKATA-700069.

.....Petitioners

-VERSUS-

VINAY KUMAR,
SON OF LT. VISHNI DEO,
FLAT NO.6F, BLOCK C, MAINAK GREENS, G.S. ROAD, GUWAHATI-781005,
WAS WORKING AS PRINCIPAL COMMISSIONER OF INCOME TAX, 2ND
FLOOR, AAYKAR BHAWAN, G.S. ROAD, GUWAHATI-781005 AT THE TIME
OF FILING O.A. NO.62/2018 (NOW RETIRED).

.....Respondent

– BEFORE –

HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR

For the Petitioners : Mr.S.C. Keyal, Advocate.
: Ms. G. Baruah, Advocate.

For the Respondent : Ms. D. Chaudhury, Advocate.

Date of Hearing : 23.10.2024.

Date of judgment : 29.10.2024.

JUDGMENT & ORDER (CAV)

(Vijay Bishnoi, CJ)

Heard Mr. S.C. Keyal, learned counsel appearing for the petitioners. Also heard Ms. D. Chaudhury, learned counsel appearing for the sole respondent.

2. This writ petition is filed by the petitioners being aggrieved with the order dated 22.05.2020 passed by the Central Administrative Tribunal, Guwahati Bench, Guwahati (hereinafter to be referred as 'CAT') in Original Application No.040/00062/2018, whereby the Original Application filed by the respondent herein was allowed and the charge-sheet initiated by the petitioners vide Memorandum dated 27.10.2017 was set aside.

3. The brief facts of the case are that the respondent was posted at Kolkata as Commissioner of Income Tax (Appeal) [in short, CIT(A)] in the year

2008. While discharging his duties as CIT(A)-VI, additional charge of CIT(A)-VIII was given to him during the period from 11.06.2008 to 30.07.2008. On 18.07.2008, the respondent decided and allowed an appeal preferred by an assessee against the assessment order passed by the Assessing Officer dated 31.12.2007 for the assessment year 2005-2006 and reversed the finding of the Assessing Officer and allowed sales commission and purchase commission to the assessee which were disallowed by the Assessing Officer.

4. Against the order dated 18.07.2008 passed by the respondent, while holding the additional charge of CIT(A)-VIII, Kolkata, Revenue had preferred an appeal before the Income Tax Appellate Tribunal, "A" Bench Kolkata (in short, ITAT) and the ITAT, Kolkata vide order dated 21.07.2011 allowed the said appeal and reversed the finding of the respondent allowing the sales commission and purchase commission to the assessee to the tune of Rs.120,55,52,350/- and affirmed the finding recorded by the Assessing Officer.

5. It appears that the ITAT had passed the order dated 21.07.2011 without providing opportunity of hearing to the assessee and therefore, the assessee approached the High Court at Calcutta challenging the order passed by the ITAT and High Court at Calcutta vide order dated 31.07.2012 disposed of the said appeal preferred by the assessee whereby it kept in abeyance the order passed by the ITAT and directed the ITAT to take a fresh decision on the appeal filed by the Revenue before it against the order passed by the respondent.

6. The ITAT had passed the order dated 08.11.2016, as per the direction of the High Court at Calcutta while considering the submissions made on behalf of the assessee, remanded the matter to the Assessing Officer to decide the

issue of disallowance of the sale commission and purchase commission to the assessee to the tune of Rs.120,55,52,350/- afresh.

7. It appears that the assessee had not appeared before the Assessing Officer while he was deciding the issue afresh as per the direction of the ITAT and the Assessing Officer passed an *ex-parte* assessment order on 18.12.2017 against the assessee wherein certain demand against the assessee had been raised.

It is to be noticed that the petitioners alleged that the respondent deleted an addition of Rs.120.55 crore (approx.) in an appeal disposed of by him in haste and as such, the respondent had failed to maintain absolute integrity.

It is apposite to reproduce the statement of articles of charge served upon the respondent which reads as under:

“STATEMENT OF THE ARTICLES OF CHARGE FRAMED AGAINST SHRI VINAY KUMAR, THE THEN COMMISSIONER OF INCOME TAX (APPEAL)-VIII, KOLKATA, PRESENTLY POSTED AS PRINCIPAL COMMISSIONER OF INCOME TAX-I, GUWAHATI

ARTICLE-I

That the said Vinay Kumar, [D.O.B. 01.07.1958] presently posted as Principal Commissioner of Income Tax-I, Guwahati, held the additional charge of Commissioner of Income Tax (Appeal)-VIII, Kolkata for a brief period from 11.06.2008 to 30.07.2008. During this period Shri Vinay Kumar had deleted an additional of ₹ 120.55 crore (approx.) in an appeal disposed of by him in a matter of three days.

The said addition was made by the Assessing Officer in the case of M/s. Ellenbarrie Exim Ltd., for A.Y. 2005-06 after a thorough investigation in which the Assessing Officer had established that the commission payments to the tune of ₹ 120.55 crore by the assessee to two local commission agents were sham transactions. The case was also selected by the charge CIT, as one among “Best Assessment Orders” under his charge. The concerned Assessing

Officer, who was present during the course of hearing before the CIT(A) was handed over a copy of the argument filed by the assessee. However, the additions made were deleted by Shri Vinay Kumar, CIT(A) within three days of the first hearing in the case without bringing in any additional facts and without waiting for the report from the Assessing Officer.

Thus, Shri Vinay Kumar, CIT(A) deleted the entire addition under consideration based on wrong appreciation of facts, by giving only a token opportunity to the Assessing Officer and passing the order “in haste”.

By the aforesaid act of omission and commission, Shri Vinay Kumar had failed to maintain absolute integrity and had thus, exhibited conduct unbecoming of a Government servant in violation of Rules 3(1)(i), 3(1)(ii) and 3(iii) of CCS (Conduct) Rules, 1964.”

8. The said Memorandum of charge was served upon the sole respondent on 27.12.2017 around six months before this retirement. The said memorandum of charge was put to challenge by the respondent before the CAT and the CAT set aside the same vide order dated 22.05.2020 while relying a decision passed by CAT, Principal Bench in **O.A. No.201/2019 & M.A. No.3262/2019** dated 16.10.2019 (**Anuradha Mookerjee Vs. Union of India & Ors.**) while observing as under:

“11. In the present case, it is indeed evident that the applicant has not agreed to the assessment made by the Assessing Officer. There could have been many cases wherein the Appellate Authority may or may not agree with the assessment made by the Assessing Officer. To find a fault ordinarily with a particular decision either at the level of the Appellate Authority i.e. CIT (Appeal) or even at the level of ITAT, the function of which quasi judicial nature shall not be fair and would be against the scheme of things put in place. It is of course agreed that the functionaries in this system could not be immuned from the normal disciplinary proceedings for obvious and glaring misconduct, misbehaviour including lack of integrity in discharge of their functions. It has also come to the notice of the Tribunal that in similar case, adjudication has been done by the CAT, Principal Bench in O.A. No. 201/2019 & M.A. No. 3262/2019 dated 16.10.2019 (Anuradha Mookerjee Vs. Union of India & Ors.). On perusal of this adjudication, it is observed that the case of the present applicant is exactly similar to that of the applicant in the aforesaid OA. In that

O.A. i.e. 201/2019. That applicant has been charge-sheeted with 05 Articles of charge. However, main point of charge is that of lack of integrity by granting relief to the Assessee to the tune of Rs. 55,67,22,264/- within ten days. After examining the detail issues raised in the O.A, Principal Bench posed two issues for consideration as under:-

“We are of the view that two issues arise for consideration in this behalf, i.e., (i) whether initiation of the disciplinary proceedings against the applicant as regards the discharge of her functions in quasi judicial capacity, is permissible in law; and (ii) whether the allegations contained in the charge memo prima facie justify the proposed action.”

CAT, Principal Bench has arrived at the conclusion that-

“The charge memo was based solely upon the imagination. It is fairly well known that if a person vested with the power to alter the legal status of another, permits his imagination to work, it may take him to a level, which he may not have imagined at all. The executive powers are required to be exercised on the basis of objective and verifiable material, and not on the basis of surmises, presumptions and imaginations.”

12. We have examined the instant case taking into account the similar case as cited above. As brought out in the forgoing paras, the charge-sheet is issued essentially on the premise that the applicant must have accepted certain consideration for having cleared such a heavy amount. This is found to be based on suspicion and premise and not acceptable in the eye of law as brought out in the foregoing paras. Though the applicant may not be immuned from disciplinary proceedings in discharging his duties in his capacity of quasi judicial nature, the basis for initiating the disciplinary proceedings as stated by the respondents that his decision was set aside by the higher authority i.e. ITAT is not acceptable basis for initiating disciplinary proceedings against the applicant as the system would not be able to function if this is done in a routine manner.

13. Keeping in view of the above and also in conformity with the decision of Co-ordinate Bench of CAT, PB (supra), we found that the charge sheet initiated by the respondent authority vide their Memorandum dated 27.12.2017 is not maintainable and liable to be set aside. Accordingly, Memorandum No.C-14011/33/2017 dated 27.12.2017 is hereby set aside.”

9. Assailing the order dated 22.05.2020 passed by CAT, Mr. S. C. Keyal, learned counsel for the petitioners has argued that the Tribunal has grossly erred in allowing the Original Application filed by the respondent without taking into consideration the fact that it is settled that disciplinary action could be

initiated against an officer in respect of judicial or quasi judicial functions and the officer who exercises jurisdiction or quasi judicial powers acting negligently or recklessly could be proceeded against by way of disciplinary action. Learned counsel for the petitioners has placed reliance on the decision of the Hon'ble Supreme Court rendered in ***Union of India & Ors. Vs. Duli Chand***, reported in ***(2006) 5 SCC 680***.

10. Per contra, Ms. D. Chaudhury, learned counsel appearing for the sole respondent has opposed the writ petition and has argued that the CAT has not committed any illegality in setting aside the Memorandum of charges issued against the respondent. It is contended that, as a matter of fact, the order dated 18.07.2008 passed by the respondent in the appeal filed by the assessee, though once reversed by the ITAT but later on, pursuant to the direction given by the High Court at Calcutta, the ITAT has decided the issue regarding disallowance of sales commission and purchase commission to the assessee afresh and has remanded the matter to the Assessing Officer for deciding the issue afresh.

11. It is contended by the learned counsel for the respondent that in the above facts and circumstances of the case, the whole premise on the basis of which the memorandum of charges issued against the respondent has been wiped out and in such circumstances, no case for interference is made out.

12. Learned counsel for the respondent has further submitted that the initiation of disciplinary proceedings against the respondent suffers from delay and laches. It is contended that the sole premise of issuance of charges against the respondent was passing of the order dated 18.07.2008 whereas the charge-

sheet was issued against him only on 27.12.2017. It is contended that the respondent was highly prejudiced on account of such delay in initiation of disciplinary action against him. It is contended that the respondent has retired from service on 30.06.2018 and the charge-sheet was issued six months before his retirement though the Department was aware about passing of the judgment on the day when it was passed.

13. Learned counsel for the respondent has, therefore, submitted that no case for interference is called for in this writ petition and the same is liable to be dismissed.

14. Heard the learned counsel appearing for the parties and also perused the material available on record.

15. At the outset, it is to be clarified that there is no quarrel on the proposition of law that disciplinary proceedings against an officer can very well be initiated in respect of judicial or quasi-judicial functions. It is well settled by various pronouncements of the Hon'ble Supreme Court that an officer, who exercises judicial or quasi-judicial powers, if acted negligently or recklessly, could be proceeded against by way of disciplinary action. It is also true that in every case, disciplinary action cannot be set aside or closed only on account of delay and laches.

16. In ***Secretary, Ministry of Defence & Ors. Vs. Prabhash Chandra Mirdha***, reported in ***(2012) 11 SCC 565***, the Hon'ble Supreme Court has held that the proceedings are not liable to be quashed on the grounds that proceedings had been initiated at belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent

employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings.

17. In the present case, the charge against the respondent is to the effect that he has deleted an addition of Rs.120.55 crore (approx.) while deciding an appeal in the hasty manner. Though the learned counsel for the petitioners has submitted that the said deletion was ultimately reversed by the ITAT in the appeal filed by the Revenue in the year 2011, however, it is to be noticed that the said order of the ITAT was interfered by the High Court at Calcutta and the matter was again remanded to the ITAT for deciding afresh the appeal filed by the Revenue after providing opportunity of hearing to the assessee and the ITAT, vide order dated 08.11.2016, has remanded the matter to the Assessing Officer to decide the issue afresh. In such circumstances, the whole premise of issuance of charge-sheet against the respondent has vanished.

18. It is also to be noticed that though the Department was aware about the alleged negligent act of the respondent since the beginning but has not taken any action against the respondent till passing of a fresh order by the ITAT, pursuant to the direction issued by the High Court at Calcutta. It is not the case of the petitioners that the Department was not aware about the said negligent act of the respondent, if any, and came to know about it only in the year 2017 when the memorandum of charges were issued against the respondent.

19. As observed earlier, the gravity of charge against the respondent has been diluted when the ITAT has remanded the matter to the Assessing Officer for deciding the issue afresh and in such circumstances, the delay in initiation of the disciplinary proceedings against the respondent, in the present case, is fatal

and on this ground alone, the memorandum of charges issued against the respondent is liable to be interfered with.

20. The Hon'ble Supreme Court in ***State of Madhya Pradesh Vs. Bani Singh & Anr.***, reported in ***1990 (Supp) SCC 738*** in somewhat similar circumstance, has dismissed the challenge made by the State while observing as under:

“4. The appeal against the order dated December 16, 1987 has been filed on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. We are unable to agree with this contention of the learned counsel. The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal.”

21. In view of the discussions made hereinabove, we do not find any merit in this writ petition and the same is, therefore, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant