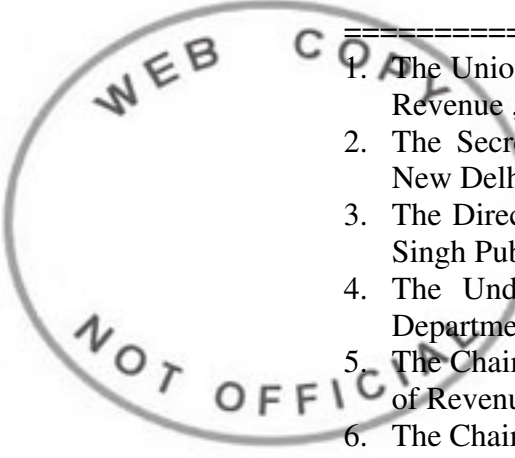


IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.18155 of 2015

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1. The Union of India through the Secretary , Ministry of Finance , Department of Revenue ,Govt. of India, North Block, New Delhi.
 2. The Secretary, Department of Revenue, Government of India, North Block, New Delhi.
 3. The Director General of Income Tax (Vigilance), Government of India, Dayal Singh Public Library Building, Deen Dayal Upadhyay Marg, New Delhi.
 4. The Under Secretary to the Government of India, Ministry of Finance, Department of Revenue, Government of India, North Block, New Delhi.
 5. The Chairman, Central Board of Direct Taxes, Ministry of Finance, Department of Revenue ,Govt. of India, North Block, New Delhi.
 6. The Chairman, U.P.S.C. Dholpur House, New Delhi.
 7. The Secretary, C.V.C. Satarkata Bhawan, New Delhi.
 8. The Chief Commissioner of Income tax, Central revenue Building , Birchand Patel Marg, Patna

.... Petitioner/s

Versus

Rajiv Sinha, Son of Sri Rajendra Sinha Resident of 244, M.I.G. Hanuman Nagar, P.S Hanuman Nagar , Patna.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 6875 of 2016

1. The Union of India through the Secretary , Ministry of Finance , Department of Revenue ,Govt. of India, North Block, New Delhi.
2. The Secretary, Department of Revenue, Government of India, North Block, New Delhi.
3. The Secretary, DOPT, North Block, New Delhi.
4. The Chairman CBDT, Ministry of Finance, Department of Revenue, North Block, New Delhi.
5. The member (P and V), CBDT, Ministry of Finance, Department of Revenue, North Block, New Delhi.
6. The Joint Secretary, Central Board of Direct Taxes, Ministry of Finance Department of Revenue, North Block, New Delhi.
7. The Under Secretary (Ad-VI) CBDT, Ministry of Finance, Department of Revenue, Govt. of India, North Block, New Delhi.
8. The Deputy Secretary (Ad-VI), Central Board of Direct Taxes, Ministry of Finance, Department of Revenue, Govt. of India, North Block, New Delhi.
9. The Chief Commissioner of Income Tax (CCA), Central Revenue Building, Birchand Patel Marg, Patna.

.... Petitioner/s

Versus

Rajiv Sinha, Son of Sri Rajendra Sinha, Resident of 244, M.I.G. Hanuman Nagar, P.S Hanuman Nagar , Patna.

.... Respondent/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, ASG
For the Respondent/s : Mr. P.N. Sahi, Sr. Advocate.
Mr. J.K. Karn, Advocate.
Mr. H.K. Karn, Advocate.

CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

C.A.V. JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 22-08-2016

The challenge in C.W.J.C. No. 18155 of 2015 is to an order passed by the Central Administrative Tribunal, Patna Bench, Patna (for short “the Tribunal”) on 10th of July, 2013 in O.A. No. 252 of 2008, whereby the order of punishment withholding one increment for a period of one year with cumulative effect vide order dated 16th of May, 2008, was set aside.

2. The challenge in C.W.J.C. No. 6875 of 2016 is to an order passed by the Tribunal on 10th of July, 2013 in O.A. No. 303 of 2011, whereby an Original Application filed by the respondent (hereinafter referred to as “the applicant”) for a direction to the petitioners to consider his case for promotion to the grade of Commissioner of Income Tax with effect from the date his immediate junior was promoted, stands allowed.

3. The applicant is the member of Indian Revenue Service and on the relevant date was functioning as Assistant Director



of Income Tax (Investigation) Unit-IV, Surat. There was search and seizure action in the premises of certain jewellers in Gujarat on 23rd of September, 1995. On certain acts of omission and commission noticed by the department and on account of failure to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government Servant, the applicant was charged for misconduct under Central Civil Services (Conduct) Rules, 1964. A charge-sheet was issued on 13th of June, 2001. The Inquiry Officer submitted his report on 30th of July, 2003. Show-cause notice for minor penalty was issued to the applicant on 5th of January, 2005 and final punishment, as mentioned above, was imposed on 16th of May, 2008.

4. The applicant challenged the order of punishment before the Tribunal, *inter alia*, on the ground that the disciplinary proceedings was delayed inflicting great mental suffering to the applicant for such a long stretch of period of more than 10 years and that there is no specific charge regarding any benefit granted to the assessee by misplacing of the documents and that there is no assessment of any loss of revenue to the Government. According to him, number of pages actually found and seized on 23rd of September, 1995 was 66 and not 73, as alleged by the department. Therefore, there is no question of entertaining any suspicious conduct, either by



the Inspectors or any member of the raid party, as the Inspector himself had informed about mis-numbering of pages of File B-1/1. It is contended that punishment has been imposed without any practical fault of the applicant and unnecessary liability has been fixed on his head ignoring the ground reality.

5. The applicant before the Tribunal challenged the order of punishment on the ground that there is inordinate delay in charging him and that the Central Vigilance Commission and UPSC have given advice contrary to the view of the Disciplinary Authority, therefore, the matter is required to be referred to Department of Personnel and Training (DOPT) as per their circular dated 13th of June, 1995. It is also contended that there is no justification for UPSC to treat this case as a major penalty proceeding. It is also contended that the order of the Finance Minister was not a speaking order and was passed without assigning any reason and without referring the matter to the DOPT. Therefore, the order is *non est* in the eye of law.

6. The learned Tribunal while exercising the jurisdiction under Section 19 of the Act observed as under :-

“7. It may not be lost sight of the fact that Mr. Sinha was not a search and seizure officer and was only a Supervisory Officer. From Para 4 of the enquiry report it is revealed that Mr. Rajiv Sinha while working as ADIT (Investigation) Unit-IV, Surat planned and organized a search under Section 132 of the Income Tax Act in the business premises of Sh. Mathurbhai B. Rudani,



C/o Ms. Sraddha Jewellers, Surat and the search commenced on 12.09.1995 and concluded on 12.10.1995. Mr. Rajiv Sinha had planned this action and was totally in-charge of the search and the same was conducted through his direct involvement and over all supervision right from the beginning till the end. It is clear from the enquiry report and the office Memorandum dated 05.01.2005 issued to the applicant that on 14.05.1995 when the papers said to be in the file B-1/1 were seized, Shri J.R. Tharwani was authorized officer who remained for the duration of the day and signed Panchnama. It was primarily his duty that all the documents found/seized were reflected accurately in the Panchnama. It was also his responsibility as authorized officer to seize important documents. Why seizure was not affected on that day, was not clear in the circumstance prevailing. The department concluded that on the preponderance of probability, the sequence of events indicated that it was through the negligence of Shri J.R. Tharwani that the loss of papers resulted.

12. The observation of the IO, reply of the applicant and the initial findings of the disciplinary authority authorizing in OM dated 05.01.2005, clearly show that while the applicant cannot be held responsible for loss of papers or non inventory of File B-1/1 containing loose papers on 14.9.95 but had the applicant been more vigilant and checked the file and also cross checked with the officer in charge of 14.09.95 Shri Tharwani, the loss could have been detected on 23.09.95. Only to this extent his negligence may be alleged. In such series of large scale raids, occurrence of such small magnitude can not be ruled out. What is important is the seriousness of the implications and consequences of the said negligence and whether there was any malafide motive. The respondents have not explained how any loss was caused to Government due to this negligence or how the applicant had favoured the assesseees with some visible undue gains or has shown dishonesty or lack of integrity.

13. As to the other part of allegation regarding failure



to confront the loose papers, from the Inquiry Officer's report, the reply of the applicant and the preliminary observation of the disciplinary authority in letter dated 05.01.2005, it is clear that the loose papers in File B-1/1 were in fact seized on 14.09.1995 when Shri J.R. Tharwani was authorized officer, but the same were not physically available for inventory. However, the Department did not bother to state what were those documents and what were the contents of the documents which were not confronted to the assessee or were suppressed. If another officer could have confronted with the assessee with the left out documents and could have unearthed any amount that had escaped assessment, certainly action of the raiding officer could have been questioned. There is no clear evidence of any loss of revenue by such omission. No doubt, it was a case of negligence of duty but no primary responsibility can be fixed on the applicant.

14. It was not a case of single raid at a single place. There were several raids at various places at a time and naturally since the raids were conducted under the guidance and over all supervision of Mr. Rajiv Sinha, he cannot be held responsible for each and every lapse of the members of raiding party at different places. In the Enquiry Report it has been clearly mentioned that Mr. J.R. Tharwani was the authorized officer on 14.09.1995 at the premises of Sh. Mathurbhai B. Rudani. Thus for any such omission or lapses of missing papers, he should have been answerable along with the Inspector who had not accounted the loose papers properly. Had it been proved by the Department that those documents bore such fact which virtually helped the assessee in escaping assessment, the matter could have been viewed seriously. There is absolutely no evidence that by such conduct the assessee got any financial benefit. The alleged negligence on the part of applicant could have been taken serious note of, if it could have been proved that the same was intentional or malafide and it had helped the assessee in getting some financial gain.

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15. We have perused the report of the Inquiry Officer, so also of the Disciplinary Authority and satisfied that it may be a case of negligence and not a case of malafide or a case of any wrongful gain so far as applicant in this case is concerned. That was perhaps the reason for which the Department wanted to conclude the proceeding with a minor penalty. The UPSC insisted on imposing for a major penalty charge without any positive findings how the conclusion of the Enquiry Officer was erroneous or perverse and what important document the Department overlooked. The UPSC may interfere only when the conclusion arrived at by the disciplinary authority is erroneous or not based on record. When the department found that the first charge was not proved and the second charge was partly proved and the UPSC had no independent data or materials, then without explaining how the applicant's view was not correct, UPSC had no basis to take a different view."

7. Learned counsel for the petitioners argued that the learned Tribunal has exercised the jurisdiction over the findings recorded by the Inquiry Officer and that of the Disciplinary Authority as if the Tribunal is an Appellate Authority. The Tribunal while exercising the power of judicial review is to examine the decision making process and not the merits or demerits of the findings recorded by the Disciplinary Authority. The Tribunal cannot re-appreciate the merits of allegations levelled against the delinquent and return a finding that the delinquent has not conducted any misconduct. He relies upon the Supreme Court judgment reported as High Court of Gujarat Vs. Hitendra Vrajlal Ashara and another,



(2014) 15 SCC 614; and State Bank of India and others Vs. Ramesh Dinkar Punde, (2006) 7 SCC 212. Learned counsel for the petitioners also relies upon the Supreme Court judgment reported as Union of India and others Vs. P. Gunasekaran, (2015) 2 SCC 610 wherein, the Supreme Court has laid down parameters on which the High Court while exercising the writ jurisdiction under Article 226 of the Constitution of India can intervene and the circumstances in which it cannot intervene.

8. In Hitendra Vrajlal Ashara's case (supra), the Supreme Court held as under:-

“7. It is a well-accepted principle of law that the High Court while exercising powers under Articles 226 and 227 of the Constitution does not act as an appellate court and its jurisdiction is circumscribed and confined to correct an error of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of the principles of natural justice. As already seen in the present case, the Division Bench has reappreciated the evidence acting as a court of appeal and we find it difficult to support the judgment Hitendra Vrajlal Ashara v. State of Gujarat, 2013 SCC OnLine Guj 4497 of the Division Bench. We have, on facts, found that no procedural irregularity has been committed by the enquiry officer in the disciplinary proceedings as the same was conducted in accordance with the Gujarat Civil Services (Conduct) Rules, 1971 and principles of natural justice. We noticed that the enquiring authority had elaborately considered the charges levelled against the delinquent officer and rightly held to be proved. In our view, the enquiry officer has rightly rendered the finding against the delinquent and the same was accepted by the High Court and on its recommendation the order of dismissal was passed by the

appointing authority and it is legally justified.”

9. In Ramesh Dinkar Punde’s case (supra) the Supreme Court held as under:-

“5. The High Court, on reappreciation of evidence, reversed the finding of the inquiry officer and set aside the orders of the disciplinary authority and Appellate Authority.

6. Before we proceed further, we may observe at this stage that it is unfortunate that the High Court has acted as an Appellate Authority despite the consistent view taken by this Court that the High Court and the Tribunal while exercising the judicial review do not act as an Appellate Authority:

“Its jurisdiction is circumscribed and confined to correct errors of law or procedural error, if any, resulting in manifest miscarriage of justice or violation of principles of natural justice. Judicial review is not akin to adjudication on merit by reappreciating the evidence as an Appellate Authority.” (See Govt. of A.P. v. Mohd. Nasrullah Khan (2006) 2 SCC 373, SCC p. 379, para 11.)”

10. In a recent judgment P. Gunasekaran,’ case (supra), the Court held to the following effect:-

“12. Despite the well-settled position, it is painfully disturbing to note that the High Court has acted as an appellate authority in the disciplinary proceedings, reappreciating even the evidence before the enquiry officer. The finding on Charge I was accepted by the disciplinary authority and was also endorsed by the Central Administrative Tribunal. In disciplinary proceedings, the High Court is not and cannot act as a second court of first appeal. The High Court, in exercise of its powers under Articles 226/227 of the Constitution of India, shall not venture into reappreciation of the evidence. The High Court can only see whether:



- (a) the enquiry is held by a competent authority;
- (b) the enquiry is held according to the procedure prescribed in that behalf;
- (c) there is violation of the principles of natural justice in conducting the proceedings;
- (d) the authorities have disabled themselves from reaching a fair conclusion by some considerations extraneous to the evidence and merits of the case;
- (e) the authorities have allowed themselves to be influenced by irrelevant or extraneous considerations;
- (f) the conclusion, on the very face of it, is so wholly arbitrary and capricious that no reasonable person could ever have arrived at such conclusion;
- (g) the disciplinary authority had erroneously failed to admit the admissible and material evidence;
- (h) the disciplinary authority had erroneously admitted inadmissible evidence which influenced the finding;
- (i) the finding of fact is based on no evidence.

13. Under Articles 226/227 of the Constitution of India, the High Court shall not:

- (i) reappreciate the evidence;
- (ii) interfere with the conclusions in the enquiry, in case the same has been conducted in accordance with law;
- (iii) go into the adequacy of the evidence;
- (iv) go into the reliability of the evidence;
- (v) interfere, if there be some legal evidence on which findings can be based
- (vi) correct the error of fact however grave it may appear to be;
- (vii) go into the proportionality of punishment unless it shocks its conscience.

14. In one of the earliest decisions in *State of A.P. v. S. Sree Rama Rao* AIR 1963 SC 1723, many of the above principles have been discussed and it has been concluded thus: (AIR pp. 1726-27, para 7)

“7. ... The High Court is not constituted in a proceeding under Article 226 of the Constitution as a court of appeal over the decision of the authorities holding a departmental enquiry against a public servant: it is concerned to determine whether the enquiry is held by an authority competent in that behalf, and according to the procedure prescribed in that behalf, and whether the rules of natural justice are not violated. Where there is some evidence, which the authority entrusted with the duty to hold the enquiry has accepted and which evidence may reasonably support the conclusion that the delinquent officer is guilty of the charge, it is not the function of the High Court in a petition for a writ under Article 226 to review the evidence and to arrive at an independent finding on the evidence. The High Court may undoubtedly interfere where the departmental authorities have held the proceedings against the delinquent in a manner inconsistent with the rules of natural justice or in violation of the statutory rules prescribing the mode of enquiry or where the authorities have disabled themselves from reaching a fair decision by some considerations extraneous to the evidence and the merits of the case or by allowing themselves to be influenced by irrelevant considerations or where the conclusion on the very face of it is so wholly arbitrary and capricious that no reasonable person could ever have arrived at that conclusion, or on similar grounds. But the departmental authorities are, if the enquiry is

otherwise properly held, the sole judges of facts and if there be some legal evidence on which their findings can be based, the adequacy or reliability of that evidence is not a matter which can be permitted to be canvassed before the High Court in a proceeding for a writ under Article 226 of the Constitution.”

11. In the present case, none of the tests on the basis of which the High Court can interfere is satisfied. A reading of the order passed by the Tribunal shows that it has re-appreciated the evidence and interfered with the conclusions recorded by the Inquiry Officer and by the Disciplinary Proceedings. It has gone into the adequacy and the reliability of evidence. The Tribunal in exercise of the powers under Section 19 of the Administrative Tribunals Act, 1985 does not exercise powers larger than that of the High Court conferred under Article 226 of the Constitution of India and, thus, the principle laid down in P. Gunasekaran's case (supra) are applicable to the proceedings before the Tribunal as well. In view of the said judgment, the re-appreciation of evidence done by the Tribunal to return a finding that the applicant was not guilty of misconduct is not tenable in law.

12. In respect of an argument that there was difference of opinion in the matter of punishment suggested by the Central Vigilance Commission and UPSC, therefore, the matter should have been forwarded to DOPT is again without any merit. Suffice it to



mention that the punishment suggested by both the authorities was to impose major penalty. UPSC advised vide advice dated 25th of January, 2007 to impose major penalty. The Central Vigilance Commission also advised major penalty. Since the department has accepted the advice of UPSC to impose punishment, therefore, there was no requirement to send the file to DOPT. Though the UPSC advised major penalty but in fact the department has given a minor penalty, therefore, the difference is in fact to the advantage of the applicant.

13. The Supreme Court in Union of India and others Vs. B.V. Gopinath, (2014) 1 SCC 351 was seized of a matter as to when a charge-sheet can be issued to a member of Indian Revenue Service. It was held that the charge-sheet can be issued upon approval by the Appointing Authority i.e. Finance Minister. The Court held as under:-

“45. Rule 14 of the CCS (CCA) Rules provides for holding a departmental enquiry in accordance with the provisions contained in Article 311(2) of the Constitution of India. Clause (8) also makes it clear that when the Finance Minister is approached for approval of charge memo, approval for taking ancillary action such as appointing an inquiry officer/presiding officer should also be taken. Clause (9) in fact reinforces the provisions in Clause (8) to the effect that it is the Finance Minister, who is required to approve the charge memo. Clause (9) relates to a stage after the issuance of charge-sheet and when the charge-sheeted officer has submitted the statement of defence. It provides that in case the charge-sheeted officer simply denies the charges, CVO will appoint an inquiry officer/presiding officer. In case of denial



accompanied by representation, the Chairman is to consider the written statement of defence. In case the Chairman comes to a tentative conclusion that written statement of defence has pointed out certain issues which may require modification/amendment of charges then the file has to be put up to the Finance Minister. So the intention is clearly manifest that all decisions with regard to the approval of charge memo, dropping of the charge memo, modification/amendment of charges have to be taken by the Finance Minister.

49. We are unable to accept the submission of the learned Additional Solicitor General. Initially, when the file comes to the Finance Minister, it is only to take a decision in principle as to whether departmental proceedings ought to be initiated against the officer. Clause (11) deals with reference to CVC for second stage advice. In case of proposal for major penalties, the decision is to be taken by the Finance Minister. Similarly, under Clause (12) reconsideration of CVC's second stage advice is to be taken by the Finance Minister. All further proceedings including approval for referring the case to DoP&T, issuance of show-cause notice in case of disagreement with the enquiry officer's report; tentative decision after CVC's second stage advice on imposition of penalty; final decision of penalty and revision/review/memorial have to be taken by the Finance Minister." (Emphasis supplied)

14. A perusal of the aforesaid judgment shows that the final decision of penalty has to be taken by the Finance Minister including approval for referring the case to DOPT. In the present case, it is the Finance Minister who has taken a decision that CVC and UPSC have advised major penalty but then approved the imposition of minor punishment. The order of the Finance Minister, as produced by the applicant, reads as under:-

“CVC and UPSC have advised major penalty. They have reiterated their advice. We should put an end to these proceedings. We may accept the advice and impose the penalty as advised by UPSC (see para 9.1)”

15. Since the decision has been taken by the Finance Minister, which is in terms of the decision under B.V. Gopinath's case (supra), we do not find that there is any violation of the instructions inasmuch as the decision as to whether the matter should be referred to DOPT or not has been taken by the Finance Minister and the penalty approved by him. The order of the Finance Minister is culmination of long decision making process. The order as reproduced above gives indication that the Minister has passed an order after being fully aware of the entire background. Therefore, we do not find that on the said ground as well, the order of punishment could have been interfered with by the Tribunal.

16. Consequently, we allow the present writ applications, set aside the order passed by the Tribunal and dismiss the Original Applications.

17. The order passed by the Tribunal in C.W.J.C. No. 6875 of 2016 was allowed for the reason that punishment imposed has since been set aside. Since in terms of the findings recorded above, the order of the Tribunal, setting aside the punishment, has

been set aside, therefore, the applicant may not be entitled to promotion from the date his immediate junior was promoted. However, the petitioners shall consider the case of the applicant for promotion after the expiry of the punishment period and keeping in view the consequential effect of the punishment imposed on the rights of promotion of the applicant in accordance with law.

(Hemant Gupta, J)

Ahsanuddin Amanullah, J I agree.

(Ahsanuddin Amanullah, J)

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