THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE N.BALAYOGI

W.P.NO.44507 OF 2016

ORDER (Per the Hon'ble Sri Justice Sanjay Kumar)

The Government of India and its Income Tax authorities filed this writ petition aggrieved by order dated 20.08.2015 passed by the Central Administrative Tribunal, Hyderabad Bench, in O.A.No.241 of 2012.

The said O.A. was filed by the 1st respondent herein assailing the charge memo dated 14.07.2009 and the proceedings dated 6.2.2012, whereby the Commissioner of Income Tax (Audit), Government of India, Hyderabad, appointed an Inquiry Officer.

By the order dated 20.08.2015, the Tribunal held that the disciplinary proceedings initiated by the Income Tax authorities against the 1st respondent herein stood vitiated on the ground of delay. The O.A. was accordingly allowed and the 1st respondent was held entitled to all consequential benefits. Hence this writ petition.

By order dated 21.12.2016 this court granted interim suspension of the order passed by the Tribunal for two weeks. There was no extension thereafter.

Heard Sri B.Narasimha Sarma, learned Standing Counsel for the Income Tax authorities, and Sri Siva, learned counsel for the 1st respondent.

Perusal of the record reflects that the charge memo dated 14.07.2009 issued to 1st respondent was in relation to incidents dating back to the year 2002. The irregularities imputed to the 1st respondent were in relation to certain acts of omission and commission during survey proceedings. It appears that the 1st respondent was issued a show cause notice in this regard on 16.02.2006. No explanation is forthcoming as to why a charge memo was delayed for three years and was issued only on 14.07.2009. Again, the appointment of an Inquiry Officer took almost three years as it was only by proceedings dated 6.2.2012, the Commissioner of Income Tax (Audit), Government of India, appointed the Inquiry Officer.

Sri B.Narasimha Sarma, learned counsel, would state before this court that as there was no stay of the inquiry, the same culminated in the Inquiry Report on 5.11.2014. However, he fairly concedes that this Inquiry Report was not even communicated to the 1st respondent till date and no show-cause notice was issued to him as regards the findings recorded therein. Significantly, it was only on 20.08.2015 that the Tribunal allowed the O.A.

The aforesaid facts clearly demonstrate that there was continuous and unexplained delay at every stage on the part of the Income Tax authorities in proceeding with the matter.

Pleadings filed by the Income Tax authorities, be it before the Tribunal or before this court, do not reflect even a semblance of a reasonable explanation for this delay.

Sri B.Narasimha Sarma, learned counsel, would place reliance on *GOVERNMENT OF A.P. v. V.APALA SWAMY*[1], wherein the Supreme Court observed that principles upon which proceedings can be directed to be quashed on the ground of delay are: (1) where, by reason of delay, the employer condoned the lapses on the part of the employee and; (2) where the delay caused prejudice to the employee. The Supreme Court further observed that in the case of prejudice, the employee must make out the same before the Inquiry Officer.

In the present case, the glaring and undisputable delay would have to be viewed in the light of *STATE OF A.P. vs. N.RADHAKISHAN*[2], wherein while noting that 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 and he should be made to suffer a penalty if deviates there from, the Supreme Court further observed that disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice and such delay would cause prejudice to the charged officer unless it can be shown that he is to blame for it or when there is proper explanation for the delay in conducting the disciplinary proceedings.

In the present case, the unexplained delay on the part of the Income Tax authorities in completing the process, whereby they now wish to penalize

[1] (2007)14 SCC 49
[2] (1998) 4 SCC 154

the 1st respondent for irregularities allegedly committed in the year 2002, cannot be accepted.

At every stage, as already stated supra, the Income Tax Department demonstrated shocking somnolence and lethargy, which still remains unexplained. That being so, this court finds no reason to interfere with the order passed by the Tribunal which is under challenge.

The writ petition is devoid of merit and is accordingly dismissed. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

N.BALAYOGI ,J

DATE: 09—03—2017

AVS