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

\+ **Date of Decision: 08.08.2019**

% **W.P.(C) 8115/2019 and C.M. No. 33675/2019**

UNION OF INDIA & ORS ..... Petitioners

Through: Mr. Akshay Makhija, CGSC and Ms.Mahima Bahl, Advocate.

versus

MANOJ KUMAR GAUTAM ..... Respondent

Through: Mr. Vishnu Sharma, Ms. Anupama Sharma & Mr. Akhileshwar Jha, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

VIPIN SANGHI, J. (ORAL)

1. The Union of India has preferred the present writ petition to assail the order dated 16.11.2012 passed by the Central Administrative Tribunal (CAT/ Tribunal) in O.A. No. 3252/2017. By the impugned order the Tribunal has allowed the Original Application preferred by the respondent and direct that he be promoted since he has been found fit by the DPC in its recommendations dated 07.06.2017. The respondent's promotion has been granted with effect from the date when his juniors were so promoted. It is directed that he shall retain his seniority.

2. The respondent was serving as the Commissioner, Income-Tax in the year 2008. He had outstanding gradings during his entire tenure as

Commissioner of Income Tax. In the year 2014-15, Departmental Promotion Committees (DPCs) were held for the post of Principal Commissioner of Income Tax. Though his seniors were promoted, he was not so promoted. Another DPC was held on 07.07.2017, when the case of the respondent was considered. On this occasion, though his juniors were promoted, he was not promoted. The respondent was not made aware of the reasons for his being superseded despite his legal notice dated 19.08.2017 to the petitioner. He then preferred the Original Application in question before the Tribunal.

3. The defence set up by the petitioner before the Tribunal was that though the respondent's case was considered for promotion, he was not promoted in view of the pending complaint against him. The Tribunal allowed the Original Application by placing reliance on ***Union of India Vs. K.V. Jankiraman***, (1991) 4 SCC 109. The Tribunal noted that the circumstances warranting withholding of the respondent's promotion, as enumerated in the said decision in ***K.V. Jankiraman*** (supra), were not present in the present case. Reliance was also placed on Office Memorandum dated 02.11.2012, which, inter alia, provides:

> *"12. It may thus be noted that vigilance clearance cannot be denied on the grounds of pending disciplinary/ criminal Court case against a Government servant, if the three conditions mentioned in para 2 of this Department's OM dated 14.09.1992 are not satisfied. The legally tenable and objective procedure in such cases would be to strengthen the administrative vigilance in each Department and to provide for processing the disciplinary cases in a time bound manner. If the charges against a Government servant are grave enough and whom*

> *Government does not wish to promote, it is open to the Government to suspend such an officer and expedite the disciplinary proceedings."*

4. Consequently, the Original Application was allowed.

5. The submission of Mr. Makhija is that the petitioner really has no grievance with, and does not dispute the correctness of the impugned order dated 16.11.2017. He, however, submits that post the said decision, a charge-sheet has been issued to the respondent vide memorandum dated 01.02.2018. Mr. Makhija submits that since the respondent stands charge-sheeted, and the charge-sheet has been issued to the respondent before the issuance of orders for his promotion, he cannot be granted promotion in the light of the DOP&T OM dated 14.09.1992.

6. The charge memorandum issued to the respondent dated 01.02.2018 has been perused by us. The two Articles of Charge framed against the respondent vide the said charge-memo are the following:

> *"ARTICLE-I*
>
> *That Shri M.K. Gautam while serving as the Addl. CIT, Central Range, Surat* ***during the period 16.7.2004 to 24.6.2005****, in connivance with the TRO, Central Range, Surat oversaw the auction of the shares of Dandi Salt Pvt. Ltd. for a paltry sum thereby causing a gain to certain individuals and loss to the organization. He acted in an improper manner by endorsing the auction of shares of Dandi Salt Pvt. Ltd. by his letter dated 27.5.2005, without raising any query about the shares of he other companies which were also under attachment.*
>
> *Thus, by his aforesaid acts, Shri M.K. Gautam failed to maintain absolute integrity, devotion to duty and exhibited*

conduct unbecoming of a Government Servant; further, while holding a supervisory post, he did not take all possible steps to ensure the integrity and devotion of the government servant for the time being under his control and authority. Thus, he violated the provisions of Rules 3(I)(ii), 3(1)(ii) and 3(I)(iii) and 3(2)(i) of the CCS (Conduct) Rules, 1964.

ARTICLE-II

That Shri M.K. Gautam while serving as the Addl. CIT, Central Range, Surat ***during the period 16.7.2004 to 24.6.2005****, vide letter dated 27th May, 2005, while granting approval, directed the then TRO to sell the shares of Dandi Salt Pvt. at the face value without opting for valuation of the said shares for determining the Reserve Price, as required b Rule 18 of the Income Tax (Certificate Proceedings) Rules, 1962. In connivance with the TRO, he issued directions to sell the shares on 'first come first offer basis' instead of sale by public auction as required by Rules 43 and 44 of the Second Schedule of the Income-Tax Act, 1961. Thus, he failed in his supervisory duties by giving inappropriate directions to the TRO.*

Thus, by his aforesaid acts, Shri M.K. Gautam failed to maintain absolute integrity, devotion to duty and exhibited conduct unbecoming of a Government Servant; further, while holding a supervisory post, he did not take all possible steps to ensure the integrity and devotion of the government servant for the time being under his control and authority. Thus, he violated the provisions of Rules 3(I)(ii), 3(1)(ii) and 3(I)(iii) and 3(2)(i) of the CCS (Conduct) Rules, 1964 " (emphasis supplied)

7. It would be seen that the said charges pertain to the period from 16.07.2004 to 24.06.2005. There is no averment made in the charge memorandum that the allegations contained therein against the respondents surfaced only recently, much less is it alleged that the respondent was

instrumental in suppressing the uncovering of the alleged misconduct by him. The Statement of Imputations of Misconduct or Misbehaviour in support of the Article of Charge record, inter alia, the directions issued by the respondent on 27.05.2005 in relation to the shares of Dandi Salt Private Limited, which read as follows:

> *".... Both Mr. Sureshchandra Agarwal and Mrs.Anju Agarwal own 100 shares in Dandi Salt Pvt. Ltd. which is a defunct company. From the balance sheet of the said company, it is seen that no business has been started in the said concern. There are no new assets owned by the said company except the share capital and share application money of Rs. 7500/- each in the name of Mr. Sureshchandra Agarwal and Mrs. Anju Agarwal."*

8. The allegation against the respondent was that he had not assessed the value of the trademark "*Dandi Salt*", which was owned by the defunct company Dandi Salt Private Limited. The allegations against the respondent are such, which were known to the petitioner Department soon after he had allegedly committed the misconduct of permitting the sale of the shares of Dandi Salt Private Limited on first-come-first-serve basis.

9. A perusal of the Charge-Sheet and the Statement of Imputations of Misconduct or Misbehaviour in support of the Article of Charge leaves no manner of doubt in our mind that the present is a case of witch-hunt of the respondent. The immense delay in issuance of the charge memorandum after the alleged misconduct took place in the year 2004-05 is not at all explained. The charge memorandum was not issued either before holding of the DPC - when the respondent's case came up for consideration for promotion to the post of Chief Commissioner of Income Tax, or even

thereafter till the pendency of the Original Application preferred by the respondent in September 2017. The charge memorandum has been issued well after the order was passed by the Tribunal on 16.11.2017 directing that the respondent be promoted to the post of Chief Commissioner of Income Tax, since he had been found fit for promotion by the DPC.

10. Mr. Makhija has submitted that the complaint against the respondent had been received in the year 2011. Evidently, the petitioner issued a notice to the respondent dated 25.09.2012 calling for his explanation in relation to the incident/ transaction. The respondent submitted his reply dated 22.10.2012. Firstly, there is no explanation as to why the charge memorandum was not issued for nearly 6 years after receiving the reply of the respondent – if the petitioner was not satisfied therewith. Secondly, the charge memorandum does not even state so much as to say that the respondents reply has been examined and found to be unsatisfactory– let alone why the same was found unsatisfactory.

11. We, therefore, do not find any merit in this petition and dismiss the same.

VIPIN SANGHI, J.

RAJNISH BHATNAGAR, J.

AUGUST 08, 2019
B.S. Rohella