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

+ **W.P.(C) 3436/2015**

UNION OF INDIA AND ORS. .... Petitioners  
Through Mr. R. V. Sinha and Mr. A. S. Singh,  
Advocates

versus

THAN SINGH ..... Respondent  
Through Mr. S. K. Gupta, Advocate

**CORAM:**  
**JUSTICE S. MURALIDHAR**  
**JUSTICE TALWANT SINGH**

**ORDER**  
% **11.12.2019**

**Dr. S. Muralidhar, J.:**

1. The Ministry of Finance, Department of Revenue, the Central board of Direct Taxes, The Director General of Income Tax (DIG), and the Chief Commissioner of Income Tax (CCI) and the Commissioner of Income Tax-II have filed the present petition challenging the order dated 27<sup>th</sup> October, 2014 passed by the Central Administrative Tribunal (CAT), Principal Bench, New Delhi allowing OA No. 1304/2014 filed by the Respondent and quashing the Memorandum dated 31<sup>st</sup> May, 2013.

2. The facts in brief are that on the date of his retirement i.e. 31<sup>st</sup> May, 2013 a charge memorandum was served upon the Respondent alleging that while he was functioning as Income Tax Officer (ITO) W-5(1) in Firozabad, Uttar

Pradesh, while computing the re-assessment proceedings for Assessment Year 2001-2002 he failed to appreciate the facts narrated by the Assessment Officer in the first assessment proceedings and the CIT (A) in the First Appellate Proceedings; that he failed to seek directions under Section 144A of the Income Tax Act, from the Additional JCIT-5, Firozabad and ignored the fact that the first assessment proceedings in the above case for the above Assessment Year were completed after obtaining directions under Section 144 A in the JCIT, Range-5, Firozabad. Accordingly, the Respondent was sought to be proceeded against for contravention of Rules 3 (1) (i), (ii) & (iii) of the CCS (Conduct) Rules, 1964.

3. With the Articles of Charge, a list of four documents was appended which contained the original (first) Assessment Orders of the CIT (A) and ITAT as well as the re-assessment order. However, no witnesses to prove those charge, was cited in the charge memorandum.

4. The Respondent filed the aforementioned OA No.1304/2014 questioning the charge memorandum *inter-alia* on the ground that there were no witnesses to support the Articles of Charge and that the inquiry could be a futile exercise. In the impugned order the CAT referred to Rules 14 (3) & (4) of the CCS (CCA) Rules, 1965 in terms of which the Disciplinary Authority (DA) is required to furnish the statement of Articles of Charge along with the list of documents and the list of witnesses. Reference was also made to the decisions in ***Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570*** and ***LIC of India v. Ram Pal Singh Bisen 2011 (1) SLJ 201*** where it was held that mere admission of a document and evidence did ***W.P.(C) 3436/2015***

not result in the document being proved. It was further held that witnesses examined by the Department of Enquiry should be made available for cross-examination and that even though the Code of Civil Procedure and the Evidence Act are not strictly adhered to in the disciplinary proceedings, the principles behind those provisions cannot be altogether ignored. Reference was also made to the decision in ***Kuldeep Singh v. the Commissioner of Police v. JT (1998) 8 SC 603***. The CAT held that in the absence of witnesses the documents relied upon could not be proved. Further by not producing prosecution witnesses, the DA had denied the delinquent employee a reasonable opportunity to defend his case by cross-examining such witnesses.

5. This Court has heard the submissions of learned counsel for the parties.

6. It was submitted on behalf of the Petitioners that as long as the documents were not denied, it was pre-mature for the CAT to interfere with the charge memorandum only because list of witnesses was not furnished. It is submitted that such witness could be summoned even during the course of the inquiry and that no prejudice was caused to the Respondent by the non-furnishing of the list of witnesses.

7. The Court notes that under Rule 14(3) & (4) of the CCS (CCA) rules, it was incumbent, where the Government proposes to hold an inquiry, to draw the substance of imputations which would contain “a list of documents by which and a list of witnesses by whom, the Articles of Charge are proposed to be sustained”. The said rule reads as under:

"14 (3) Where it is proposed to hold an inquiry against a Government servant under this rule and rule 15, the disciplinary authority shall draw up or cause to be drawn up –

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person".

8. Rule 14 (4) also envisages serving upon the Government servant the copy of the Articles of Charge which would include “the list of documents and witnesses by which each Articles of Charge is proposed to be sustained”.

9. The following paragraphs in *LIC of India v. Ram Pal Singh Bisen* (*supra*) are relevant in this context:

"20. Thus, the question that arises, for consideration is whether in absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross examination in the Court, what is the effect of documents filed by appellants and marked as Exhibits.

21. Despite our persistent requests made to the learned counsel appearing for the appellants they have not been able to show compliance of Order XII Rule 1 and 2 of the CPC, meaning thereby that there has not been any compliance thereof.

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26. We are of the firm opinion that mere admission of document in evidence does not amount to its proof. In other words, mere marking of exhibit on a document does not dispense with its proof, which is required to be done in accordance with law. As has been mentioned herein above, despite perusal of the record, we have not been able to come to know as to under what circumstances respondent plaintiff had admitted those documents. Even otherwise, his admission of those documents cannot carry the case of the appellants any further and much to the prejudice of the respondent.

27. It was the duty of the appellants to have proved documents Exh. A-1 to Exh. A-10 in accordance with law. Filing, of the Inquiry Report or the evidence adduced during the domestic enquiry would not partake the character of admissible evidence in a court of law. That documentary evidence was also required to be proved by the appellants in accordance with the provisions of the Evidence Act, which they have failed to do.”

10. Although, as pointed out by learned counsel for the Petitioner, in disciplinary inquiry proceedings the rules of the CPC and the Evidence Act may not strictly apply, it is too basic a principle, that the mere production of a document is not sufficient even in a disciplinary inquiry. There has to be some witness to prove such a document. Without a witness to prove the documents, the Inquiry Officer cannot simply take it on record as a genuine document. In the present case in the absence of any list of witnesses, there was no means by which the documents could have been proved by the Department in the inquiry proceedings.

11. Consequently, the Court is of the view that the impugned order of the CAT does not call for interference.

12. At this stage, learned counsel for the Petitioner placed reliance on a decision dated 10<sup>th</sup> August, 2016 of this Court in WP(C) No. 3127/2014 (***A.K.Saxena s. Union of India***) while setting aside the order of the CAT the Disciplinary Authority and the Appellate Authority this Court remanded the matter to the Disciplinary Authority to conduct a *de-novo* inquiry in accordance with law after giving the employee an opportunity of being heard. Liberty was granted to add a list of witnesses.

13. In the present case, however, the Respondent has already superannuated in 2013 and no useful purpose will be served at this stage in permitting the Petitioner to start the *de-novo* inquiry. Consequently, there is no merit in this petition and is accordingly dismissed.

**CM Appl. No. 39461/2017 (additional affidavit)**

14. For the reason stated in the application, the additional affidavit is taken on record. The application is disposed of.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**DECEMBER 11, 2019**

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