$~74

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

\+ **W.P.(C) 6472/2015 and CM APPL. 24166/2017 (Addl. Affidavit)**

UNION OF INDIA & ANR ..... Petitioner

Through: Ms. Madhurima Tatia, Advocate.

versus

RAJNISH KUMAR & ORS ..... Respondent

Through: None.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

<u>O R D E R</u>

% **11.12.2019**

1. The Department of Revenue and the Central Board of Direct Taxes ('CBDT') have challenged an order dated 11th September, 2014 passed by the Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi allowing OA No.1327/2014 filed by the Respondent No.1 and quashing the disciplinary proceedings initiated against him by charge Memorandum dated 13th February, 2003.

2. As noted in the impugned order, this is the third round of litigation. While quashing the Memorandum in the first round by an order dated 5th September, 2011 on the ground that it had not been approved by the Disciplinary Authority ('DA'), the CAT gave liberty to the Petitioners to issue a fresh Memorandum if it is approved by the competent authority.

3. When the Respondent's representation against the charge Memorandum

sent by him on 9th July, 2012 to the Chairman, CBDT was not responded to, he filed a second OA being OA No.1961/2013 which was disposed of by the CAT by an order dated 14th June, 2013 directing the Petitioners to dispose of the representation.

4. The representation was disposed of by a letter dated 14th October, 2013, stating that the issues raised by him were not to be examined as no disciplinary proceedings were pending against him. It is stated that the entire material had been placed before the DA for initiation of fresh proceedings.

5. Thereafter, a fresh Memorandum dated 24th December, 2013 was issued listing out two Articles of Charge. The first Article of Charge was that during the period March, 1992 to March, 1994, the Respondent had passed 10 assessment orders, which necessitated remedial action against him under Sections 147/263 of the Income Tax Act, 1961 ('IT Act'). The second Article of Charge spoke of illegal gratification being accepted by the Petitioner for 'safeguarding the AHD Officials and suppliers.' Appended to the charge Memorandum, for the first Article of Charge, as many as 10 separate assessment orders passed by the Respondent were relied upon. For Article-II, a confessional statement made by Mr. Dipesh Chandak before the Special Judge, CBI, AHD, Patna was relied upon.

6. It requires to be noted that AHD stands for Animal Husbandry Department and the scam referred to for which the Respondent allegedly accepted gratification was the 'animal husbandry scam'.

7. In the impugned order, the CAT has quashed the said charge Memorandum essentially on the ground that there was an inordinate delay in initiating the disciplinary proceedings and that there were no witnesses to prove the documents that were cited. Reliance was placed on the decision of the Supreme Court in ***Roop Singh Negi v. Punjab National Bank (2009) 2 SCC 570*** and the judgment dated 22nd August, 2007, in Civil Appeal No. 3881 of 2007 (***Union of India v. Swathi S. Patil)***.

8. The CAT further held that there was a violation of Rule 14 (3) of the CCS (CCA) Rules, 1965 inasmuch there was not a single witness to prove either of the two charges. Further, in the documents to prove Article-I, which were the assessment records of 10 individuals, it was not indicated as to what evidence was forthcoming from those documents. One, Mr. Dipesh Chandak who was supposed to be examined to prove the second charge, was not examined as the Petitioners apprehended his turning hostile. In effect therefore, there were no witnesses cited to prove the charges.

9. By a separate order passed today in W.P.(C) 4471/2014 (***Union of India v. Ritu Chaudhary***), this Court has upheld another order of the CAT, where disciplinary proceedings were quashed *inter alia* on the grounds of inordinate and unexplained delay and for failure to file a list of witnesses along with a Memorandum of charge.

10. In that view of the matter, the Court is unable to find any legal infirmity in the impugned order of the CAT.

11. Considering that the Respondent has already superannuated, the Court does not consider it appropriate to permit the Petitioner to initiate any *de novo* enquiry either.

12. The petition is accordingly dismissed. The pending application is also disposed of.

S. MURALIDHAR, J.

TALWANT SINGH, J.

DECEMBER 11, 2019
pa