IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 11.03.2020
Judgment pronounced on: 29.07.2020

W.P.(C) No.2615/2020 and C.M.No.9179/2020

ANIL KUMAR THAKUR ….. Petitioner

Versus

UNION OF INIDA & ANR. ….. Respondents

Advocates who appeared in this case:
For the Petitioner : Mr. S. C. Goel, Advocate
For the Respondents : Mr.

CORAM:
HON'BLE MR JUSTICE SIDDHARTH MRIDUL
HON'BLE MR JUSTICE TALWANT SINGH

J U D G M E N T

TALWANT SINGH, J.

1. By way of this petition the petitioner has challenged the final order of Central Administrative Tribunal ('CAT'), Principal Bench, New Delhi dated 31st May, 2019 in O.A. No. 453/2017, by which CAT had upheld the dismissal of the petitioner from service.

2. In brief, the facts are that the petitioner joined Income Tax Department in 1989 as a stenographer and was promoted as Inspector of

Income Tax vide order dated 18.04.2012 issued from the office of Chief Commissioner of Income Tax, Delhi-I, New Delhi. Wife of the petitioner had filed multiple cases against him. An FIR bearing No. 188/2013 dated 16th May, 2013 was registered against the petitioner alleging theft by the petitioner on 20.12.2012 of the Court file in respect of criminal complaint filed by his wife with the Court of Metropolitan Magistrate Ms. Monica Saroha at Saket Court Complex. Petitioner was arrested on 18.05.2013. As per the petitioner, he was convicted for theft without appreciating the evidence and even the first Appellate Court had confirmed the conviction. On 14.12.2015 Commissioner of Income Tax Commissioner (Audit)-2, New Delhi issued a notice under Rule 19(1) of CCS (CCA) Rules 1965. In the meantime, the petitioner had approached the Hon'ble High Court on the criminal side and his sentence was stayed vide order dated 04.02.2016 in Crl. R.P. No. 722/2015. On 15.02.2016 petitioner was issued final show cause notice by CIT, (Audit)-2 with a direction to file written submission or to argue the case in person on 21.03.2016. On 04.04.2016 CIT (Audit)-II issued order under Rule 19(1) CCS (CCA) Rules dismissing the petitioner from service. The main challenge to the dismissal is on the ground that CIT (Audit)-II is not the appointing authority of Inspector of Income Tax; rather it is the office of Principal CCIT, Delhi-I, who appoints Inspectors and other officials in Delhi. The representation filed by the Petitioner was dismissed on 10.08.2016 but the plea filed by another Inspector, namely Sh. Baljeet Singh, was allowed by the same authority. The petitioner filed an O.A. on 26.09.2016 before CAT as the order on his appeal was not being passed by the Appellate Authority. Vide order dated 30.09.2016, the CAT directed the respondent to decide his appeal within sixty days and as per the said directions, the petitioner submitted his written submissions but vide order dated 29.11.2016, respondent No. 1 upheld the order of dismissal of petitioner without considering the contentions raised by him regarding discretion exercised qua other officials and his dismissal by an authority ranked lower than his actual appointing authority. Petitioner was forced to file O.A.No.453/2017 before CAT, to which counter affidavit and additional counter affidavit were filed by the respondents. It was finally held by the Tribunal that petitioner was appointed by the Chief Commissioner of Income Tax and his dismissal order was passed by the Commissioner of Income Tax in his capacity as a disciplinary authority. Vide impugned order dated 31.05.2019 CAT upheld dismissal of petitioner from service which is alleged to be in direct violation of Article 311 Clause (1) of the Constitution of India.

3. Feeling aggrieved, the petitioner has challenged the said order of CAT on

the grounds that the act of respondent of dismissal of petitioner is in direct violation of Article 311 Clause (1) of Constitution of India; CIT (Audit)-II is not the appointing authority of the petitioner, the Tribunal failed to appreciate distinction between appointing authority and the authority prescribed for dismissal under Article 311 Clause (1) of the Constitution; in Delhi it is the office of Principal CCIT, Delhi which appoints Inspectors and hence CIT (Audit)-II was not competent to issue his dismissal order; the order of the Tribunal is perverse and is based upon materially false facts; the ground of discrimination vis-à-vis other officer was not considered; the criminal case against the petitioner does not relate to any matter of his employment and petitioner has a good record in service. It has also been pleaded that the penalty imposed is itself disproportionate to his alleged conduct.

4. When the matter was taken up, counsel for the respondents was present in Court on prior notice. Arguments have been heard from both sides. As per the petitioner, the main ground raised in the writ petition is that the authority which had passed the dismissal order is subordinate to the authority by which petitioner was appointed. The appointment letter of the petitioner as Inspector of Income Tax dated 18.04.2012 was issued from the office of the Chief Commissioner of Income Tax, Delhi-I, New Delhi but the same was

signed by one Sh. R. C. Meena, Additional Commissioner (HQRS-PERS), New Delhi. Clause No. 5 of the said appointment letter states that it was issued with approval of Chief Commissioner of Income Tax, Delhi-I, New Delhi. The dismissal order dated 04.04.2016 was issued by Sh. F. S. Sirowa, Disciplinary Authority, Commissioner of Income Tax (Audit)-2, New Delhi. The operative paragraph of the dismissal order is reproduced hereunder:

> "NOW, THEREFORE, in exercise of the powers conferred by Rule 19(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, I in the capacity of the Competent Disciplinary Authority am satisfied beyond doubt that the conduct of Sh. Anil Kumar Thakur which has led to his conviction is such as to render his further retention in the public service undesirable and the gravity of the charge is such as to warrant the imposition of major penalty of dismissal from government service. Accordingly, major penalty of dismissal from Government service is imposed on Sh. Anil Kumar Thakur which shall ordinarily be a disqualification for future employment under the Government and the said Sh. Anil Kumar Thakur, Inspector of Income Tax (under suspension) is dismissed from Government service with immediate effect."

5. When considering the dismissal of the Petitioner, it is also to be kept in mind that the petitioner was convicted in a criminal case by the court of learned ACMM. The operative paragraph of the judgment dated 15.07.2015 of Ld. ACMM is reproduced hereunder:

> "Therefore, in view of consistent depositions of official-witnesses read along-with the electronic-evidence, in the nature of video-clip, showing theft of judicial-file from Ahlmad room, prosecution has successfully proved its case against accused Dr. Anil Kumar Thakur beyond reasonable

doubt. Accused having stolen the judicial-file kept under the custody of Ahlmad is therefore held guilty for offence U/s 380 IPC and is accordingly convicted."

6. The petitioner preferred an appeal against the said judgment, which was dismissed by the Court of learned ASJ on 08.09.2015. Thereafter, the petitioner preferred a criminal revision petition bearing no. 722/2015 against the order of learned ACJ and the said revision petition was taken up for hearing on 04.02.2016. In the said petition, in **CrI. M. B. 8099/2015** the following order was passed on 04.02.2016 and criminal revision petition was also admitted:

> **"CrI.M.B. 8099/2015**
>
> The present petition has been filed against the order dated 08.09.2015 passed by the learned Additional Sessions Judge and judgments/orders dated 15.07.2015 & 30.07.2015 passed by the learned Additional Chief Metropolitan Magistrate, Saket, New Delhi.
>
> It has been submitted that the petitioner is behind the bar since 30.07.2015 and he has already been behind the bar for the last six months. He has further submitted that fine of Rs.2,000/- already stands deposited.
>
> Heard.
>
> In the facts and circumstances, the application is allowed and the sentence of imprisonment is suspended during the pendency of the present revision petition. The petitioner is ordered to be released on bail on furnishing the personal bond in the sum of Rs.25,000/- with two surety bonds in the like amount, to the satisfaction of the Trial Court."

7. By way of the above order, it was noted that the petitioner was behind bars for last about six months and the fine had been already deposited, so

during the pendency of the revision petition the sentence of imprisonment was suspended and petitioner was ordered to be released on bail. It is clear that only the sentence of imprisonment was suspended but the effect of judgment still remained.

8. It is also to be seen that when the petitioner filed an appeal against his dismissal, he never raised an issue regarding authority of the Commissioner of Income Tax to dismiss him. The CAT has observed the same in para 10 onwards of the impugned order as under:

> "10. A comparison of Article 311 (2) of Constitution of India with Rule 19 of the CCS (CCA) Rules discloses that additional requirement of giving an opportunity to an employee for making representation, in the context of deciding the nature of punishment is contained in the first proviso to Rule 19. It is in this context, that notice was issued to the applicant requiring him to explain as to why the punishment of dismissal be not imposed. Applicant did not challenge the authority of the Commissioner of Income Tax at that stage. After undertaking extensive discussion on the pleas in 14 typed pages, the Commissioner dismissed the applicant from service. The relevant facts and various judgments relied upon by the applicant were discussed at length. The appeal preferred by the applicant was also rejected. As many as 24 grounds were raised before the appellate authority and all of them were dealt with. The plea of competence of Commissioner was not raised before the appellate authority also. It is pleaded for the first time in the OA.
>
> 11. The plea of the applicant is that he was appointed by the Chief Commissioner of Income Tax and therefore he could not have been dismissed by an authority, other than the Chief Commissioner itself. The order of punishment dated 18.4.2012 was, no doubt, issued by the office of the Chief Commissioner of Income Tax. However, it was signed by the Additional Commissioner of Income Tax (HQRS-PERS), New Delhi.
>
> 12. Under the Recruitment Rules, the Commissioner of Income Tax is mentioned as Appointing Authority for the post of Income Tax

Inspector. The show cause notice to the applicant was issued by the same authority, i.e., the Commissioner of Income Tax and order of punishment was also passed by that very authority. Therefore, the plea of the applicant that the Appointing Authority was Chief Commissioner of Income Tax, cannot be accepted."

9. Learned counsel for the petitioner, during arguments, has drawn our attention to notification dated 05.10.1988 issued by the Ministry of Finance, Department of Revenue by which the powers of appointment of Income Tax Officer has been given to two authorities, i.e., Chief Commissioner of Income Tax as well as Commissioner of Income Tax. The relevant portion of the said notification is quoted hereunder:

(a) Inspectors, Supervisors (grade I & Head Clerks, Stenographers (Grade II when posted in the office of Chief Commissioner of Income Tax	Chief Commissioner of Income Tax	Chief Commissioner of Income Tax Dy. Commissioner of Income Tax (Hqrs.) (Admn.)	All (i) to (iii)	Central Board of Direct Taxes Chief Commissioner of Income Tax
(e)Inspectors supervisors(grade I & Head Clerks, Stenographers (Grade II when posted in the office of Commissioner of Income Tax	Commissioner of Income Tax	Commissioner of Income Tax Asstt. Commissioner of Income Tax (Hqrs) Admn.)	All (i) to (iii)	Chief Commissioner of Income Tax Commissioner of Income Tax

10. On the basis of the above notification, it is clear that the power of the Chief Commissioner of Income Tax as well as the power of Commissioner of Income Tax is concurrent as far as the appointment of Inspectors of

Income Tax is concerned. In the present case, the petitioner was appointed by an office order issued from the office of Chief Commissioner of Income Tax; however, the same was signed by an Additional Commissioner of Income Tax and his dismissal order was issued by Commissioner of Income Tax. So, in our view, where there are two appointing authorities then either of them is competent to issue the order of dismissal and in this case the order issued by Commissioner of Income Tax dismissing the service of the petitioner is legal and valid. Moreover, in his departmental appeal before the Appellate Authority, the petitioner had nowhere challenged the powers of the Commissioner of Income Tax to issue the order of dismissal. It is pertinent to note here that the Petitioner cannot say that he was not aware about this ground at that particular time because he had taken as many as 24 grounds to challenge his dismissal and the Principal Chief Commissioner of Income Tax had dealt with all the said grounds in a detailed manner and had given reasons/justification for rejecting the said grounds. Findings of the Appellate Authority are as under:

> "20. After considering the facts and circumstances of the case, grounds taken by Shri Anil Kumar Thakur, appellant in his appeal and additional submissions and directions of Hon'ble CAT, Principal Bench, New Delhi filed before the undersigned have also been discussed in the foresaid paras of this order I give my findings in this regard are as under:

a. For imposition of penalty under CCS(CCA) Rules, it is not necessary that the action of incident of misconduct should necessarily be related to the official work and penalty can be imposed for misconduct even in private affairs/ incident non related to the official work. Reference is made to Govt. of India instruction contained in MHA O.M. No. 25/16/59-Ests.(A), dated 01.09.1956 wherein it has been laid down that a Govt. servant is expected to maintain a responsible and decent standard of conduct in his private life and not bring discredit to his service by his misdemeanors. Though the above mentioned MHA was in respect of conduct of Govt. servant in relation to proper maintenance of his family, but in the OM it has also essentially been laid down that a public servant has to maintain a decent standard of conduct. Stealing of court record and that too pertaining to a case of domestic violence filed by the wife of appellant definitely reflected a grave misconduct indicating criminal mindset of the appellant and in such case penalty of dismissal from Govt. service was justified as such person of proven misconduct and pervert mindset may not be desirable in the Govt. service.

b. Reference is also made to the decision of Hon'ble Apex Court S. Govind Menon vs. Union of India AIR 1967 SC 1274 in the below mentioned case wherein it has been held that for imposition of penalty it is not necessary that the misconduct should be related to the office or official work. The brief description has also been summarized by the DA in his order dated 04.04.2016.

c. The other facts stated in his grounds are of routine and general nature and it is not specifically mentioned as to how the order passed by the Disciplinary Authority is arbitrary, unreasonable and non speaking. The facts are undisputed and in fact the order of dismissal was passed in a very reasoned and speaking manner.

d. Therefore, in exercise of powers conferred under Rule 27 of CCS(CCA)Rules, 1965, after examining the detail facts and judgments of the various courts mentioned by the Disciplinary

> Authority and by the Appellant, I have arrived at the conclusion that the order passed by the Disciplinary Authority is reasoned, self speaking and all the issues raised by the appellant were properly considered. The appellant has prime facie not pointed out any procedural deficiency or legal infirmity in the order. Therefore, there is no merit in the appeal and the appellant has failed to make out a case of stay of dismissal order. The Disciplinary Authority has also relied upon various case laws and Govt. of India instructions in support of his findings of awarding of penalty of dismissal from service and the appellant has not brought on record any evidence to rebut such findings. Case laws submitted by the appellant are not relevant to the current case. Accordingly, the order passed under Rule 19(i) of CCS (CCA), Rules 1965 by the Disciplinary Authority on 04.04.2016 deserves to be confirmed"**.**

11. In view of the above, this Court is of the opinion that the main ground raised by the petitioner that his order of dismissal issued by the Commissioner of Income Tax is violative of Article 311 (1) of the Constitution of India is without any basis and this ground is liable to be rejected.

12. As far as the second ground regarding the proportionality of the punishment is concerned, it is to be noticed that the charge against the petitioner was regarding theft of judicial record from the court of learned Magistrate and the said charge stands proved vide judgment dated 15.07.2015 of the Ld. ACMM, which was further affirmed in appeal by the learned ASJ on 08.09.2015. The said conduct of the petitioner is unbecoming of a government servant and is very serious in nature. The CAT has observed in this regard in para 13 of the impugned order, which is

re-produced hereunder:

> "13. So far as merits are concerned, the offence held to have been committed by the applicant is very serious. He committed theft of the records of the Court of law. The trial court held the charge as proved on the basis of the oral and documentary evidence. Appellate Authority has also upheld the same. As of now, the case is pending before the High Court in the form of review/revision. It is a different matter that in case the applicant is acquitted of the offence, he can avail remedy with the Disciplinary Authority".

13. The petitioner has relied upon the judgment in *Mysore State Road Transport Corporation vs. Mirja Khasin Ali Beg & Anr.(1977 SCR (2) 282).* In our considered view, the facts of the said case are quite different and ratio of the same is not applicable to the present case. In the case in hand, there are two parallel appointing authorities, which was not the case in *Mysore State Road Transport Corporation* (supra). Hence, the said judgment does not support the case of the petitioner.

14. Another ground raised by the petitioner that the offence committed by him was not in respect of his official duty does not matter, where he has committed a very serious offence of theft of the court record. We are conscious of the fact that a revision petition filed by him before this Court is still pending. As on date, there are no grounds to interfere with the order of the Commissioner of Income Tax, (Audit)-II dated 04.04.2016 by which the punishment of dismissal from service was imposed against the petitioner.

The said order of dismissal as well as the order in appeal by the Appellate Authority dated 29.11.2016 and the order of CAT dated 31st May, 2019 in OA no. 453/2017 are hereby upheld. However, in case the petitioner is acquitted in the revision petition filed by him before this Court, then he will have all the legal remedies open to him regarding his employment as Inspector of Income Tax.

15. The writ petition is without any merit and the same is hereby dismissed in view of the above observations. No order as to costs.

TALWANT SINGH
(JUDGE)

SIDDHARTH MRIDUL
(JUDGE)

JULY 29, 2020
mr