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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISIDICIION
WRIT PETITION NO. 2979 OF 2021**

Mayur Gajanan Kamble .. Petitioner

Versus

Union of India & Anr. .. Respondents

Mr. Rajeev N. Kumar for petitioner.

Mr. Subir Kumar a/w Mr. Syed Ahmed for respondents.

**CORAM : DIPANKAR DATTA, CJ &
G. S. KULKARNI, J.**

DATE : AUGUST 11, 2021

PC:

1. An unsuccessful original applicant before the Central Administrative Tribunal, Mumbai Bench, Mumbai (hereafter "the Tribunal" for short) is the petitioner before this Court. Challenge has been laid to the judgment and order dated January 15, 2021 of dismissal of Original Application No. 243 of 2020 by the Tribunal on the finding that there was no merit justifying grant of relief as prayed.

2. The petitioner is an officer of the Indian Revenue Service, who holds a substantive post of Deputy Commissioner of Income Tax (hereafter "DCIT", for short). By Office Order No. 221 of 2018 dated December 31, 2018, the President of India was pleased to appoint the petitioner as well as 182 other

officers of the service in the grade of Joint Commissioner of Income Tax (hereafter "JCIT", for short) purely on ad-hoc basis for a period of one year, with effect from January 1, 2019 or the date they assume charge as JCIT, whichever is later. Such order stipulated that the promotions were being effected on *in-situ* basis and the officers would continue to discharge the same functions and duties as they were discharging before their promotions until further orders. Paragraph 2 of the order is relevant for the purpose of a decision on this writ petition and is, therefore, quoted below: -

"2. These appointments are intended to be on ad-hoc nature subject to the following conditions:

- (i) Such appointment shall not confer any right to the officers for continued officiating or seniority or for regular promotion and shall be governed by the instructions of DOP&T as contained in OM No. 28036/8/87-Estt.(D) dated 30.03.1988 and instructions issued by the Government from time to time.
- (ii) These appointments will not confer any right or equity in favour of the appointees."

3. Pursuant to the order, the petitioner started discharging the duties and functions of a JCIT. On or about April 30, 2020, disciplinary proceedings were drawn-up against the petitioner by issuance of charge-sheet memorandum under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. It was alleged that by reason of his conduct while

functioning as DCIT, Mumbai, the petitioner had exhibited conduct unbecoming of a Government servant and failed to discharge his duties with the highest degree of professionalism and dedication to the best of his ability, and thereby contravened the stated provisions of the Central Civil Services (Conduct) Rules, 1964.

4. The respondent no.2 had passed an order dated May 27, 2020 by which, *inter alia*, the petitioner was reverted to the substantive post of DCIT from the post of JCIT, with effect from the afternoon of the same date. Apart from the petitioner, five other officers suffered the same fate. The order refers to 'vigilance status' about such officers as the trigger for such reversion. This order of the respondent no.2 was under challenge before the Tribunal which, as noted above, failed by reason of dismissal of the original application.

5. Perceiving initiation of disciplinary proceedings as a ground for his reversion, the petitioner approached the Tribunal for quashing of the order dated May 27, 2020, *inter alia*, on the following grounds: -

- (a) The impugned decision of the respondent not to continue the ad-hoc promotion of the petitioner to the post of JCIT and directing his reversion vide the impugned order is ex-facie illegal, ab-initio void and deserves to be quashed and set aside.

- (b) The impugned order is in violation of Office Memorandum dated December 24, 1986 issued by the Department of Personnel and Training. Since the petitioner had discharged duty as JCIT for more than a year, he could not have been reverted to the post of DCIT merely on the ground of pendency of disciplinary proceedings.
- (c) The Patna Bench of the Central Administrative Tribunal had granted stay in a similar matter and, therefore, the petitioner was also entitled to similar relief.
- (d) The petitioner was due for regular promotion much earlier but it was due to the fault of the respondents that no process was conducted and, as such, he was not considered therefor. When the petitioner was due for such promotion, no disciplinary proceedings were pending against him; therefore, the petitioner ought to be granted regular promotion to the post of JCIT with effect from January 1, 2019.
- (e) The illegal reversion of the petitioner amounts to humiliation and, therefore, ought to be set aside.

6. The original application was contested by the respondents by filing reply-affidavit. It was pleaded therein that the petitioner, not having any right to post, cannot claim that the respondents should have continued him as JCIT despite disciplinary proceedings having been initiated against him. Insofar as the Office Memorandum dated December 24, 1986

is concerned, the respondents claimed that subsequent office memoranda issued in supersession of all earlier office memoranda had the effect of superseding Office Memorandum dated December 24, 1986. The respondents also referred to certain decisions in support of their claim that the original application was devoid of merit.

7. Before this Court, Mr. Rajeev Kumar, learned advocate for the petitioner, vociferously contended that the petitioner could not have been reverted without taking recourse to Article 311(2) of the Constitution. It was further contended by Mr. Rajeev Kumar that having regard to the terms of Office Memorandum dated December 24, 1986, the respondents acted illegally in reverting the petitioner to the post of DCIT. It was also his contention that other officers, who were reverted by the impugned order, have moved different Benches of the Central Administrative Tribunal and have obtained protective interim orders; therefore, the petitioner is also entitled to similar relief.

8. This Court has not considered it necessary to call upon the respondents to answer.

9. The first contention that the petitioner was entitled to protection of Article 311 (2) of the Constitution, is thoroughly misconceived. Provisions of such article are attracted if the appointing authority proposes to impose a penalty such as dismissal or removal or reduction in rank. Clause (2) of Article

311 ordains that no such order of penalty shall be passed, except after an inquiry into charges that have been informed to the officer and after giving him a reasonable opportunity of being heard. Here, there has been no reduction in rank. The petitioner continued as DCIT while officiating on promotion as JCIT, by reason of an adhoc promotion which did not create any right in his favour. Moreover, reversion of the petitioner from the post of JCIT to DCIT by the order dated May 27, 2020 is not to be viewed as a measure of penalty. The respondent no.2 divested the petitioner of the responsibility as JCIT considering his vigilance status only, since the petitioner's promotion by its very nature was a temporary arrangement. Thus, there is no question of attraction of Article 311 on facts and in the circumstances.

10. That apart, Article 311 applies if a person is the holder of a post under the Union. Since the petitioner was appointed on promotion on ad-hoc basis and it was clearly stipulated in such order that such appointment would not confer any right or equity in favour of the appointees, question of application of the procedural safeguards engrafted in Article 311 would not arise.

11. Much has been argued by Mr. Rajeev Kumar on the basis of the Office Memorandum dated December 24, 1986. We consider it appropriate to quote the same hereinbelow: -

“(10)” Disciplinary proceedings against an employee appointed to a higher post on ad-hoc basis: -

The question whether a Government servant appointed to a higher post on ad-hoc basis should be allowed to continue in the ad-hoc appointment when a disciplinary proceeding is initiated against him has been considered by this Department and it has been decided that the procedure outlined below shall be followed in such cases: -

(i) Where an appointment has been made purely on ad-hoc basis against a short-term vacancy or a leave vacancy or if the Government servant appointed to officiate until further orders in any other circumstances has held the appointment for a period less than one year, the Government servant shall be reverted to the post held by him substantively or on a regular basis, when a disciplinary proceeding is initiated against him.

(ii) Where the appointment was required to be made on ad-hoc basis purely for administrative reasons (other than against a short-term vacancy or a leave vacancy) and the Government servant has held the appointment for more than one year, if any disciplinary proceeding is initiated against the Government servant, **he need not be reverted** to the post held by him only on the ground that disciplinary proceeding has been initiated against him.

Appropriate action in such cases will be taken depending on the outcome of the disciplinary case.

[Deptt. Of Pers. & Trg. OM No. 11012/9/86-Estt. (A) dated the 24th December, 1986]”

(emphasis supplied)

12. According to Mr. Rajeev Kumar, the case of the petitioner is squarely covered by sub-clause (ii) which ordains that if a Government servant has held the appointment for more than one year on a higher post on ad-hoc basis, he must not be reverted to the post held by him only on the ground of initiation of disciplinary proceedings. What is of significance is that the

Office Memorandum dated December 24, 1986 does not make it mandatory for continuation of an officer on a higher post on ad-hoc basis, notwithstanding that disciplinary proceedings have been initiated against him. The important words are "he need not be reverted". This Court is inclined to read the terms of the office memorandum as directory, leaving it open to the appointing authority to decide whether despite initiation of disciplinary proceedings an officer should be continued on the higher post to which he was promoted on ad-hoc basis. Having regard to the terms of the letter of appointment dated May 27, 2020, it was made clear in no uncertain terms that the petitioner, by reason of the appointment on promotion on ad-hoc basis, would not acquire any right or equity in such an appointment. The terms of the appointment order would prevail bearing in mind the element of discretion left to be exercised by the appointing authority by the Office Memorandum dated December 24, 1986. The concerned officer having taken an informed decision based on vigilance status of the petitioner, the Court would be slow to interfere with such decision.

13. Even otherwise, this Court is of the considered opinion that the subject office memorandum has no statutory force and does not have the force of law. Having been issued for the guidance of the departmental officers, its breach, if any, cannot form the basis of a claim for enforcement in a Court of law by the petitioner. If any authority is required, this Court may usefully refer to the decision of the Supreme Court in **South Central Railway Vs G. Ratnam**, reported in (2007) 8 SCC 212.

14. The last contention of Mr. Rajeev Kumar, in the considered view of this Court, has been urged to be rejected. Orders passed by the benches of the Central Administrative Tribunal cannot bind the High Court. Such orders are subject to judicial review by the High Courts in terms of the decision of the Supreme Court in **L. Chandra Kumar Vs. Union of India & Ors.** reported in (1997) 3 SCC 261. This Court, therefore, finds no reason to be persuaded by the orders passed by the other Benches of the Central Administrative Tribunal to hold in favour of the petitioner. On the contrary, this Court approves the view taken by the Tribunal in dismissing the original application.

15. The writ petition lacks merit and, accordingly, stands dismissed. There shall be no order as to costs.

(G. S. KULKARNI, J.)

(CHIEF JUSTICE)

PRAVIN
DASHARATH
PANDIT

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