IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2022

Coram

THE HONOURABLE MR.JUSTICE S.VAIDYANATHAN
AND
THE HONOURABLE MRS.JUSTICE N.MALA

W.P.No.16651 of 2019

Union of India
Rep.by the Secretary to the Government
Ministry of Finance,
Department of Revenue,
Central Board of Direct Taxes,
New Delhi 110 001. ...Appellant

-vs-

1. The Central Administrative Tribunal
Madras Bench Rep. By its Registrar,
City Civil Court Buildings,
High Court Complex,
Chennai 600 104.

2. Shiva Srinivas ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari to call for the records of 1st respondent Tribunal in OA No.1067/2016 dated 06.09.2018 and quash the same.

For Petitioner : Mr.V.Vijay Shankar
For Respondents : Mr.Menon Karthik Mukundan for R2

O R D E R

S.VAIDYANATHAN, J.
&
N.MALA, J.

The present Writ Petition has been filed against the order passed by the Central Administrative Tribunal (CAT) in O.A.No.1067 of 2016, by which the Tribunal has quashed the order dated 18.04.2016 passed by the Writ Petitioner herein, thereby allowing the Original Application.

2. The case of the Applicant / 2nd Respondent herein is that he was working as Joint Commissioner of Income Tax. According to

him, a Charge Memo dated 18.04.2016 was issued against him, alleging misconduct relating to an assessment of Tax decided by him in the year 2009. The Applicant was holding the post of Joint Commissioner of Income Tax from 01.04.2016 and the assessment in respect of charge memo dated 18.12.2009 had occurred much prior to the said period. The Writ Petitioner has invoked the provisions of Rule 14 of CCS (CCA) Rules for issuance of charge memo regarding certain irregularities committed by him. The Tribunal, by order dated 06.09.2018 in O.A. No. 1067 of 2016 quashed the charge memo issued by the Writ Petitioner herein and aggrieved by the same, the present Writ Petition has been filed.

3. The learned counsel for the Writ Petitioner submitted that the Applicant had discharged his duty in favour of an Assessee, by name Mr.Mohd.Yousuf and despite adducing sufficient list of dates to the Tribunal as proof in respect of time taken for issuance of the charge memo, the Tribunal, without proper application of mind, quashed the charge memo, which needs interference by this Court.

4. The learned counsel for the Applicant / 2nd Respondent contended that in fact after assessment and considering various aspects, it was the Applicant, who had enhanced the Tax liability of one B.Mohammed Yousuf, in respect of which, the charge memo came to be issued to him. Moreover, the alleged assessment had taken place in the year 2009 and after a lapse of seven years, charges were levelled against him, which has no legs to stand. The interference with the charge memo by the Tribunal is perfectly valid and is sustained in law.

5. Head both sides.

6. The case put forth by the Writ Petitioner / Department is that a complaint was received from the CCS (CCA) against the Applicant for rendering a decision with a dishonest intention in favour of an Assessee and that the applicant has committed a serious misconduct while in service. Therefore, it was decided to proceed against the employee for a major misconduct under Rule 14 of CCS (CCA) Rules. The learned counsel for the Applicant submitted that four charges have been framed against the Applicant and that the proceedings have been contemplated before issuance of the Charge Sheet against the Applicant, which is an usual practice. Undoubtedly, the delay is on the part of the Department and it is impermissible for the Writ Petitioner / Department to bypass the procedure contemplated in the Disciplined Procedures / Guidelines / Instructions to proceed with an enquiry.

7. In the present case on hand, though a complaint has been

received from the Assessee immediately, there is no need to wait for seven long years to issue a charge memo and therefore, it is obvious that there is a delay in issuance of charge memo. It is true that the Hon'ble Supreme Court reported in (1996) 3 SCC 157 in the case of Secretary to Government, Prohibition & Excised Department Vs L.Srinivasan, while deciding the case of delay in issuance of charge memo, held that in the nature of charges, it would take a long time to detect embezzlement and fabrication of false records which should be done in secrecy. The matter may take time and that sufficient evidence have got to be taken before the issuance of charge memo and the limitation cannot be applicable in those cases and that the charge memo cannot be interfered on the ground of delay. But, at the same time, the present case on hand does not fall in that category for the simple reason that the Department, inspite of receipt of the complaint from the Assessee, failed to act upon it with an immediate effect, proceed with the enquiry by issuance of charge memo and the Department would have completed the said exercise well before seven years instead of sleeping over for seven years. In a recent judgment of the Hon'ble Supreme Court in the case of UCO Bank and others Vs Rajendra Shankar Shukla, reported in (2018) 14 SCC 92, it was held in Paragraph Nos.12 & 13, which are extracted below:-

> "12. We do not find any reason to interfere with the judgment and order passed by the High Court. However, it is necessary for us to highlight a few facts which were brought to our notice during the course of submission made by the learned counsel. the first issue of concern is the enormous delay of about 7 years in issuing a charge-sheet against Shukla. There is no explanation for this unexplained delay. It appears that some internal discussions were going on within the Bank but that it took the Bank 7 years to make up its mind is totally unreasonable and unacceptable. On this ground itself, the charge-sheet against Shukla is liable to be set aside due to the inordinate and unexplained delay in its issuance.
>
> 13. What compounds the default on the part of the Bank is that Shukla was placed in a higher category as a Manager on 19.07.1994 while all these discussions were going on in the Bank. He was also allowed to cross the efficiency bar on 12.08.1996 again while the discussions were going on. Surely, if the Bank was serious about proceeding against Shukla for misconduct, they would not only have taken prompt action in issuing a charge-sheet but would not have granted him the benefit of being placed in a higher category or crossing the efficiency bar."

8. In view of the above dictum laid down by the Supreme

Court, we find substance in the argument advanced by the the Applicant, who is the 2nd respondent herein and in view of the inordinate delay involved in issuance of charge memo, we are of the view that the order of the Tribunal is liable to be upheld.

9. With the above observation, this Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

dpq

To:

The Registrar,
The Central Administrative Tribunal
Madras Bench,
City Civil Court Buildings,
High Court Complex,
Chennai 600 104.

+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.25403

+1cc to Mr.Menon Karthik Mukundan, Advocate, S.R.No.25423
(29/06/2022)

W.P.No.16651 of 2019

AD(CO)
CT/27/06/2022