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

Decided on: 22.04.2022

\+ W.P.(C) 11260/2019 & CM APPL. 46371/2019

RAMESH CHANDER ..... Petitioner

Through: Mr. Arvind K. Nigam, Sr. Adv. with Mr. Bhuanesh Sehgal, Adv.

versus

CENTRAL BOARD OF DIRECT TAXES ..... Respondent

Through: Ms. Shiva Lakshmi, CGSC with Mr. Siddharth Singh, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

NAJMI WAZRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. The petitioner impugns the order dated 08.05.2019 passed by the learned Central Administrative Tribunal, Principal Bench, New Delhi in O.A No. 1356/2019, upholding the issuance of Charge Memo against him by the Ministry of Finance, Government of India ('GOI').
2. The learned Senior Advocate for the petitioner submits that the order is erroneous in facts and in law because a fundamental error has been committed, in the issuance of the purported Charge Memo. A Charge memo was issued to the petitioner on 21.06.2018, with respect to his duties as Additional

Commissioner of Income Tax, Central Range-2, New Delhi. However, the communication issued on 01.03.2017 to the petitioner addresses his designation as Commissioner of Income Tax (Appeals)-3.

3. The Charge Memo referring to his position as an Additional Commissioner, was roughly 15 years ago. What is to be seen is that on the date of issuance of Charge Memo i.e., 21.06.2018, he was a Group A officer in the post of Additional Director General, Central Economic Intelligence Bureau (CEIB), he was Commissioner, Income Tax in 2017 (pdf pg. 89 of W.P. (C) 11260/2019).

4. The rule governing issuance of Charge Memo to the Officers of Rank of Commissioner is spelt out in Office Order No. 205/2005 dated 19.07.2005, which states that "*approval for issuing Charge Memo/sanction prosecution*" lies with the Finance Minister. Apropos the authority to issue such Charge Memo, the respondent had so clarified through a RTI reply, that the sanction this was not granted by the Finance Minister. In the said reply, the respondent has admitted that the Chairman, CBDT gave approval for initiating penalty proceedings against the petitioner. That being the position, the initiation of the proceedings against the petitioner is against the prescribed rules and would deem to be *non est*. The impugned order has noted that the Minister of State for Finance (MoSF) is not subordinate to the Union Minister of Finance.

5. The respondent has placed on record an Office Order issued on

19.06.2019 by the Ministry of Finance, GOI delineating the work allocated to Minister of State in the Ministry of Finance. Para 2 and 3 of the said order reads, *inter alia*, as under:-

> *"....2. All matters pertaining to the five Departments of Ministry of Finance except those mentioned in Para 3 below, but including Starred & Unstarred Parliament Questions and Calling Attention Motions, shall be submitted to the Finance Minister through the Minister of State. However, VIP References addressed to the Finance Minister will be submitted directly to her.*
> *3. The following matters will be disposed of at the level of the Minister of State:*
> *...*
> ***CBDT***
> *(i) All matters relating to establishment and vigilance of Group- A officers below the rank of Commissioner of Income Tax.*
> *..."*

6. This Office Order was amended in the 04.07.2019, which reads, *inter alia,* as under:-

> *"...2(ii) All matters where the President of India is the Appointing and Disciplinary Authority shall be submitted to the Finance Minister through the Minister of State."....*

7. What is evident from the two aforequoted Office Orders is that it indeed removes any doubt in this regard, in so far as it states that where the appointing disciplinary authority is the President of India, only the Finance Minister would be the authority concerned before whom the matters concerning such officers would be placed.

8. The petitioner is a Group- A officer in the rank of the Commissioner, his appointing and disciplinary authority is the President of India. Therefore, on all three grounds, it would be the Finance Minister, who would have had the jurisdiction apropos issuance of any Charge Memo or other proceedings against the said officer. A reference has been made in the impugned order to the dicta of Supreme Court in *Union of India and Others vs. B.V. Gopinath* (2014) 1 SCC 351. However, the Government of India has itself clarified that the sole authority to issue Charge Memo or initiate any disciplinary proceedings against a Group – A Officer or an Officer whose appointing authority is the President of India, would lie with the Finance Minister.
9. No further reference is required to any precedent. That being the position, the issuance of the Charge Memo cannot be sustained and is accordingly, set aside as being *non est.*
10. The petition, along with the pending application, is allowed and disposed-off, in the above terms.

NAJMI WAZIRI, J

SWARANA KANTA SHARMA, J

APRIL 22, 2022/dss