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

Decided on: 22.04.2022

\+ W.P.(C) 11262/2019 & CM APPL. 46407/2019

P D KANUNJNA ..... Petitioner

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

versus

CENTRAL BOARD OF DIRECT TAXES ..... Respondent

Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, 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. 1355/2019, 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 to the petitioner on 26.06.2018, apropos his duties as Deputy Commissioner of Income Tax, Central Circle - 3, New Delhi.

3. The Charge Memo refers to his designation as a Deputy Commissioner, a position he occupied roughly 15 years ago, whereas on the date of issuance of Charge Memo i.e., 26.06.2018, he was a Group A officer i.e., Joint Commissioner of Income Tax.

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, it 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 sanction was not granted by the Union Finance Minister. In the said reply, the respondent has admitted that Chairman, CBDT gave approval for initiating penalty proceedings against the petitioner. That being the position, the initiation of the proceedings against the petitioner is without due sanction, against the prescribed rules and would therefore be deemed as *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 apropos 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.*
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> *3. The following matters will be disposed of at the level of the Minister of State:*
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> *...*
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> ***<u>CBDT</u>***
>
> *(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 make it clear that where the Appointing and 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 Joint Commissioner, his Appointing and Disciplinary Authority is the President of India. Therefore, only the Finance Minister would have had the jurisdiction apropos issuance of any Charge Memo or other related 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. That being the position, the issuance of the Charge Memo cannot be sustained and is accordingly, set aside as being without due sanction, against the rules and as *non est.*
10. Consequently, 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