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

% ***Date of decision: July 26, 2024***

+ **W.P.(C) 120/2009 & CM APPL.248/2009**

**UOI**

**.....Petitioner**

**Through: Mr. Naushad Ahmad Khan, Mr. S.  
Malik Mr. Akhil Tyagi and Mr.  
Habib-ur-Rehman, Advocates**

**versus**

**U.R.KAPOOR & ANR.**

**....Respondents**

**Through: Mr. Lokesh Kumar and Mr. Ankur  
Arora, Advocates for R-1 with R-1 in  
person**

**CORAM:**

**HON'BLE MR. JUSTICE SURESH KUMAR KAIT**

**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

**J U D G M E N T (oral)**

1. The present petition has been filed by the petitioner under Article 226 of the Constitution of India seeking quashing of order and judgment dated 12.03.2008 passed by learned Central Administrative Tribunal ('Tribunal'), Principal Bench, New Delhi in O.A. No.2341/2006 whereby Memorandum dated 10.02.2004, Charge Memo dated 30.10.2005, Statement of Articles of Charge and the Statement of Imputation of misconduct or misbehavior in support of the charges framed against respondent No.1, have been directed.
2. The brief facts of the case, as spelt out in the present petition are, that respondent No.1, Additional Commissioner, Sales Tax-IV (ACST-IV) while dealing with sales tax matters in Ward No.84 operating from Mayur Vihar,



entertained a revision petition preferred by M/s N.P.L. Motors Pvt. Limited, even though he was not having jurisdiction to entertain the same as it was sought to be entertained by Ward No.91, i.e. ACST-I.

3. Respondent No.1 vide order dated 19.09.2003, reduced the penalty upon the dealer from Rs.2,22,96,752/- to Rs.10,00,000/- for late filing of return and late payment of tax, with direction to the said dealer to pay the said penalty within a month. As an afterthought, the respondent No.1 wrote to the Sales Tax Officer (STO), Ward No.91 on 7.10.2003 seeking information on the decision taken on the application of the said dealer for change of the Head Office. The STO, Ward No.91 allowed the request of the dealer for opening the branch sales office at 16/48, Mayur Vihar, Delhi, however, he rejected the request for change of Head Office from 29, Okhla Industrial Estate, New Delhi to the branch sales office at 16/48, Mayur Vihar, Delhi on the ground that the books of accounts of the dealer were continued to be maintained at the original business premises at 29, Okhla Industrial Estate, New Delhi.

4. The petitioner-UOI in the present petition has alleged that in the aforesaid revision petition filed before respondent No.1/ACST-IV, the dealer did not bring the entire background of the case in respect of dismissal of the appeal by ACST-I and even respondent No.1/ACST-IV entertained the revision petition without settling the jurisdictional issue, therefore, order passed by respondent No.1 was silent on development and history of case. There is no mention that an appeal was filed before ACST-I or that ACST-I directed the dealer to comply with the order of the Sales Tax Appellate Tribunal to deposit Rs.15,00,000/- with surety of the like amount however the dealer did not comply with the Tribunal's order and, therefore, his



appeal was dismissed.

5. The respondent No.1/ACST-IV after attaining the age of superannuation retired on 30.06.2004, however, respondent No.2 initiated departmental proceedings under Rule 9(1) of the CCS Pension Rules, 1972 and issued a charge-sheet against him on 30.09.2005.

6. The respondent No.1/ACST-IV made representation to respondent No.2 raising issues in respect of penalty imposed upon other dealers by the Sales Tax Department during the relevant period and also stating that he had jurisdiction to entertain the revision petition and sought dropping of the disciplinary proceedings initiated against him; which was rejected by the respondent No.2.

7. The disciplinary authority, however, decided to continue with the oral inquiry and appointed Inquiry Authority and Presiding Officer on 06.09.2006.

8. The respondent No.1 preferred OA No.2341/2006 before the learned Administrative Tribunal challenging the charge-sheet dated 30.09.2005/30.10.2005 and order dated 06.09.2006.

9. The stand of the petitioner-UOI (respondents before the Tribunal) was that the dealer in his revision petition filed before respondent No.1/ACST-IV had clearly brought out the entire background of the case including dismissal of his appeal by ACST-I, however, respondent No.1 did not settle the jurisdiction issue and since the dealer was regularly filing his monthly sales tax returns in Ward No.91, he could not have filed the revision petition under the jurisdiction of ACST-IV. The petitioner pleaded before the learned Tribunal that the dealer was required to deposit Rs.15,00,000/- as well as surety of Rs.15,000/- as a pre-condition to hear his appeal, however,

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the dealer did not comply with the same so ACST dismissed the appeal *in limine*, against which revision petition was filed before respondent No.1/ACST-IV.

10. According to petitioner, the conduct of respondent No.1 was to be examined on the basis of facts of the case and not obtaining verification report in respect of admitted tax amount by the said dealer from Ward No.91, however, the disciplinary authority after due examination of the representation filed by respondent No.1 as well as the facts of the case, proceeded to hold an oral inquiry.

11. The learned Tribunal on the basis of pleading of both the parties, vide impugned judgment dated 12.03.2008 observed and held as under:-

*“17. We have given our thoughtful consideration to the whole issue and are of the view that the applicant could not be charged for any of the instances/cases mentioned by the Hon’ble Supreme Court for taking disciplinary action. It does not appear to us that the applicant acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty. There is no prima facie material to show recklessness or misconduct on his part in discharge of duties. He does not appear to have acted negligently or that he omitted the prescribed conditions which are essential for exercise of the statutory powers, nor he appears to have acted in order to unduly favour a party. This does not also appear to be a case where the applicant might have been actuated by corrupt motive. There is no doubt that the applicant has been attributed, even though by presumption, corrupt motive, which would naturally reflect on his reputation for integrity or good faith or devotion to duty, but the same, as repeatedly said, is derivative from the two factors, namely, he would have no jurisdiction to entertain and decide the revision, and that he had*



*helped the dealer at the cost of the government. If both these elements are excluded, the allegations, be it of corrupt motive or acting in a manner as would reflect on his reputation for integrity or good faith or devotion to duty, would fall like a pack of cards. As for the instance at serial number (iii) with regard to acting in a manner unbecoming of a government servant, the same is of general nature and, in our view, has to be backed by a specific instance, which may show as to how and in what manner, the specified allegation is such which may show that the applicant acted in a manner which in unbecoming of a government servant.*

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*21. We are of the opinion that the State has indefeasible right to proceed against a government employee, but the said right has to be exercised in a reasonable manner. In totality of the facts and circumstances of this case, we are of the firm view that the government has exercised its right in the present case in a wholly arbitrary manner, which would be violative of provisions contained in Article 14 of the Constitution of India. The applicant, who served the government with an unblemished career throughout, cannot be made to suffer humiliation in his period of retirement when he is supposed to sit back and relax having rendered meritorious service to the department. The charge as framed against the applicant has no semblance of truth as the allegations made against him are presumptive, derivative and based upon conjectures and surmises on completely incorrect interpretation of law that the applicant did not have jurisdiction to entertain and decide the revision of the dealer.*

*22. For the reasons stated above, we quash and set aside the memorandum dated 10.2.2004, charge memo*



*dated 3.10.2005 as also the statement of articles of charge and the statement of imputation of misconduct or misbehaviour in support of the charges framed against the applicant and allow this Application. However, the costs of the litigation are made easy.”*

12. The challenge to the judgment dated 12.03.2008 passed in OA No.2341/2006 by learned Tribunal is on the ground that the learned Tribunal did not appreciate that the OA filed by respondent no.1 was pre-mature, as mere issuance of charge-sheet or show cause notice does not give rise to any cause of action.

13. During the course of hearing, learned counsel for petitioner has submitted that the Tribunal has gravely erred by quashing memorandum 03.10.2005 and no writ lies against the charge-sheet or show cause notice. Reliance is placed upon decision rendered by Hon'ble Supreme Court in **Union of India & Anr. Vs. Kunisetty Satyanaryana** 2006 (12) SCC 28. Learned Counsel submitted the learned Tribunal has exceeded its jurisdiction by quashing the memorandum dated 03.10.2005 which was issued against respondent No. 1 after thorough examination of the matter and obtaining advice of CVC. It was submitted that the present petition deserves to be allowed and impugned judgment and order dated 12.03.2008 passed by learned Tribunal deserves to be quashed.

14. To the contrary, learned counsel for respondent No.1 submits that the order passed by the learned Tribunal is well-merited and calls for no interference by this Court.

15. On the last date of hearing, this Court put a query to learned counsel for petitioner as to whether the order passed by respondent No.1 in the revision petition, has been challenged by petitioner or not. Today, learned



counsel for petitioner, on instructions, has informed this Court that the said order has not been challenged and the same has attained finality.

16. The Hon'ble Supreme Court in ***State of Punjab vs. V.K. Khanna & Ors.*** : (2001) 2 SCC 330 has held as under:

*“The concept of fairness in administrative action has been the subject matter of considerable judicial debate but there is total unanimity on the basic element of the concept to the effect that the same is dependent upon the facts and circumstances of each matter pending scrutiny before the Court and no straight-jacket formula can be evolved therefor. As a matter of fact fairness is synonymous with reasonableness and on the issue of ascertainment of meaning of reasonableness, common English parlance referred to as what is in contemplation of an ordinary man of prudence similarly placed – it is the appreciation of this common man's perception in its proper perspective which would prompt the Court to determine the situation as to whether the same is otherwise reasonable or not. Similarly the existence of mala fide intent or biased attitude cannot be put on a strait-jacket formula but depends upon facts and circumstances of each case.”*

17. In the present case, the petitioner has alleged that the learned Tribunal has exceeded its jurisdiction by setting aside the Statement of Articles of Charge and the statement of imputation of misconduct or misbehavior in support of the charges framed against the respondent No.1 amidst pendency of inquiry proceedings.

18. In our considered opinion, the Hon'ble Supreme Court in ***State of Punjab vs. V.K. Khanna (supra)*** has already settled the law that existence of mala fide intent of an officer depends upon the facts and circumstances of each case and it cannot be straightaway said that the officer exceeded its



jurisdiction while performing its quasi-judicial obligations.

19. Though the learned Tribunal in the impugned judgment and order has dealt with all the legal issues and has opined that the respondent No.1 had jurisdiction to decide the revision petition, however, we further add that if the respondent No.1 had no jurisdiction to entertain and decide the revision petition, the same would have been challenged by the concerned authority and would have got reversed before the appellate or higher authority, but the said decision was not challenged and thus, attained finality. In such a situation, the petitioner cannot be heard to say that the respondent No.1 passed an illegal order without jurisdiction.

20. In view of aforesaid, we find no infirmity and error in the impugned judgment and order passed by learned Tribunal.

21. Finding no merit in the present writ petition, the same is accordingly dismissed. Pending application also stands disposed of as infructuous.

**(SURESH KUMAR KAIT)**  
**JUDGE**

**(GIRISH KATHPALIA)**  
**JUDGE**

**JULY 26, 2024**  
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