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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 21.03.2024*

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W.P.(C) 5477/2017

UNION OF INDIA & ANR.

..... Petitioners

Through: Ms.Madhurima Tatia, Adv.

versus

PAVAN VED

..... Respondent

Through: Mr.Puneet Jain, Adv.

CORAM:**HON'BLE MS. JUSTICE REKHA PALLI****HON'BLE MR. JUSTICE RAJNISH BHATNAGAR****REKHA PALLI, J (ORAL)**

1. The present writ petition under Articles 226 & 227 of the Constitution of India seeks to assail the order dated 11.11.2016 passed by the learned Central Administrative Tribunal (Tribunal) in O.A. No.1517/2015. Vide the impugned order, the learned Tribunal has quashed the charge memo dated 11.06.2014, issued to the respondent on the purported ground that while functioning as Commissioner of Income Tax (Appeals), he has wrongly decided five appeals by ignoring material facts of those cases.
2. At the outset, we may note the brief factual matrix as emerging from the record.
3. The respondent joined the Department of Income Tax as an Income Tax Officer Group 'A' on 31.12.1981 and was with passage of time



promoted first as Deputy Commissioner of Income Tax on 28.01.1990, and thereafter as Commissioner of Income Tax on 23.06.2001. While being posted as Commissioner, Income Tax (Appeals) at Raipur, during the course of discharge of his quasi-judicial duties, he decided various appeals. On 11.06.2014, the petitioners issued a charge memo to the respondent on the ground that five of the appeals decided by him in exercise of quasi-judicial powers while he was serving as Commissioner of Income Tax (Appeals) at Raipur, between 13.05.2003 and June 2007, had been wrongly decided by ignoring material facts. At this stage itself, it may be noted that in the year 2002, a charge memo on similar grounds pertaining to cases decided by the respondent during the period between 1996-1998 was issued to him which charge memo stands quashed by the Apex Court.

4. Being aggrieved by the issuance of this belated charge memo on 11.06.2014 and that too for performance of his quasi-judicial functions, the respondent approached the learned Tribunal by way of O.A. No.1517/2015 which has been allowed vide the impugned order. It is in these circumstances that the present petition has been filed by the Union of India.

5. Learned counsel for the petitioners submits that the impugned order is wholly perverse as the learned Tribunal has wrongly applied the ratio of the decision dated 13.08.2014 of this Court in ***W.P. (C) 5113/2014*** titled ***Union of India v. Sh.S.Rajguru***, which decision, she contends, was erroneous and was therefore liable to be ignored. She, further, submits that the learned Tribunal failed to appreciate that the respondent being a Commissioner of Income Tax, a long drawn procedure was required to be followed before issuing him the charge memo, and therefore, it was not a fit case where the charge memo should have been set aside on the ground of



delay. She, therefore, prays that the impugned order be set aside.

6. On the other hand, learned counsel for the respondent supports the impugned order and submits that the learned Tribunal was justified in quashing the charge memo dated 11.06.2014, which besides having been issued belatedly, was only a counterblast to the respondent's challenge to the earlier charge memo dated 13.09.2002, wherein the petitioners had leveled similar allegations qua cases decided by him while he was posted as Joint Commissioner of Income Tax during the period between 1996 to 1998. He, further, submits that the petitioners' plea that the decision in ***S.Rajguru (supra)*** was incorrect or ought to have been ignored by the learned Tribunal overlooks the fact that a challenge to the said decision before the Apex Court had failed, and therefore, the same had attained finality. In ***S.Rajguru (supra)*** a Coordinate Bench of this Court had rightly held that a quasi-judicial authority is expected to act without fear and therefore, unless there are allegations of *malafide*, disciplinary actions cannot be initiated against such an authority solely on the basis of decisions rendered in its quasi-judicial capacity. He, contends, that this principle was rightly applied by the learned Tribunal to the facts of the present case where the respondent had acted with utmost diligence. He, therefore, prays that the writ petition be dismissed.

7. In order to appreciate the rival submissions of learned counsel for the parties, we may begin by noting the relevant extracts of the impugned order, which read as under:-

“21. In view of the above pronouncements, it is established that the impact of delay upon the fate of the case has to be



established under the circumstances of the present case. We find that an earlier charge sheet, whereby the respondents procrastinated over the departmental proceedings, concluded in favour and getting the matter pending, yet another charge sheet for major penalty was issued without providing a copy of the disagreement note to the applicant. Therefore, the Tribunal in OA No.4476/2013 had no option but to quash the charge sheet/show cause. We also find that whatever be the compulsion, the delay of ten years is little difficult to explain. We further find that the respondents are not prepared to abide by their own guidelines and rather trying to rationalise the delay. Nowhere do we find any explanation forthcoming except for general statement. Therefore, the issue of delay sticks against the respondents.

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24. In the instant case, we find that explanation given by the applicant in the tabular form reveals that out of his five decisions, three have been upheld by the higher judicial authority; in one the department has not chosen to appeal against; and the remaining one matter is still sub judice before the Hon'ble High Court. There is some substance in the assertion of the applicant that his view in the decision was a plausible view based upon circular issued by the CBDT as also the decisions of Hon'ble Bombay High Court.

25. We are not here to assess evidence as none has been forthcoming on the incorrect part of the judgment. However, on face of it, the facts appear to be correct as stated by the applicant. We also do not agree that the distinction which the respondents have sought to draw between the case of S. Rajguru (supra) and the case in hand. As already noted above, the charge in S. Rajguru's case was of having committed irregularities whereas the applicant in the present case has been charged with malafide to benefit the assessee which is a much higher form of irregularity. However, both were being proceeded against



departmentally for the misconduct. If the judgment was good in irregularity, it would also be good in higher charges. Therefore, this distinction has been artificial drawn. What impresses us here is that the decision of the Hon'ble High Court in S.Rajguru's case (supra) has noted some of the previous decisions on the subject and is very authoritarian in its tone, tenor and contents. It is obvious that the SLP filed against that case was dismissed by the Hon'ble Supreme Court in SLP No.33895/2014 decided on 16.01.2015.

26. In conclusion, we find that the delay is not adequately explained though the charge of malafide levelled by the applicant does not get substantiated to any extent. We also find that law laid down in Zunjarrao Bhikaji Nagarkar v. Union of India & Ors. (supra) is not bad law but has been supplemented by the decision in K.K. Dhawan's case (supra). In such cases where the quasi judicial officers have acted malafidedly, the entire situation has been summed up in S. Rajguru's case (supra) which is more akin to decision in Zunjarrao Bhikaji Nagarkar Vs. Union of India & Ors. (supra). We also agree with the assertion of the applicant that on face of it most of the decisions are explained either by way of approval of the superior courts or inability of the Government to file appeals. We are firmly of the opinion that independence of a judicial form whether be it a quasi judicial body is of absolute importance. If a quasi judiciary starts deciding all cases in favour of the Government then the very purpose of creating such fora would stand defeated. The proper course is to file appeal before the superior courts. Having taken note of the decision in OA No.4476/2013, we have no hesitation at present to allow the instant OA except that the retiral dues to be paid to the applicant will carry interest @ 6% only and not 18%, as prayed for."

8. From a perusal of the aforesaid extracts of the impugned order, we find that the learned Tribunal came to a categoric conclusion that the



inordinate delay in issuance of the charge sheet was not satisfactorily explained. Furthermore, by relying on the decision in *S.Rajguru (supra)* the learned Tribunal opined that in cases like the present, unless *malafide* is alleged against an officer exercising quasi-judicial powers, no action can be taken against him on the basis of the decisions taken by him.

9. Having given our thoughtful consideration to the rival submissions of the learned counsel for the parties, we are of the view that even if we were to accept the petitioners' plea that the decision in *S.Rajguru (supra)* was not applicable to the facts of the present case, or that the said decision as urged by the petitioners was liable to be ignored, the fact remains that the petitioners have not been able to explain the inordinate delay of over ten years in issuing the charge memo. The appeals which the respondent is purported to have wrongly decided pertained to the period between 13.05.2003 to June 2007, when he was functioning as the Commissioner, Income Tax (Appeals) at Raipur and therefore, there is undoubtedly a delay of over ten years if computed from 13.05.2003. A Commissioner of Income Tax (Appeals) decides appeals on a regular basis in his quasi-judicial capacity and cannot be expected to have access to records of all decided cases after so many years. It is, therefore, evident that on account of this inordinate delay in issuance of the charge sheet, grave prejudice was likely to be caused to the respondent.

10. Even before us, the learned counsel for the petitioners except for baldly stating that the delay was occasioned due to the long drawn procedure required to be followed before issuing the charge memo to a Group 'A' officer like the respondent, has not been able to furnish any reason much less to say any justifiable reason for this inordinate delay.



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11. For the aforesaid reasons, we find no infirmity with the impugned order. The writ petition being meritless, is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

(RAJNISH BHATNAGAR)
JUDGE

MARCH 21, 2024
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