Union Of India vs Upendra Singh on 17 February, 1994

Equivalent citations: 1994 SCC (3) 357, JT 1994 (1) 658

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy, B.L Hansaria

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           PETITIONER:
UNION OF INDIA

        Vs.

RESPONDENT:
UPENDRA SINGH

DATE OF JUDGMENT17/02/1994

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
HANSARIA B.L. (J)

CITATION:
 1994 SCC  (3) 357        JT 1994 (1)   658
 1994 SCALE  (1)637


ACT:



HEADNOTE:



JUDGMENT:
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The Judgment of the Court was delivered by B.P. JEEVAN REDDY, J.- This appeal is preferred against the judgment of the Central Administrative Tribunal, Principal Bench, New Delhi quashing the charges (charge-sheet) framed on February 7, 1991 against the respondent. The respondent is a member of the Indian Revenue Service (IRS) and is presently working as Deputy Commissioner of Income Tax. On February 7, 1991, a memorandum of charges was issued to him accompanied by a "Statement of imputations of misconduct or misbehaviour in support of article of charges" framed against him. The articles of charges are the following:

Article-I The said Shri Upendra Singh while posted as Inspecting Assistant Commissioner of Income Tax, B.S.D. (North) Range Bombay during the financial year 1986-87, got a survey under Section 133-A of Income Tax Act, 1961 conducted in the cases of Raghuvanshi group of builders on January 9, 1987. During the course of this survey incriminating documents and a confessional statement of the assessees showing unaccounted receipts of Rs 1.56 crores and admitted unaccounted incomes of Rs 46.60 lakhs earned by four firms of this group, viz. M/s Raghuvanshi Builders, M/s Raghuvanshi Developers, M/s Raghuvanshi Associates and M/s Raghani Builders, were obtained :

(a)The said Shri Upendra Singh initiated proceedings under Section 144-A in the case of M/s Raghuvanshi Builders, M/s Raghuvanshi Developers and M/s Raghuvanshi Associates in an illegal and improper manner.

(b)During the aforementioned proceedings under Section 144A, the said Shri Upendra Singh neither examined the incriminating documents and evidence collected during the survey, nor passed any orders under Section 144-A, in spite of being aware of the evidence gathered during the survey.

(c)The said Shri Upendra Singh during the aforementioned proceedings under Section 144-A improperly and illegally acquiesced in the assessees' offer to disclose only an amount of Rs 11,27,794 in the names of the aforesaid firms and did not direct the assessing officer to bring to tax the full amount of undisclosed incomes of these firms as admitted during the survey on January 9, 1987.

(d)The said Shri Upendra Singh gave illegal and improper directions to the assessing officer to complete the assessments in the cases of M/s Raghuvanshi Builders, M/s Raghuvanshi Developers and M/s Raghuvanshi Associates under Section 143(1) even though at the relevant time proceedings under Section 144-A of I.T. Act, 1961 were pending before him and these cases did not come within the purview of the Summary Assessment Scheme of the Amnesty Scheme of the CBDT.

2.Shri Upendra Singh has, therefore, violated Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the CCS (Conduct) Rules, 1964."

2.For the purposes of this case, it is not necessary to set out the statement of imputations which is a very lengthy one referring elaborately to the material and evidence which was sought to be relied upon against the respondent at the proposed inquiry. As soon as the memo of charges was served upon the respondent, he approached the Tribunal for quashing the charges. The Tribunal admitted the original application and passed the following interim order :

"The learned counsel submitted that the applicant has been served with a charge-sheet on account of the charges which relate to the discharge of quasi-judicial functions by the applicant. He, therefore, prayed for that as per Supreme Court's

> decision in the case of V.D. Trivedi v. Union of India' interim directions may be issued restraining the respondents from proceeding against the applicant under the Disciplinary & Appeal Rules.
>
> We have considered the matter and in the interest of justice, we restrain the respondents from proceeding with disciplinary action in pursuance of the charge-sheet dated February 7, 1991 for a period of 14 1 (1993) 2 SCC 55: 1993 SCC (L&S) 324: (1993) 24 ATC 79 days. List the case on April 18, 1991 for further consideration of interim relief. Order Dasti."

3.Against the said interim order, the Union of India approached this Court by way of Civil Appeal No. 4316 of 199 1. The appeal was allowed by this Court by its order dated September 10, 1992 and the Tribunal was directed to "deal with the matter in the light of the observations made by this Court in Union of India v. A.N. Saxena21'. It was further directed that "in the meanwhile the disciplinary proceedings initiated against the respondent on the basis of the memorandum dated February 7, 1991 would, continue". It is necessary to notice the observations in the said judgment. The Bench first dealt with the submission that no disciplinary proceedings can be taken against an officer in respect of his judicial or quasi-judicial functions. It rejected the contention following the decision of this Court in Union of India v. A.N. Saxena2. While rejecting the said contention the Bench drew particular attention to the following observations in A.N. Saxena2:

> (SCC p. 127, para 6) "In the first place, we cannot, but confess our astonishment at the impugned order passed by the tribunal. In a case like this the tribunal, we feel, should have been very careful before granting stay in a disciplinary proceeding at an interlocutory stage. The imputations made against the respondent were extremely serious and the facts alleged, if proved, would have established misconduct and misbehaviour. It is surprising that without even a counter being filed, at an interim stage, the tribunal without giving any reasons and without apparently considering whether the memorandum of charges deserved to be enquired into or not, granted a stay of disciplinary proceedings as it has done. If the disciplinary proceedings in such serious matters are stayed so lightly as the tribunal appears to have done, it would be extremely difficult to bring any wrongdoer to book. We have, therefore, no hesitation in setting aside the impugned order of the tribunal and we direct that the disciplinary proceedings against the respondent in terms of the charge- sheet dated March 13, 1989 shall be proceeded with according to law. In fact, we would suggest that disciplinary proceedings should be proceeded with as early as possible and with utmost zeal."
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> The Bench further opined that "the present case is fully covered by the aforesaid decision of this Court and considering the facts and circumstances of the present case, in the light of 'the said decision, the impugned order passed by the Tribunal cannot be upheld". Evidently because the said appeal was preferred against an interlocutory order made by the Tribunal, the Bench directed the Tribunal to deal with the original application in the light of the decision in A.N. Saxena2. The Bench

directed expressly that the disciplinary proceedings against the respondent were to continue.

2 (1992) 3 SCC 124

4.When the matter went back to the Tribunal, it went into the correctness of the charges on the basis of the material produced by the respondent and quashed the charges holding that the charges do not indicate any corrupt motive or any culpability on the part of the respondent. We must say, we are not a little surprised at the course adopted by the Tribunal. In its order dated September 10, 1992 this Court specifically drew attention to the observations in A.N. Saxena2 that the Tribunal ought not to interfere at an interlocutory stage and yet the Tribunal chose to interfere on the basis of the material which was yet to be produced at the inquiry. In short, the Tribunal undertook the inquiry which ought to be held by the disciplinary authority (or the inquiry officer appointed by him) and found that the charges are not true. It may be recalled that the jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution. Therefore, the principles, norms and the constraints which apply to the said jurisdiction apply equally to the Tribunal. If the original application of the respondent were to be filed in the High Court it would have been termed, properly speaking, as a writ of prohibition. A writ of prohibition is issued only when patent lack of jurisdiction is made out. It is true that a High Court acting under Article 226 is not bound by the technical rules applying to the issuance of prerogative writs like certiorari, prohibition and mandamus in United Kingdom, yet the basic principles and norms applying to the said writs must be kept in view, as observed by this Court in T. C. Basappa v. T. Nagappa3. It was observed by Mukherjea, J. speaking for the Constitution Bench :

> "The language used in Articles 32 and 226 of our Constitution is very wide and the powers of the Supreme Court as well as of all the High Courts in India extend to issuing of orders, writs or directions including writs in the nature of 'habeas corpus, mandamus, quo warrant, prohibition and certiorari' as may be considered necessary for enforcement of the fundamental rights and in the case of the High Courts, for other purposes as well. In view of the express provisions in our Constitution we need not now look back to the early history or the procedural technicalities of these writs in English law, nor feel oppressed by any difference or change of opinion expressed in particular cases by English Judges. We can make an order or issue a writ in the nature of ,certiorari' in all appropriate cases and in appropriate manner, so long as we keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in English law." (emphasis supplied)

5.The said statement of law was expressly affirmed by a seven-Judge Bench in Ujjam Bai v. State of Up.4 The reason for this dictum is selfevident. If we do not keep to the broad and fundamental principles that regulate the exercise of jurisdiction in the matter of granting such writs in 3 (1955) 1 SCR 250: AIR 1954 SC 440 4 AIR 1962 SC 1621, 1625 English law, the exercise of jurisdiction becomes rudderless and unguided,it tends to become arbitrary and capricious. There will be no uniformity of approach and there will be the danger of the jurisdiction becoming personalized. The parameters of jurisdiction would vary from Judge to Judge and from Court to Court. (Some say, this

has already happened.) Law does advance. Jurisprudence does undoubtedly develop with the passage of time, but not by forgetting the fundamentals. You have to build upon the existing foundations and not by abandoning them. It leads to confusion; it does not assist in coherence in thought or action.

6.In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal v. Gopi Nath & Sons5. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para

8) "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

7.Now, if a court cannot interfere with the truth or correctness of the charges even in a proceeding against the final order, it is ununderstandable how can that be done by the tribunal at the stage of framing of charges? In this case, the Tribunal has held that the charges are not sustainable (the finding that no culpability is alleged and no corrupt motive attributed), not on the basis of the articles of charges and the statement of imputations but 5 1992 Supp (2) SCC 312 mainly on the basis of the material produced by the respondent before it, as we shall presently indicate.

8.The gravamen of the charges against the respondent is that he conducted a survey under Section 133-A of the Income Tax Act, 1961 in respect of Raghuvanshi group of builders on January 9, 1987; during the course of survey, several incriminating documents were found; the assessee also gave a statement (referred to as confessional statement in the memo of charges) admitting unaccounted receipts of Rs 1.56 crores and also admitting unaccounted income of Rs 46.60 lakhs; the respondent initiated proceedings under Section 144-A of the Income Tax Act against the said group in illegal and improper manner and that in spite of voluminous evidence gathered, he neither examined the incriminating documents and evidence nor passed any order under Section 144-A but improperly and illegally acquiesced in the assessees' offer to disclose a far smaller amount; further the

respondent gave directions to the assessing officer to complete the assessments of the said builder under Section 143(1) (summary assessment procedure) even though at the relevant time the proceedings under Section 144-A were pending; during the pendency of such proceedings, no such direction could have been issued by the respondent. On the above basis it was alleged that the respondent has violated Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of CCS Conduct Rules, 1944. The statement of imputations elaborately sets out the evidence and material in support of the said charges. It is alleged that the conduct of the respondent "shows an intention to confer undue and improper benefits on these assessees. He has thus displayed lack of integrity, lack of devotion to duty and conduct unbecoming of a government servant.....

9. The Tribunal observed in the first instance that in the articles of ?charges there is no reference to culpability of respondent and that it is found only in the statement of imputations. This is not correct. The charges which we have set out hereinabove clearly allege the illegal and improper conduct on the part of the respondent. It was also alleged that he improperly and illegally acquiesced in the offer of the assessees to disclose a much smaller amount and that he failed to direct the assessing officer to bring to tax the full amount of undisclosed income, which was admitted by the assessees during the survey. As a matter of fact, it was alleged, he issued a direction, contrary to law, to the assessing officer to complete the assessment of the concerns under Section 143(1). Secondly, the Tribunal examined the truth of the charges with reference to the material and orders produced by the respondent, in particular the proceedings taken by the Commissioner of Income Tax under Section 263 and the order of the Income Tax Appellate Tribunal (ITAT) in the appeal preferred by the aforesaid assessees against the order of the Commissioner of Income Tax. After extensively referring to the findings and observations in the order of the ITAT, the Tribunal concluded :

> "Thus, according to the order of the ITAT dated July 21, 1992, there is no evidence that the action taken by the applicant in regard to the assessments in question was pursuant to any corrupt motive or an improper motive to oblige any one indicting culpability. Assuming that the assessments made were erroneous or wrong, no disciplinary action can be taken against the applicant as he had only discharged quasijudicial functions. In the instant case, the Income Tax Appellate Tribunal allowed the appeal filed by the assessees against the orders passed by the CIT under Section 263 of the Income Tax Act. The decision of the Income Tax Tribunal which is the highest fact-finding authority lends support to the stand of the applicant in the instant case."

(It is significant to notice that the order of ITAT is dated July 21, 1992, whereas the charges were framed against the respondent and communicated to him along with statement of imputations of February 7, 1991 about 11/2 years earlier.)

10.It may be noticed that the proceedings taken by the CIT under Section 263 and the appeal before the ITAT were between the Revenue and the assessees aforesaid. In those proceedings, the conduct of the respondent was not in issue but the liability of the assessees. Any observation made therein with respect to the action/orders of the respondent is only incidental. May be, the said orders are

relevant we do not propose to express any opinion on the issue in the disciplinary proceedings against the Tribunal, but they are certainly not conclusive. Those were the proceedings taken by the assessee to protect his own rights. Moreover, it is stated by the learned counsel for the Revenue before us that the department has not accepted the order of the Income Tax Appellate Tribunal and that it has filed an application under Section 256(1) before the Tribunal which no doubt has been dismissed but that the department is filing an application before the High Court under Section 256(2). We do not know whether the said observations/findings of the Tribunal will ultimately be upheld or not. They are not yet final. In the circumstances, we are inclined to agree with the learned counsel for the Revenue that the order of the Tribunal is clearly in excess of its jurisdiction.

11.Shri R.K. Jain, learned counsel for the respondent referred us to certain material which according to him establishes the innocence and good faith of the respondent. We do not propose to refer to the said material or to comment upon it since any such comment is bound to prejudice the case of the parties before the disciplinary authority, which should now proceed expeditiously according to law.

12.We must mention that Shri R.K. Jain, learned counsel for the respondent did not dispute the proposition that a disciplinary inquiry can be held even with respect to judicial/quasi-judicial orders passed by an officer. His main contention was that the charges are not sustainable, which contention, as we have indicated above, cannot be countenanced at this stage of the proceedings.

13.Before parting with this case, we may refer to the decision of this Court in Union of India v. K.K. Dhawan6. Following A.N. Saxena2 this Court held that a disciplinary inquiry can be held even with respect to the 6 (1993) 2 SCC 56 conduct of an officer in discharge of his judicial or quasi- judicial duties. Having said so, this Court set out the situations in which disciplinary action can be taken with respect to the judicial/quasi-judicial conduct. Paragraphs 28 and 29 of the judgment will bring out the ratio : (SCC p. 67, paras 28 and 29).

> "28. Certainly, therefore, the officer who exercises judicial or quasijudicial powers acts negligently or recklessly or in order to confer undue favour on a person is not acting as a Judge. Accordingly, the contention of the respondent has to be rejected. It is important to bear in mind that in the present case, we are not concerned with the correctness or legality of the decision of the respondent but the conduct of the respondent in discharge of his duties as an officer. The legality of the orders with reference to the nine assessments may be questioned in appeal or revision under the Act. But we have no doubt in our mind that the Government is not precluded from taking the disciplinary action for violation of the Conduct Rules. Thus, we conclude that the disciplinary action can be taken in the following cases :
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> (i)Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;
>
> (ii) if there is prima facie material to show recklessness or misconducting the discharge of his duty;

(iii) if he has acted in a manner which is unbecoming of a government servant;

(iv)if he had acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

(v) if he had acted in order to unduly favour a party;

(vi)if he had been actuated by corrupt motive, however small the bribe may be because Lord Coke said long ago 'though the bribe maybe small, yet the fault is great'.

29.The instances above catalogued are not exhaustive. However, we may addthat for a mere technical violation or merely because the order is wrong and the action not falling under the above enumerated instances, disciplinary action is not warranted. Here, we may utter a word of caution. Each case will depend upon the facts and no absolute rule can be postulated." (emphasis in original)

14.Shri Jain submitted that the allegations made against the respondent do not fall within any of the six clauses. It is not possible to agree. In any event, the truth or otherwise of the charges is a matter for inquiry.

15.For the above reasons, the appeal is allowed, the order of the Tribunalis set aside, the disciplinary inquiry against the respondent shall proceedunhindered and expeditiously. It is in the interest of everyone concerned that the truth or otherwise of the charges is determined at the earliest. The respondent shall pay the costs of the appellant in this appeal assessed at Rs 5000.