Supreme Court of India
Union Of India And Ors vs A.N. Saxena on 27 March, 1992
Equivalent citations: 1992 AIR 1233, 1992 SCR (2) 364
Author: M Kania
Bench: Kania, M.H. (Cj)

PETITIONER:
UNION OF INDIA AND ORS.

Vs.

RESPONDENT:
A.N. SAXENA

DATE OF JUDGMENT27/03/1992

BENCH:
KANIA, M.H. (CJ)
BENCH:
KANIA, M.H. (CJ)
MOHAN, S. (J)

CITATION:
1992 AIR 1233 1992 SCR (2) 364
1992 SCC (3) 124 JT 1992 (2) 532
1992 SCALE (1)800

ACT:
Administrative Tribunals Act, 1985 : Section 24
Tribunal-power to make interim orders-Income Tax Officer, performing judicial or quasi-judicial functions-Charge of making irregular assessments-Whether disciplinary proceeding could be initiated against him-Power of Tribunal to stay departmental proceedings-voluntary retirement during pendency of enquiry, Fundamental Rule 56 (k)-Permissibility of-Payment of provisional pension-Whether could be stopped pending enquiry.

HEADNOTE:
The respondent, an Income Tax Officer, was served a charge-sheet on the ground that he completed certain assessments in an irregular manner designed to confer benefits on the assesses. Accordingly disciplinary proceedings were initiated against him. He filed an application before the Central Administrative Tribunal for setting aside the charge-sheet and for restraining the appellant from taking disciplinary proceedings against him. By its order dated 27.6.91 the Tribunal restrained the appellant from proceeding with disciplinary proceedings. During the pendency of the departmental proceedings the

respondent was allowed to retire voluntarily under Fundamental Rule 56(k). By its second order dated July 15, 1991 the Tribunal directed that in case the commuted value of the pension payable to the respondent was refunded, he should be paid the full value of the pension from the due date including the arrears pending the proceedings before the tribunal. Against both the orders of the Tribunal the Union of India filed appeals in this Court. It was contended on behalf of the respondent that as he was performing judicial or quasi-judicial functions in making the assessment order, even if his actions were wrong, they could be corrected in an appeal or in revision and no disciplinary proceedings could be taken regarding such actions.

Allowing the appeals, this Court :

HELD : 1. The Tribunal should have been very careful before grant

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ing 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 wrong-doer to book. Therefore, the impugned order of the Tribunal is set aside and it is directed that the disciplinary proceedings against the respondent shall be proceeded with according to law. [368A-D]

1.1. In the facts and circumstances of the case it is desirable that the same Bench of the Tribunal should not proceed with further hearing of the application made by the respondent. [369D]

2. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his action and only if the circumstance so warrant. The initiation of such proceedings is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to

oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken. [368-H, 369-A]

3. It is surprising that in a disciplinary enquiry pertaining to serious charges the respondent was allowed to retire voluntarily under Fundamental Rule 56(k). It is not known whether it was duly considered whether his application for voluntary retirement ought to have been rejected in view of the seriousness of the charges levelled against him. However, nothing more can be done in that connection. [369E-F]

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JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 50-51 of 1992.

From the Judgment and order dated 27.6.1991 of the Central Administrative Tribunal, Delhi in O.A. No. 1307 of 1991.

K.T.S. Tulsi, Addl. Solicitor General Ashok K. Srivastava, Hemant Sharma and P. Parmeswarn for the Appellants.

A.K. Sanghi for the Respondent.

The Judgment of the Court was delivered by KANIA, CJ. These appeals are directed against two orders passed by the Central Administrative Tribunal (Principal Bench). New Delhi (hereinafter referred to as "The tribunal"). By the first impugned order the appellant was restrained from proceeding further with the disciplinary proceedings against the respondent in terms of the charge-sheet dated March 13, 1989, filed by the appellant. This order was passed by the Vacation Bench of the tribunal on June 27, 1991.

The second order sought to be challenged is an order dated July 15, 1991, whereby the tribunal directed that in case the commuted value of the pension payable to the respondent was refunded, the respondent should be paid the full value of the pension from the due date including the arrears pending the proceedings before the tribunal.

We propose to set out only a few facts: At the relevant time, the respondent was an Income Tax Officer posted at New Delhi. On March 13, 1989, a memorandum of charges or charge-sheet was served on the respondent. The first article of charge was to the effect that the respondent while functioning as an Income Tax Officer completed certain assessments in an irregular manner, designed to confer undue benefit on the assessees concerned. The statement of imputations for misconduct and misbehaviour was forwarded along with the charge-sheet.

The first case dealt with is that of Master Raju Sehgal Trust. The assessment year in question was 1979-80. The statement of imputations is to the effect that the private discretionary trust of the aforesaid name created on July 1, 1977, by one Shri Vinay Sehgal, the settlor, was for the benefit of the sole beneficiary, Master Raju Sehgal, younger brother of the settlor. The trustees were the parents of the settlor and the beneficiary, while the trust was created with corpus of only Rs. 1,000. The trustees were given power to receive donations and gifts from relations, friends and so on. The assessee-trust filed the first return of income for the assessment year 1979-80 declaring their income nil. In the accounting year relevant to the assessment year 1979-80, the trust claimed having received donations amounting to Rs. 16,52,053. The respondent completed the assessment on March 29, 1982 accepting the receipt of the aforesaid donations as genuine. A scrutiny of the record showed that 179 certificates were produced by the assessee from the alleged donors showing donations amounting to Rs.9,49,200. The alleged donors were mostly from Calcutta whereas the beneficiary, the trustees and the settlor were all from Delhi. Thus, the bulk of the donations were made by the parties in a different city far away. A good part of the funds of the trust was utilised by the trustees and other members of the Sehgal family, including the beneficiary. Details of such amounts have been given in the statement of imputations. Loans were also taken for substantial amounts from the trust by members of the Sehgal family for which no interest was charged. Curiously enough, none of the donors was ever assessed at an income exceeding Rs. 15,000 till the assessment year 1982-83 and most of the donors have been assessed to incomes less than Rs. 10,000 each. All the donors deposited in their bank account cash equal to the amount of the gift a day or two before the issue of the cheques towards making of the gift. None of the donors was related to the family of the beneficiary. The statement of imputations alleged that the trust was used apparently only as a device for converting the unaccounted income of the Sehgal family into an accounted income. The allegation is that the respondent without making any enquiry, in the assessment order held that the donations made to the trust were found to be genuine, rendering it difficult even to re- open the assessment of the trust for the said assessment year, without considering and determining the issues in volved. As per imputations, the order enabled the Sehgal family to legalist their unaccounted income of over Rs. 16 lacs on which tax of Rs.10 lacs would have been payable.

The respondent filed an application before the tribunal for setting aside this charge-sheet and prayed for an interim relief restraining the appellant from taking disciplinary proceedings against him, pending decision of the tribunal. It is on this application that the tribunal granted interim relief by the order which is sought to be impugned before us.

In the first place, cannot, but confess out 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 wrong-doer 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.

It was urged before us by learned Counsel for the respondent that as the respondent was performing judicial or quasi-judicial functions in making the assessment orders in question even if his actions were wrong they could be corrected in an appeal or in revision and no disciplinary proceedings could be taken regarding such actions.

In our view, an argument that no disciplinary action can be taken in regard to action taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken likely to undermine his independence. Hence the need for extreme care and caution before initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely, a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken.

Appellants have also sought to impugne the order relating to the payment of pension, which we have referred to earlier. However, learned counsel for the appellants is unable to point out any provision under which the payment of provisional pension could be stopped pending enquiry. In the circumstances, we decline to interfere with that part of the order leaving it open to the appellants, if so advised, to make an application to the tribunal for varying or vacating the relief granted in connection with the pension.

Considering all the facts and circumstances of the case, we direct that a copy of this order should be forwarded to the Chairman of the Central Administrative Tribunal so that he may consider whether further hearing of the application made by the respondent should be proceeded with by a bench presided over by him or a Bench other than the one which has passed the impugned order. We do not intend to cast any aspersions on the members of the tribunal who have passed the order, in the absence of more concrete material. But we certainly feel that in the facts and circumstances it is desirable that the same Bench of the tribunal should not proceed with further hearing of the application.

We are somewhat surprised that in a disciplinary enquiry pertaining to serious charges which we have referred to earlier, the respondent was allowed to retire voluntarily under Fundamental Rule 56(k) by an order dated March 28, 1989. We do not know whether it was duly considered whether his application for voluntary retirement ought to have been rejected in view of pending enquiry against him and in view of the seriousness of the charges levelled against him. However, nothing

more can be done in that connection.

Finally, we direct that a copy of this order be sent to the Chairman, Central Board of Direct Taxes, Secretary of the Ministry of Finance and the Finance Minister respectively for such action as they deem fit. The appeals are allowed with no order as to costs.

We may make it clear, in fairness to the respondent, that although we have made strong observations it must be remembered that they are in an appeal from an interim order and cannot be regarded as conclusive. When the case is to be finally heard by the tribunal it shall be decided on the material before it on merits according to law and without being unduly guided by our observations.

Mr. Sanghi, learned counsel for the respondent, urged that the pending application of the respondent before the Tribunal it may be directed to be heard expeditiously. That application may be made to the tribunal and we have no doubt that the tribunal will give it due consideration according to law. It has further been pointed out by Mr. Sanghi that as the allegations levelled against his client are very serious, the relevant documents must be supplied and all the rules of fair play must be adhered to. We have no doubt that this will be done by the tribunal.

T.N.A. Appeals allowed.