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HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition (S) No. 493 of 2018

P. R. Dewangan S/o Late Shri R. L. Dewangan, aged about 60 years R/o Vidya Nagar, Bilaspur, Police Station Tarbahar, District Bilaspur, Chhattisgarh

---- Petitioner

Versus

1. State of Chhattisgarh through Secretary, Commercial Tax Department, Mahanadi Bhawan, Mantralaya, Capital Complex, Naya Raipur, District Raipur, Chhattisgarh
2. Commissioner, Commercial Tax, Commercial Tax Building, Civil Lines, Raipur, District Raipur, Chhattisgarh
3. Special Secretary, Commercial Tax Department, Mahanadi Bhawan, Mantralaya, Capital Complex, New Raipur, District Raipur, Chhattisgarh
4. Under Secretary, Commercial Tax Department, Mahanadi Bhawan, New Raipur, Chhattisgarh

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Advocate
For Respondent/State : Shri Shashank Thakur, G.A. and Shri Ashutosh Pandy, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order On Board

30/04/2018

The order under challenge in the present writ petition is Annexure P-1 dated 03.11.2017 whereby the petitioner has been inflicted with a punishment of censure under Rule 10(1) of Civil Services (Classification, Control and Appeal) Rules, 1966.

2. The brief facts of the case are that the petitioner was working as a Deputy Commissioner in the Commercial Tax Department under the respondents. The petitioner in the capacity of Deputy Commissioner was holding the post of Commercial and Sales Tax Appellate Authority and he was posted in the office of Deputy Commissioner, Bilaspur. On 20.01.2010, the petitioner was served with a charge sheet alleging misconduct in the course of discharge of his duties. In the charge sheet, there was only one charge that the petitioner in an appeal preferred by one M/s Simplex Infrastructure Private Ltd., Korba against the assessment made for the years 2006-07, 2007-08 & 2008-09 had passed an erroneous order causing loss to the tune of rupees 3.67 crores to the State Revenue. It was also alleged that the petitioner has not followed the order of the Divisional Deputy Commissioner dated 07.08.2009 while deciding the appeal and setting aside the order of the assessing officer. The charge against the petitioner was that the petitioner is said to have granted certain rebate to M/s Simplex Infrastructure Private Ltd., Korba which otherwise was not permissible. The respondents initiated a departmental enquiry against the petitioner and the enquiry officer vide his enquiry report dated 18.07.2016 submitted an enquiry report. In the enquiry report, the enquiry officer has classified the Charge into four separate charges and found the first charge partially proved and the other charges not proved at all. After submission of the enquiry report, the department issued a show cause notice to the petitioner on 10.08.2016. The petitioner immediately gave a detail reply to the show cause notice on 26.08.2016. Thereafter, the respondents have passed the impugned order Annexure P-1 dated 03.11.2017 inflicting the petitioner with a punishment of censure.

3. According to the counsel for the petitioner, the issuance of charge sheet for the alleged misconduct is totally unsustainable and uncalled for

and therefore, the order of punishment deserves to be held not sustainable. The alleged misconduct against the petitioner was in the course of discharging his statutory duties that of an appellate authority and as such it was a quasi judicial function and an order passed exercising the quasi judicial power could not have been brought within the ambit of a misconduct much less the petitioner could not have been punished for the same. It was contended that the order passed by the petitioner was an order which could be challenged before the higher authority by way of an appeal/revision and if at all if any erroneous order had been passed, the same could have been rectified. It was further contended that in fact, subsequently in a revision petition, the order of the petitioner stood revised/modified and the order of rebate granted to the said company stood set aside and the alleged loss caused to the petitioner also stood recovered. Therefore, on this count also the charge would not have been sustainable much less warranting a punishment. Thus, prayed for setting aside of the order of punishment.

4. Per contra, the stand of the State counsel was that the action on the part of the petitioner in exercise of its power under the Act which resulted in the monetary loss to the State exchequer and that the finding arrived was totally bad in law. The petitioner while discharging his duties has ignored or has not followed the instructions and orders issued by the superior authorities in this regard. State counsel relying upon the law laid down by the Supreme Court in the case of **Union of India and others Vs. K. K. Dhawan** reported in **(1993) 2 SCC 56** submitted that even if the officer exercising quasi judicial function they could be proceeded in a disciplinary proceeding in case it was found that the officer had not acted upon in a manner which was otherwise required from him under the statutes under the powers which he was otherwise exercising. According to the State

counsel, if a quasi judicial officer in the course of discharging his quasi judicial powers acts negligently or recklessly then the particular officer can be subjected to disciplinary proceedings. Thus, according to the respondents, it is the same charge against the petitioner also that of not following the orders of the superior authorities and that he had been negligent in deciding the appeal in respect of M/s Simplex Infrastructure Private Ltd.

5. Having heard the contentions put forth on either side and on perusal of the record what would be relevant at this juncture is to take note of the nature of allegations which were levelled against the petitioner. The charge sheet dated 20.01.2010 reveals that there was only one line charge levelled against the petitioner and the crux of the charge is reproduced hereinunder:

> आरोप क्रमांक–1 :–
> श्री देवांगन द्वारा मेसर्स सिम्पलेक्स इन्फ्रास्टक्चरल प्रा.लि. कोरबा के वर्ष 2006–07, 2007–08 एवं 2008–09 के प्रांतीय, केन्द्रीय एवं प्रवेश कर प्रकरण में त्रुटिपूर्ण आदेश पारित कर लगभग रूपये 3.76 करोड़ की राशि का न्यून करारोपण किया गया एवं व्यवसायी को एक करोड़ की अवांछनीय वापसी प्रदान की गई जो कि शासन के राजस्व हितों के प्रतिकूल है। इसके अतिरिक्त आपके द्वारा संभागीय उपायुक्त, बिलासपुर के पत्र क्रमांक 2016 दिनांक 17.08.2009 द्वारा प्रदत्त आदेश का पालन नहीं किया गया है।

6. It would be relevant to quote certain findings of the enquiry officer at this juncture which would reveal the conclusion reached by the enquiry officer :

> "विवेचना से यह भी स्पष्ट है कि आयुक्त वाणिज्यिक कर द्वारा पारित सभी निगरानी आदेश वर्तमान में छततीसगढ़ वाणिज्यिक कर अधिकरण रायपुर के समक्ष संबंधित व्यवसायी द्वारा अपील किये जाने पर निर्णय हेतु विचाराधीन है। चूंकि आयुक्त के द्वारा पारित आदेश अपील में निर्णय हेतु लंबित होने से आयुक्त का आदेश विचाराधीन प्रकरण में अंतिम आदेश नहीं माना जा सकता है।
> विवेचना से यह भी स्पष्ट होता है कि अपचारी अधिकारी द्वारा पारित आदेश को आयुक्त ने अपने पारित आदेश दिनांक 01.02.2010 के द्वारा अपास्त नहीं किया है, मात्र उसमें आंशिक संशोधन करते हुये अपचारी अधिकारी ने उक्त प्रकरणों के कर निर्धारण आदेशों में जिन विक्रयों को अंतर्राज्यीय व्यापार के दौरान विक्रय मान्य कर छूट दी गई थी केवल उन विक्रयों को आयुक्त ने राजस्व हितों के विपरीत मान कर ''स्वप्रेरणा'' से निगरानी आदेश पारित किया है।
> उपरोक्त संपूर्ण विवेचना से अपचारी अधिकारी द्वारा कर निर्धारण आदेश पारित कर शासन को राजस्व क्षति पहुंचाने की मंशा जानबूझकर परिलक्षित नहीं होती है। किंतु

अपचारी अधिकारी ने राजस्व हितों को ध्यान में न रखते हुये, निर्णय पारित कर कहीं न कहीं चूक की है।
विभाग की ओर से प्रस्तुत विभागीय गवाहों में से किसी भी गवाह ने यह कथन नहीं किया है कि अपचारी अधिकारी द्वारा त्रुटिपूर्ण कर निर्धारण कर न्यून करारोपण किया जाकर व्यवसायी को अवांछनीय वापसी प्रदान की जाकर शासन के राजस्व हितों के प्रतिकूल कार्यवाही की गई।
अपचारी अधिकारी द्वारा प्रस्तुत अभिलेखों से यह स्पष्ट है कि व्यापारी द्वारा प्रस्तुत सभी संबंधित दस्तावेजों का अवलोकन करने के बाद ही दिनांक 24.07.2009 को छ. ग. मूल्य संबंधित कर अधिनियम 2005 की धारा 36 के अधीन एक पक्षीय आदेश को विधि के अंतर्गत सुनवायी व परिशीलन पश्चात अपास्त किया गया। जो विधि प्रक्रिया व अधिनियम के प्रकाश में सही व वैध है।
इस तरह विभागीय गवाहों एवं प्रस्तुतकर्ता अधिकारी द्वारा इस विचाराधीन प्रश्न बिंदू क्रमांक–1 में उल्लेखित आरोप में न्यून करारोपण करने में की गई चूक को छोड़ शेष अन्य बिंदू क्र.–1 में उल्लेखित आरोपों को प्रमाणित करने में असफल रहा है।
उपरोक्त संपूर्ण विवेचना के आधार पर अपचारी के विरूद्ध विचाराधीन प्रश्न बिंदू क्रमांक–1 में आरोपित न्यून करारोपण करने का आरोप आयुक्त वाणिज्यिकर के स्वप्रेरणा में लिये जाकर पारित किये गये आदेश के प्रकाश में राजस्व हित को ध्यान में न रख निर्णय पारित कर चूक करना परिलक्षित होना प्रतीत होता है। यद्यपि साक्ष्य एवं अभिलेखें से अपचारी अधिकारी द्वारा पारित ओदेश राजस्व क्षति पहुंचाने की मंशा जानबूझकर परिलक्षित नहीं होती है।
ऐसी स्थिति में अपचारी अधिकारी के विरूद्ध बिंदू क्रमांक–1 के उल्लेखित उक्त आरोप आंशिक रूप से प्रमाणित पाया जाता है।"

7. So far as the other allegations are concerned, there is a categorical finding by the enquiry officer holding that the charges levelled against the petitioner have not been proved at all.

8. Another striking feature which has to be given its due weightage is that the alleged order passed in an appeal by the petitioner subsequently stood partly modified by the revisional authority and the order in respect of granting rebate to the said company was set aside and the concerned company thereafter has deposited the entire amount with the department. Moreover, there is a categorical finding by the enquiry officer that there was no malafides or an act showing undue favour to the company or the order being passed with a corrupt motive. The Enquiry Officer has not doubted the integrity or honesty of the petitioner while passing the order in an appeal. In the absence of any such allegation being proved or even charged, the petitioner could not have been subjected to a disciplinary proceeding nor could the disciplinary authority could have passed the punishment order which is under challenge in the present writ petition.

9. So far as the judgment which has been relied upon by the respondent State in the case of K. K. Dhawan (supra) is concerned, the Supreme Court has carved out certain exceptions wherein a quasi judicial authority/Court would have been subjected to disciplinary action for orders passed in exercise of judicial functions. Those exceptions are i) where the act reflects on the reputation for integrity, good faith and devotion to duty; ii) where the act prima facie shows reckless or misconduct in the discharge of his duty; iii) where the act is totally unbecoming of a Government servant; iv) where the orders have been passed without following the essential conditions in exercise of his statutory powers; v) an act done showing undue favour to a party and vi) if the order was passed with a corrupt motive.

10. In the instant case, the respondents State so also the witnesses before the enquiry officer as is clearly reflected from the enquiry report have failed to establish any of the exceptions which has been carved out by the Supreme Court in the case of K. K. Dewangan (Supra). The Supreme Court in the case of **Zunjarrao Bhikaji Nagarkar Vs. Union of India and others** reported in **(1999) 7 SCC 409** in somewhat similar factual backdrop in paragraph-41 to 43 held as under:

> "41. ..... There has to be some basis for the disciplinary authority to reach such a conclusion even prima facie. Record in the present case does not show if the disciplinary authority had any information within its possession from where it could form an opinion that the appellant showed 'favour' to the assessee by not imposing the penalty. He may have wrongly exercised his jurisdiction. But that wrong can be corrected in appeal. That cannot always form basis for initiating disciplinary proceedings for an officer while he is acting as quasi judicial authority. It must be kept in mind that being a quasi judicial authority, he is always subject to judicial supervision in appeal.
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> 42. Initiation of disciplinary proceedings against an officer cannot take place on an information which is vague or indefinite. Suspicion has no role to play in such matter. There must exist reasonable basis for the disciplinary authority to proceed against the delinquent officer. Merely because penalty

> was not imposed and the Board in the exercise of its power directed filing of appeal against that order in the the Appellate Tribunal could not be enough to proceed against the appellant. There is no other instance to show that in similar case the appellant invariably imposed penalty.
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> 43. If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it does not proceed on any legal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal. The charge- sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication whereunder quasi judicial powers are conferred on administrative authorities, would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings."

11. A similar view has been reiterated by the Supreme Court in the case of **Ramesh Chander Singh vs. High Court of Allahabad and another** reported in **(2007) 4 SCC 247** wherein in paragraphs 11 & 15 held as under:

> "11. We fail to understand as to how the High Court arrived at a decision to initiate disciplinary proceedings solely based on the complaint, the contents of which were not believed to be true by the High Court. If the High Court were to initiate disciplinary proceedings based on a judicial order, there should have been strong grounds to suspect officer's bona fides and the order itself should have been actuated by malice, bias or illegality. The appellant-officer was well within his right to grant bail to the accused in discharge of his judicial functions. Unlike provisions for granting bail in TADA Act or NDPS Act, there was no statutory bar in granting bail to the accused in this case. A Sessions Judge was competent to grant bail and if any disciplinary proceedings are initiated against the officer for passing such an order, it would adversely affect the morale of subordinate judiciary and no officer would be able to exercise this power freely and independently.
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> 15. In Kashi Nath Roy v. the State of Bihar, AIR 1996 SC 3240, this Court observed under a similar circumstance that in our system appellate and revisional courts have been set up with the presupposition that the lower courts in some measure of cases can go wrong in decision making in law and in fact.

> The higher courts have been established to correct errors. In cases where intolerable error is pointed out, it is functionally required to correct the error in an appropriate case and in a manner befitting maintaining dignity of the court and independence of the judiciary. The higher court should convey its message in the judgment to the officer concerned through a process of reasoning, essentially persuasive, reasonable, mellowed but clear and result oriented and rarely a rebuke."

12. It would also be worthwhile to take note of the judgment of the Supreme Court in the case **P. C. Joshi vs. State of UP and others** reported in **(2001) 6 SCC 491** wherein paragraph-7 it has been held as under:

> "In the present case, though elaborate enquiry has been conducted by the Enquiry Officer, there is hardly any material worth the name forthcoming except to scrutinize each one of the orders made by the appellant on the judicial side to arrive at a different conclusion. That there was possibility on a given set of facts to arrive at a different conclusion is no ground to indict a judicial officer for taking one view and that too for alleged misconduct for that reason alone. The Enquiry Officer has not found any other material, which would reflect on his reputation or integrity or good faith or devotion to duty or that he has been actuated by any corrupt motive. At best he may say that the view taken by the appellant is not proper or correct and not attribute any motive to him which is for extraneous consideration that he had acted in that manner. If in every case where an order of a subordinate court is found to be faulty a disciplinary action were to be initiated, the confidence of the subordinate judiciary will be shaken and the officers will be in constant fear of writing a judgment so as not to face a disciplinary enquiry and thus judicial officers cannot act independently or fearlessly. Indeed the words of caution are given in K.K.Dhawans case [supra] and A.N.Saxenas case [supra] that merely because the order is wrong or the action taken could have been different does not warrant initiation of disciplinary proceedings against the judicial officer. In spite of such caution, it is unfortunate that the High Court has chosen to initiate disciplinary proceedings against the appellant in this case."

13. When the legal proposition which has been enunciated by the Supreme Court in the aforementioned judgments is compared with the findings of the enquiry officer so also the factual matrix, it would clearly reflect that there was hardly any material which was available with the Disciplinary Authority for having passed the order of punishment even

though it is of only a censure but which could be fatal so far as the career growth is concerned. Moreover, the alleged wrong which was crept in the order passed by the petitioner later on stood corrected by the order of the Revisional Authority. In addition, there is no whisper of the order passed by the petitioner being with a corrupt motive or to oblige to any person for extraneous consideration. The order of punishment does not appear to be with any substantive basis or material nor does the order of the Disciplinary Authority provide any reason to inflict the petitioner with the said punishment.

14. Accordingly, the impugned order of punishment dated 03.11.2017 is not sustainable and the same deserves to be and is accordingly set aside/quashed. As a consequence, the writ petition stands allowed.

Sd/-
(**P. Sam Koshy)**
JUDGE

Bhola