Union of India and Another

Vs

R. K. Desai

Civil Appeal No. 560 of 1991

(M. H. Kania, S. Mohan JJ)

25.03.1992

ORDER

1. This is an appeal from the decision of the Central Administrative Tribunal, Ahmedabad. The respondent is an Income Tax Officer. By a memorandum dated March 23, 1988 the respondent Income Tax Officer was informed that the Commissioner of Income Tax proposed to hold an inquiry against him under Rule 14 of Central Civil Services (CCA) Rules, 1965. It was alleged that the substance of the imputations of misconduct or misbehavior in respect of which the inquiry was proposed to be held was set out in the enclosed statement of articles of charge. By the said memorandum, the respondent was called upon to show cause why an inquiry should not be held against him. On July 7, 1988, the respondent submitted his reply to the show-cause notice denying any misconduct on his part. On July 11, 1988, the Commissioner of Income Tax appointed an inquiry authority officer to inquire into the charges.

2. The said show-cause notice and the appointment of Enquiry Officer was challenged by the respondent by a petition filed before the Tribunal. By the impugned judgment, the Tribunal has quashed and set aside the said show-cause notice.

3. It is common ground that the charges levelled against the respondent are in respect of his conduct in assessing certain assessees, i.e., in the course of exercise of his judicial or quasi-judicial functions. On a reading of the charges and the allegations in detail learned Additional Solicitor General has fairly stated that they do not disclose any culpability nor is there any allegation of taking any bribe or of trying to favor any party in making the orders granting relief in respect of which misconduct is alleged against the respondent. The only paragraph to which the learned Additional Solicitor General drew our attention was paragraph 6 of the statement of imputations which runs as follows :

> "Shri R. K. Desai also issued refunds amounting to Rs. 26,641 in the cases referred to above to the Indian agents of the masters of ships. In fact, these agents were not authorised to receive the refund orders, nor were there any requests from the non-resident owners of the ships to issue such refunds to their agents. The refunds were therefore granted to unauthorised persons. Moreover, refunds in these cases were personally delivered to instructions."

4. In our view, the allegations are merely to the effect that the refunds were granted to unauthorised persons and this was done in disregard to the instructions of the Central Board of Direct Taxes. There is no allegation, however, either express or implied that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous

considerations. In these circumstance, merely because such orders of refunds were made, even assuming that they were erroneous or wrong, no disciplinary action could be taken as the respondent was discharging quasi-judicial function. If any erroneous order had been passed by him the correct remedy is by way of an appeal or revision to have such orders set aside. In these circumstances, there is no dispute that the appeal may fail.

5. Learned Additional Solicitor General has, however, submitted that there are certain observations in the impugned judgment which might lead to an impression that no disciplinary inquiry can be held at all under the Central Civil Services (Conduct) Rules, 1963 and it is strongly urged by him that such a view is not sustainable in law.

6. In this connection, we would like to point out in the impugned judgment of the Tribunal in paragraph 17 it is pointed out as follows :

> "Before parting with the case we must observe that whenever Government finds that revenue has been sacrificed irresponsibly or the circumstances in which doubts about corruption or other ulterior motives can be raised, immunity against disciplinary proceedings cannot be conferred on delinquent Government servants. Nor can any proposition be allowed that they are not answerable to the Government."

7. It seems difficult beyond dispute, and is not in fact disputed before us, that it is not as if an officer belonging to the Central Civil Service is totally immune from disciplinary proceedings wherever he discharges quasi-judicial or judicial functions. If in the discharges of such functions he takes any action pursuant to a corrupt motive or an improper motive to oblige someone or take revenge on someone, in such a case it is not as if no disciplinary proceedings can be taken at all. On the contrary, merely because he gives a judicial or quasi-judicial decision which is erroneous or even palpably erroneous no disciplinary proceedings would lie. We may in this connection usefully refer to H.H.B. Gill v. R. (AIR 1948 PC 128, 133 : 52 CWN 567 : 49 Cri LJ 503) where it was held as under :

> "A public servant can only be said to act or to purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty. Thus a Judge neither acts nor purports to act as a Judge in receiving a bribe, though the judgment which he delivers may be such an act : nor does a Government medical officer act or purport to act as a public servant in picking the pocket of a patient whom he is examining, though the examination itself may be such an act. The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office."

Following this ruling in United Provinces v. Electricity Distributing Co. (AIR 1948 PC 159 : 1948 All LJ 189), it was held in paragraph 21 as under :

> "In the present case, it is equally clear that the appellant 'could not justify the acts in respect of which he was charged', i.e., acts of fraudulently misapplying money entrusted to his care as a public servant, 'as acts done by him by virtue of his office that he held'."

8. This Court approved the dictum of H.H.B. Gill v. R. (AIR 1948 PC 128, 133 : 52 CWN 567 : 49 Cri LJ 503) in the ruling of Matajog Dobey v. H. C. Bhari (AIR 1956 SC 44, 49 : (1955) 2 SCR

925) where it was held as under :

> "The offence alleged to have been committed must have something to do, or must be related in some manner, with the discharge of official duty. No question of sanction can arise under Section 197, unless the act complained of is an offence; the only point to determine is whether it was committed in the discharge of official duty. There must be a reasonable connection between the act and the official duty. It does not matter even if the act exceeds what is strictly necessary for the discharge of the duty, as this question will arise only at a later stage when the trial proceeds on the merits.
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> What we must find out is whether the act and the official duty are so inter-related that one can postulate reasonably that it was done by the accused in the performance of the official duty, though possibly in excess of the needs and requirements of the situation. In Hori Ram Singh v. Emperor (AIR 1939 FC 43, 51 (B) : 40 Cri LJ 468) Sulaiman, J. observes :
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> "The section cannot be confined to only such acts as are done by a public servant directly in pursuance of his public office, though in excess of the duty or under a mistaken belief as to the existence of such duty. Nor is it necessary to go to the length of saying that the act constituting the offence should be so inseparably connected with the official duty as to form part and parcel of the same transaction.'
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> The interpretation that found favour with Varadachariar, J. in the same case is stated by him in these terms at page 56 : 'There must be something in the nature of the act complained of that attaches it to the official character of the person doing it'. In affirming this view, the Judicial Committee of the Privy Council observed in Gill case (AIR 1948 PC 128, 133 : 52 CWN 567 : 49 Cri LJ 503) :
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> 'A public servant can only be said to act or purport to act in the discharge of his official duty, if his act is such as to lie within the scope of his official duty... The test may well be whether the public servant, if challenged, can reasonably claim that, what he does, he does in virtue of his office.'
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> Hori Ram Singh v. Emperor (AIR 1939 FC 43, 51(B) : 40 Cri LJ 468) is referred to with approval in the later case 'H. T. Huntley v. Emperor (AIR 1944 FC 66 : 45 Cri LJ 755 : (1944) 1 MLJ 503)' but the test laid down that it must be established that the act complained of was an 'official' act appears to us unduly to narrow down the scope of the protection afforded by Section 197, Criminal Procedure Code, as defined and understood in the earlier case. The decision in - Albert West Meads v. R. (AIR 1948 PC 156 : 49 Cri LJ 660 : (1948) 2 MLJ 120) does not carry us any further; it adopts the reasoning in Gill case (AIR 1948 PC 128, 133 : 52 CWN 567 : 49 Cri LJ 503)."

There are two cases of this Court to which reference may be made here. In Shreekantiah Ramayya Munipalli v. State of Bombay (AIR 1955 SC 287, 292-293 : (1955) 1 SCR 1177) Bose, J. observes as follows :

> 'Now it is obvious that if Section 197 of the Code of Criminal Procedure is construed too narrowly, it can never be applied, for of course, it is no part of an official's duty

> to commit an offence and never can be. But it is not the duty we have to examine so much as the act, because an official act can be performed in the discharge of official duty as well as in dereliction of it. The section has content and its language must be given meaning.'
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> The question of previous sanction also arose in Amrik Singh v. State of Pepsu (AIR 1955 SC 309, 312 : (1955) 1 SCR 1302). A fairly lengthy discussion of the authorities is followed up with this summary :
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> 'If the acts complained of are so integrally connected with the duties attaching to the office as to be inseparable from them, then sanction under Section 197(1) would be necessary; but if there was no necessary connection between them and the performance of those duties, the official status furnishing only the occasion or opportunity for the acts, then no sanction would be required.'
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> The result of the foregoing discussion is this : There must be a reasonable connection between the act and the discharges of official duty; the act must bear such relation to the duty that the accused could lay a reasonable, but not a pretended or fanciful claim, that he did it in the course of the performance of his duty."

9. Again in Satwant Singh v. State of Punjab (AIR 1960 SC 266, 271 : (1960) 2 SCR 89) it has been observed as under :

> "It appears to us to be clear that some offences cannot by their very nature be regarded as having been committed by public servants while acting or purporting to act in the discharge of their official duty. For instance, acceptance of a bribe, an offence punishable under Section 161 of the Indian Penal Code, is one of them and the offence of cheating or abetment thereof is another. We have no hesitation in saying that where a public servant commits the offence of cheating or abets another so to cheat, the offence committed by him is not one while he is acting or purporting to act in the discharge of his official duty, as such offences have no necessary connection between them and the performance of the duties of a public servant, the official status furnishing only the occasion or opportunity for the commission of the offences (vide Amrik Singh v. State of Pepsu (AIR 1955 SC 309, 312 : (1955) 1 SCR 1302)). The act of cheating or abetment thereof has no reasonable connection with the discharge of official duty. The act must bear such relation to the duty that the public servant could lay a reasonable but not a pretended or fanciful claim, that he did it in the course of the performance of his duty (vide Matajog Dobey v. H. C. Bhari (AIR 1956 SC 44, 49 : (1955) 2 SCR 925)).

10. Though, these cases relate to sanction under Section 197 of Criminal Procedure Code of 1898, yet the tests laid down as to what would constitute proper exercise of power by a public servant, could be discerned. These principles will constitute the tests for launching disciplinary proceedings as well.

11. The office may occasion the bribe. But it does not mean because the officer is exercising its quasi-judicial functions, he would not be amenable to judiciary proceedings.

12. We do not intend to lay down precisely in what cases disciplinary proceedings would lie and in

what cases they do not lie because embarking upon the task of drawing such a line is cast with peril. Indeed, it is difficult to draw such a line without taking into account the concrete facts and circumstances of a case. But we are certain that if there is some degree of culpability in a large sense, disciplinary proceedings can be taken.

13. In the result, the appeal fails and is dismissed with no order as to costs.

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