

Government of Tamil Nadu

Vs

K.N. Ramamurthy

(Sujata V. Manohar, G.B. Pattanaik JJ)

13.08.1997

JUDGMENT

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K.VENKATASWAMI J.

1. The respondent herein was working as a Deputy Commercial Tax Officer, Cuddalore (Town) at the relevant time. Under Rule 17(b) of Tamil Nadu Civil Services (Classification, Control & Appeals) Rules the following charges were framed against the respondent:

(i) That he failed to analyse the facts involved in each and every case referred to above;

(ii) that he failed to check the accounts deeply and thoroughly while making final assessment;

(iii) that he failed to subject the above turnover to tax originally; and

(iv) That he failed to safeguard the Government revenue to a huge extent of Rs. 44,850/-.

2. After a due and proper enquiry, it was found that the charges were proved. Accordingly, a punishment of stoppage of increment for three years with cumulative effect was imposed.

3. The respondent challenged the above-said punishment by filing O.A. No. 1400/90 before the Tamil Nadu Administrative Tribunal. This Tribunal vide its order dated April 9, 1992 set aside the said punishment holding as follows:-

"As laid down in the decision of the Madras High Court, the hierarchy authorities is constituted for correction if the original order of assessment is wrong even if palpably wrong it cannot be subjected to disciplinary proceedings since while passing such orders, he exercises the quasi judicial functions conferred on him under the General Sales Tax Act. In the light of the principles laid down in the above decision, the disciplinary proceedings initiated against the applicant herein is not warranted and also the consequential punishment imposed on his is liable to be set aside. Accordingly, this application is allowed.

4. Aggrieved by the above decision of the Tribunal, the present appeal by special leave has been preferred by the appellant.

5. Though notice of lodgement of the petition of appeal was served on the respondent, he has not chosen to enter appearance and contest the matter.

6. The learned counsel for the appellant submitted that the view of the Tribunal for setting aside the punishment cannot be sustained in the light of a number of judgments of this Court, holding a contrary view. He brought to our notice, the following judgments:-

Union of India Vs. A.N. Saxena (1992 (3) SCC 124); Union of India Vs. K.K. Dhawan (1993 (2) SCC 56) and Union of India Vs. Upendra Singh (1994 (3) SCC 357).

7. In the case on hand, the finding accepted by the disciplinary authority was to the effect that by the act of negligence in making the assessment. The delinquent caused loss to the Government exchequer to the extent of Rs.44,850/-. This finding of the disciplinary authority is not open to challenge on the facts of the case. This Court in Upendra Singh's case (supra) has ruled that the Tribunal has no jurisdiction to go into the correctness or truth of the charges and the Tribunal cannot take over the functions of the disciplinary authority. This court in the said case further observed that the function of the Court/Tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. This Court further held that in case of charges framed in a disciplinary enquiry, the Tribunal or the Court can interfere only if on the charges (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.

8. In K.K. Dhawan's case, this Court held as follows:-

"28. Certainly, therefore, the officer who exercises judicial or quasi-judicial 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 :

(i) Where the officer had acted in a manner as would reflect on his reputation integrity or good faith or devotion to duty; (ii) if there is prima facie material to show recklessness or misconduct in the discharge on 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 may be small yet the fault is great. 29 The instances above catalogued are not exhaustive. However, we may add that 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."

9. In the premises and in the light of the finding of the disciplinary authority, the view taken by the tribunal to set aside the Punishment cannot be sustained. Accordingly, the order of the Tribunal is set aside and that of the disciplinary authority is restored. However, there will be no order as to costs.