THE MAHARASHTRA ADMINISTRATIVE TRIBUNAL, MUMBAI

ORIGINAL APPLICATION NO.172 OF 2019

DIST : MUMBAI

Shri Anil Dnyaneshwar Tannu)
Aged 58 yrs, Occu.: retired as)
Dy. Commissioner, ST)
R/at : Sayali Someswar Park, Baner Road,)
Pashan, Pune – 411007.) **....Applicant**

Versus

1. The State of Maharashtra,)
Through the Principal Secretary,)
Finance Department, Shahid Bhagat)
Singh Road, Mumbai 400 032.) **...Respondent.**

Shri D. B. Khaire , Advocate for the Applicant.
Ms S. P. Manchekar , Chief Presenting Officer for the Respondents

CORAM : SHRI P.N.DIXIT, VICE-CHAIRMAN
SHRI A.P. KURHEKAR, MEMBER-J

DATE : 31.07.2019

PER : SHRI A.P.KURHEKAR, MEMBER -J

J U D G M E N T

1. In the present O.A., the Applicant has challenged initiation of Departmental Enquiry (D.E.) taken up against him by charge sheet dated 29.12.2017 on the ground that it is hit by rule of double jeopardy and inordinate delay.

Shortly stated facts giving rise to the O.A. are as under:-

2. The Applicant was appointed as Sales Tax Inspector in the year 1995 and promoted to the post of Sales Tax Officer in 2006. Later he was promoted to the post of Deputy Commissioner of Sales Tax in 2013 and retired from the post on 30.12.2017. In 2009, while he was working as Sales Tax Officer, show cause notice dated 04.07.2009 was issued to him as to why disciplinary proceeding under Rule 8 of Maharashtra Civil

Services (Discipline & Appeal) Rules, 1979 (hereinafter referred to as 'Rules 1979') should not be initiated against him for the loss to the Government on account of defective assessment of sales tax, failure to take prompt action for recovery of sales tax etc. The Applicant has submitted his reply on 04.07.2009. On 06.08.2009, the Deputy Commissioner Sales Tax issued warning to him in respect of the lapses of wrong assessment of taxes and accordingly, order was passed to take entry of the same in his ephemeral rolls. Thereafter, on 13.05.2013 he was again served charge sheet under Rule 10 of 'Rules 1979' for the same lapses while he was working as Sales Tax Officer and explanation was called in respect of 30 cases of wrong assessment. The Applicant had requested to make available record to him to submit the reply. However, no record could be made available to him. No further action was taken and it was abandoned. Then again, the Applicant has been served with charge sheet dated 29.12.2017 under Rule 8 of 'Rule 1979' by serving charge sheet on 30.12.2017 i.e. day of his retirement. The Applicant has challenged initiation of D.E. and prayed to quash the charge sheet dated 29.12.2017 contending that it is hit by principle of double jeopardy as he was already subjected to enquiry and punishment in the past. He contends that in order to harass him charge sheet has been served on the date of retirement. He, therefore, prayed to quash the same.

3. Respondents opposed the application inter-alia denying that the Applicant was subjected to D.E. or punishment in past. In this behalf, the Respondents contend that firstly, no such regular D.E. was at all initiated against the Applicant nor he has been punished. On 04.07.2009 only show cause notice was issued to him as to why regular D.E. under Rule 8 of 'Rule 1979' should not be initiated against him and on submission of explanation of the Applicant only warning was given to him by taking entry in ephemeral rolls by the Joint Commissioner of Sales Tax and such action of warning taken by him at his level do not constitute proceedings under 'Rules 1979'. Thereafter second time, the charge sheet under Rule 10 of 'Rules 1979' was issued on 13.05.2013

but no further action was taken in pursuance of the same and, therefore, it can't be said that the Applicant was subjected to D.E. secondly. The Respondents thus contend that the charge sheet dated 29.12.2017 which has been questioned by the Applicant is the only regular D.E. taken up against the Applicant by Competent Authority i.e. Special Commissioner of Sales Tax and, therefore, principle of double jeopardy is not attracted. The warning for entry in ephemeral rolls does not amount to punishment within the meaning of punishment in terms of Rule 5 of 'Rules 1979'.

4. Shri D.B. Khaire, learned Counsel for the Applicant strenuously urged that by charge sheet dated 29.12.2017, the Applicant is subjected to D.E. third time for the same charges for which in the form of warning and entry in ephemeral rolls, he was already punished earlier. He, therefore, contends that once the Applicant is subjected to punishment, no D.E. can be initiated against him for the same charges on the principle of Rule of double jeopardy enshrined in Article 20(2) of Constitution of India. He further contends that on the point of inordinate delay also charge sheet now issued for the alleged misconduct of 2002-2005 is not tenable and amount to misuse of power. He, therefore, prayed to quash the charge sheet dated 29.12.2017.

5. Whereas learned C.P.O. countered that the warning or entry in ephemeral rolls does not amount to punishment and, therefore, the principles of double jeopardy as contemplated in Article 20(2) of Constitution of India is not at all attracted. However, she fairly concedes that the charges on which the charge sheet dated 29.12.2017 has been issued against the Applicant are same for which initially charge sheet was issued on 04.07.2009 for which warning was given to the Applicant.

6. There is no denying that the charges levelled against the Applicant in charge sheet dated 04.07.2009 and the charges levelled against the Applicant in charge sheet dated 29.12.2017 are same.

7. In view of submission advanced at bar, first material question posed is whether the principle of double jeopardy enshrined in Article

20(2) of Constitution of India is attracted in the present situation. It provides that no person shall be prosecuted and punished for the same offence more than once. Needless to mention that the fundamental condition for the applicability of clause 2 are that (a) there must have been previous D.E. (b) the delinquent must have been punished for the charges levelled against him and thirdly the subsequent proceeding must also be relating to the same charges for which he again sought to be prosecuted in D.E. In other words, unless prosecution and punishment both co-exist Article 20(2) of Constitution of India would not apply. Here material to note that proceeding initiated firstly in the year 2009 was not regular D.E. but was show cause notice to the Applicant as to why regular D.E. under Rule 8 of 'Rules 1979' should not be initiated against him. The Applicant has placed on record a copy of show cause notice which is at page no.44 to 49. The Applicant has submitted his reply which is at page no.50. In explanation though he sought to deny the charges he stated that he be excused for procedural or technical compliances, if any. He further assured that in future he would act diligently. The Joint Commissioner having found that there is no loss of revenue gave him warning that such lapses should not happen again and the entry of the same be taken in ephemeral rolls by letter dated 06.08.2009. Thus, it was show cause notice as to why D.E. should not be initiated and on warning it was closed. Second time, the charge sheet was issued on 13.05.2013 under Rule 10 of 'Rules 1979' but no further action was taken to proceed with the matter and it seems to have been abandoned**.**

8. Thereafter again on 29.12.2017 the charge sheet has been issued under Rule 8 of 'Rules 1979' for initiation of regular D.E.

9. Thus, there is no denying that when show cause notice was issued along with charge sheet dated 04.07.2009 to the Applicant, his explanation was taken and thereon warning was given to him with entry in ephemeral roll. The penalties are classified in Rule 5 of 'Rules 1979' and the lowest punishment is of censure. However, in the present case,

admittedly no further D.E. was conducted and the matter ends with show cause notice and warning with entry in ephemeral roll. It is thus, administrative order and it can't be termed as a penalty or punishment in terms of Rule 5 of 'Rules 1979' much less to attract the principles of double jeopardy. We are, therefore, not in agreement with the submission of learned Counsel of the Applicant that the principle of double jeopardy enshrined in Article 20(2) of the Constitution of India is applicable.

10. However, we find merit in alternate submission advanced by the learned Counsel for the Applicant that in view of satisfaction of the department that no further action was warranted and on account of inordinate and unreasonable delay of 15 years, now the initiation of D.E. by charge sheet dated 29.12.2017 is not permissible.

11. There is no denying that when first charge sheet dated 04.07.2009 was issued to the Applicant, the department was satisfied with the explanation submitted by the Applicant and that is why only warning was given with entry in ephemeral roll and the matter was closed. Pertinently, at that time of point itself, the department made it clear that there is no loss of revenue or taxes to the department but found some mistakes in the functioning of the Applicant. He was, therefore, advised to go through the circulars and to be careful in future. Here it would be material to note the relevant portion about the department's opinion and nature of warning given to him, which is as follows:-

> " उपरोक्त विषयात नमुद असलेले श्री.अनिल टण्णू विक्रीकर अधिकारी ड-१०४६ नरीमन पॉईट विभाग, (सध्या विक्रीकर अधिकारी ड-११६६ बोरीवली विभाग) यांचे विरुध्द मुख्यत्वे मे.मनिष ट्रेडर्स या व्यापा-याच्या कलम ५७ नंतरच्या वसुली कार्यवाही प्रकरणात आणि त्या अनुषंगाने त्यांनी पारित केलेल्या एकूण ४२ निर्धारणा प्रकरणात या कार्यालयाने ज्या त्रुटी निरिक्षणाद्वारे प्रस्तावित केल्या, त्याची पुर्तता त्यांनी एकूण - ३ खुलासा पत्राद्वारे केली असून, या कार्यालयाने, प्रकरण निहाय छाननी केली असून त्याबाबतचा आढावा घेतला असता, त्यात प्रत्यक्षात महसूल हानी नाही, परंतु कार्यपध्दतीत दोष आहेत. श्री.टण्णू यांनी निर्धारणा करताना आयुक्त कार्यालयाद्वारे पारित केलेल्या परिपत्रकांचा वेळोवेळी अभ्यास करणे हे अत्यंत महत्त्वाचे व गरजेचे असून त्यांच्या अभावामुळे जास्तीतजास्त त्रुटी राहीलेल्या आहेत, असे या कार्यालयाची धारणा आहे.
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> उपरोक्त ५ मुदयांच्या आधारे स्पष्ट आहे की, श्री.टण्णू हे महसूल पाठपुरावा याबाबत दक्ष राहीले नाहीत. ४२ प्रकरणांमध्ये व त्यांच्याकडून निर्धारणा पारित करताना विहित कार्यपध्दतीचे उल्लंघन झालेले वारंवार दिसून येते. निरीक्षणात आढळलेल्या त्रुटींच्या आधारे व मे.मनिष ट्रेडर्स या प्रकरणात त्यांच्या भविष्यात अशा चुका होउ नयेत यासाठी या कार्यालयाद्वारे शिस्तभंग आणि कर्तव्यात बेजबाबदारपणा यासाठी 'समज' देवून त्याची नोंद

Ephemeral Roll मध्ये घ्यावी. असे निर्देश या पत्राच्या अनुषंगाने त्याच्या संबंधीत विक्रीकर उपआयुक्त (प्रशा) म-९ यांना देण्यात आले.''

12. The aforesaid opinion of the Joint Commissioner, Sales Tax was communicated to the Deputy Commissioner, Sales Tax. Accordingly, by final warning letter dated 06.08.2009, the matter was closed. It is thus quite clear that the Department was satisfied with the explanation given by the Applicant and came to the conclusion that no further action was warranted as lapses were restricted to procedural aspects. Thereafter again for the same charges, surprisingly, the charge sheet was issued under Rule 10 of 'Rules 1979' on 13.05.2013. On receipt of that charge sheet, the Applicant has requested to make available record to him for submission of reply. However, no record could be made available to him. As the record could not be available to the Applicant no further action was taken in pursuance of second charge sheet issued under Rule 10 of 'Rules 1979'. Thus further action was either abandoned or the department didn't think it necessary to proceed further again. The necessary inference is that because of warning given to the Applicant on 06.08.2009, the department felt that further action for the same charges would be unnecessary.

13. Then again when the Applicant was set to retire on 31.12.2017, the charge sheet dated 29.12.2017 under Rule 8 of 'Rules 1979' has been served on the date of his retirement which is under challenge in the matter. As stated above, learned C.P.O. fairly concedes that the charges levelled in charge sheet in 29.12.2017 are one and same for which earlier charge sheet was issued twice that is on 04.07.2009 and 13.05.2013.

14. Thus, what transpires that despite closure of the enquiry on issuance of caution letter on 06.08.2009 attempt was made to revive the charges by issuing second charge sheet under Rule 10 of 'Rules 1979' in 2013 and that proceeding was also abandoned perhaps for the reasons of issuance of caution letter dated 06.08.2009 to the Applicant which was for the same charges.

15. As such, even if warning or entry in ephemeral rolls can't be termed as punishment strictly in terms of definition of punishment define in 'Rules 1979', there is no denying that at the issuance of first charge sheet in 2009 itself, the department was satisfied by the explanation given by the Applicant and warning only found enough. Now, on the date of retirement again the charge sheet has been issued for the same charges.

16. It may be noted that in first D.E. of 2009, the charges were pertaining to assessment of the taxes of the dealers for the year 2002 to 2005. By issuance of 3rd charge sheet again the same charges of the period 2002 to 2005 are levelled. Thus, now charges are being enquired into about the alleged mis-conduct after lapse of 15 years that too for the same charges for which warning was issued to the Applicant in 2009. In our considered opinion this is certainly not permissible.

17. Significant to note that there is absolutely no explanation from the side of the Respondent about this inordinate and substantial delay for initiating the D.E. third time by issuing charge sheet on the date of his retirement. It is not a case of the Respondent that action of the department to let off the Applicant only on warning was incorrect or loss of revenue was subsequently noticed because of alleged lapses on the part of the Applicant. As such, neither there is any explanation nor justification for inordinate delay of 15 years for initiating D.E. Unless the Respondent is in position to show that their earlier action to let off the Applicant on warning was incorrect and the delay is explained properly, the impugned action of initiating D.E. after lapse of 15 years can't be countenanced in law.

18. The legal principles governing the issue of delay in initiating departmental proceeding and its effect has been considered by the Hon'ble Supreme Court in ***1995 SCC (2) 570 State of Punjab V/s. Chaman Lal Goyal*** wherein following principles were laid down.

> *"It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the fact-, of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing."*

19. Again the Hon'ble Supreme Court in ***1998 (4) SCC 154 State of Andra Pradesh V/s. N. Radhakishan***, while dealing with the challenge to the order passed by C.A.T. quashing the proceeding of enquiry on the ground of delay laid down the following general proposition of law

> *"It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any default on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on that account the delay has occurred., If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer*

entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from his path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately the court is to balance these two diverse considerations."

20. Now, turning to the facts of present case, as stated above, there is absolutely not a single word to explain inordinate delay of 15 years for initiating D.E. nor any reason as to why the department changed its opinion of closing of enquiry by warning given in 2009 is forthcoming. Once the person is let off on warning and again the same charges are attempted to be revived, there has to be some explanation or justification for the same which is completely missing in the present case. As such, the delay of 15 years in the present situation is fatal so as to quash the charge sheet dated 29.12.2017.

21. If the D.E. at this stage is allowed it would certainly cause of serious prejudice to the Applicant as he would not be able to prepare his defence properly. The charges levelled against the Applicant pertains to year 2002 to 2005. It may be recalled that in 2013 when the second charge sheet was issued to the Applicant, he had filed an application for making the record available to him which was admittedly not made available as not found due to shifting of the office. It is only on the date of retirement, the charge sheet is now served upon the Applicant without a word of explanation or justification for inordinate delay.

22. Here significant to note that even at the time of issuance of third charge sheet, the Deputy Commissioner, Sales Tax by his letter dated 27.11.2017 opined that in view of caution letter given to the Applicant in 2009 and having regard to the fact that there is no loss of revenue if would not be appropriate to initiate the D.E. again. The relevant portion from his letter is material which is as follows:-

''तत्कालिन विक्रीकर सहआयुक्त (प्रशासन), नरिमन पॉईंट विभाग, मुंबई यांच्या उपरोक्त पत्राचे अवलोकन केले असता असे दिसून येते की, श्री.टण्णू यांचेकडून निर्धारणा पारित करताना विहित कार्यपध्दतीचे उल्लंघन झालेले आहे परंतू त्यांचेकडून कोणत्याही प्रकारची महसूलहानी झाल्याची नोंद आढळून येत नाही.

श्री.टण्णू यांचा तत्कालिन कार्यरत विक्रीकर सहआयुक्त (प्रशासन), नरिमन पॉईंट हा विभाग माझगांव येथील कार्यालयात स्थापित होता. दि.०१.०१.२०१२ रोजी मुंबई विक्रीकर कायद्याअंतर्गत असलेल्या कार्यालयांचे पुनर्रचनेनुसार विलिनीकरण झाल्यामुळे श्री.टण्णू यांचा तत्कालिन विक्रीकर अधिकारी (ड-१०४६) नरिमन पॉईंट विभाग, मुंबई हा कार्यभार वांद्रे येथील विक्रीकर अधिकारी (क-००७), मुंबई विक्रीकर कायदा, मुंबई या कार्यभारात विलिन झाला. फार मोठया प्रमाणावर झालेल्या विलिनीकरण प्रक्रियेमुळे श्री.टण्णू यांनी मागणी केलेल्या धारिण्या व नोंदवहया वारंवार करण्यात आलेल्या प्रयत्नानंतरही उपलब्ध होऊ शकल्या नाहीत. परंतू पहिल्या परिच्छेदात नमूद केल्याप्रमाणे श्री.टण्णू यांना देण्यात आलेल्या ज्ञापनांवर त्यांनी खुलासे सादर केलेले आहेत आणि त्यांनी सादर केलेल्या खुलाश्यांच्याच आधारे तत्कालिन विक्रीकर सहआयुक्त (प्रशासन), नरिमन पॉईंट विभाग, मुंबई यांनी श्री.टण्णू यांना समज देऊन तशी नोंद Ephemeral Roll मध्ये घेण्याची शिक्षा दिली.

या सर्व बाबींचा साकल्याने विचार करता श्री.टण्णू यांचेवर शिस्तभंग विषयक कारवाई करण्याची आवश्यकता नसल्याची या कार्यालयाची धारणा आहे व याबाबत दि.०८.११.२०१७ च्या पत्रान्वये आपणास कळविण्यात आलेले आहे.

आपल्या कार्यालयाकडून प्राप्त झालेल्या संदर्भ क्र.१ वरील पत्राच्या अनुषंगाने श्री.टण्णू यांनी या कार्यालयास दिलेल्या पत्राची प्रत आपल्या कार्यालयात सादर करण्यात येत आहे.''

Thus despite this opinion of Deputy Commissioner of Sales Tax, impugned charge sheet has been issued.

23. The contention raised by the Respondents in reply that caution letter given to the Applicant in 2009 was issued by the Joint Commissioner at his level and, therefore, now the Special Commissioner, Sales Tax had issued the charge sheet dated 29.12.2017 can clearly be treated as an explanation to justify the course of action now undertaken by the Respondent. It was well within the knowledge of disciplinary authority that the Applicant was let off on caution letter which was issued by the Joint Commissioner, Sales Tax. Even assuming for a moment that technically the Joint Commissioner was not the Disciplinary Authority in that event also there is no escape from the conclusion that D.E. is now initiated after 15 years and for which there is absolutely no explanation much less justifiable. On the contrary, the department is attempting to revive old charges for which warning was already issued. Respondents can't be allowed to retract from their stand

after the gap of 15 years as it is going to cause serious prejudice to the applicant in his defence.

24. The matter also needs to be understood from another angle as the charge sheet was served on the date of retirement. As stated earlier the charges pertain to the alleged discrepancies and lapses for the year 2002-2005. It may be noted that if the charge sheet had not been issued on the date of retirement then in that event the Respondents could not have instituted any such departmental proceeding after retirement of the Applicant being hit by the Rule 27(b)(ii) of Maharashtra Civil Services (Pension) Rules, 1982 which inter-alia provides that D.E. shall not be initiated in respect of any event which took place more than four years before such institution, if it is instituted after retirement. As such, there are reasons to say that intentionally the charge sheet was served on the date of retirement. Such action cannot be termed bonafide. If such action is allowed to continue, it would certainly cause mental agony to the Applicant and he would be deprived of pensionary benefits till conclusion of the D.E. Suffice to say, the situation is squarely covered by the principles laid down by the Hon'ble Supreme Court in ***Chaman Lal Goyal's case and N. Radhakishan's case*** (cited supra). As the Respondents themselves admit that there was no loss to the revenue and the fault of the Applicant is restricted to some irregularities and lack of knowledge of procedure, in our considered opinion, it would be unfair, unjust and abuse of process of law to continue the departmental proceeding.

25. The totality of aforesaid discussion leads us to conclude that initiation of D.E. by charge sheet dated 29.12.2017 is nothing but abuse of process of law and the same deserves to be quashed. Hence the following order.

ORDER

(a) Original Application is allowed.

(b) Initiation of D.E. by charge sheet dated 29.12.2017 is hereby quashed and set aside.

(c) The Respondents are directed to release retiral benefits of the Applicant as per his entitlement within two months.

(d) No order as to costs.

Sd/-
(A.P. KURHEKAR)
Member(J)

Sd/-
(P.N.DIXIT)
VICE-CHAIRMAN

Place : Mumbai
Date : 31.07.2019.
Dictation taken by : V.S.MANE.