IN THE HIGH COURT OF KARNATAKA AT BENGALURU

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DATED THIS THE 8TH DAY OF APRIL, 2024

PRESENT

THE HON'BLE MR JUSTICE KRISHNA S DIXIT

AND

THE HON'BLE MR JUSTICE G BASAVARAJA

WRIT PETITION NO.4730 OF 2022 (S-CAT)

BETWEEN:

1. CHAIRMAN
   CENTRAL BOARD OF DIRECT TAXES
   NORTH BLOCK, NEW DELHI-110 001.

2. REVENUE SECRETARY,
   GOVERNMENT OF INDIA
   MINISTRY OF FINANCE,
   DEPARTMENT OF REVENUE, NORTH BLOCK,
   NEW DELHI-110 001.

3. UNDER SECRETARY TO THE GOVERNMENT OF INDIA
   MINISTRY OF FINANCE,
   DEPARTMENT OF REVENUE,
   CENTRAL BOARD OF DIRECT TAXES,
   NEW DELHI-110 001.

...PETITIONERS

(BY SRI. ARVIND KAMATH., ASG A/W
SRI. B PRAMOD., CGC)

AND:

SMT. K CHANDRIKA,

...RESPONDENT

(BY SRI. S S NAGANAND., SENIOR COUNSEL FOR
SRI. ARAVIND V. CHAVAN., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO I) SET ASIDE THE ORDER DATED 17/04/2018 (ANNEXURE-A) PASSED BY THE CENTRAL ADMINISTRATIVE TRIBUNAL, BENGALURU BENCH, BENGALURU IN OA NO.170/00733/2017 AND ETC.,

THIS WRIT PETITION HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, **KRISHNA S DIXIT.J.,** PRONOUNCED THE FOLLOWING:

ORDER

Petitioner-CBDT along with Secretary and Under Secretary of the Ministry of Finance are before the Writ Court for laying a challenge to the Central Administrative Tribunal's order dated 17.04.2018, a copy whereof avails at Annexure-A whereby Respondent-employee's O.A.No.170/ 00733/2017 having been favoured, the 'charge sheet' in the disciplinary enquiry has been quashed with a direction to hold 'Review DPC' within two months to consider her case for promotion.

II. Learned ASG appearing for the petitioners argued for faltering the impugned order that: the Criminal Court's order acquitting the respondent-employee does not have the trappings of *honourable acquittal* and therefore the disciplinary proceedings could not have been quashed; the Enquiry Report having not been found satisfactory, further

enquiry was directed on 05.12.2017 and accordingly the report finding the employee guilty has been submitted; there is no bar for soliciting the views of Chief Vigilance Commissioner on matters of the kind; that being the position, the Tribunal is not justified in quashing the charge sheet. So arguing, he sought for the quashment of impugned order.

III. After service of notice, respondent-employee has entered appearance through her counsel on record. Learned Sr. Advocate appearing for the respondent vehemently resists the petition making submission in justification of the impugned order and the reasons on which it has been structured. He contended that the order of the Criminal Court convicting the respondent has been reversed by a learned Single Judge of this court with a specific finding as to there being no 'demand & acceptance'; this order, on challenge in a Civil Appeal, the Apex Court declined interference; the prosecution material & pertinent witnesses were the same in the disciplinary enquiry; the Enquiry Report dated 14.03.2014 had found the employee

'not guilty'; strangely, further enquiry was directed and without holding any further enquiry, the Enquiry Officer submitted a contradictory report now holding the employee guilty; in any circumstance, what the Tribunal has done perfectly accords with established cannons of service jurisprudence. So contending, he prayed for the dismissal of writ petition.

IV. Having heard the learned counsel for the parties and having perused the petition papers, we decline indulgence in the matter for the following reasons:

A. AS TO HONOURABLE ACQUITTAL & ITS EFFECT ON DISCIPLINARY ENQUIRY:

(1) The respondent-employee was convicted & sentenced by the Trial Court in Special (Corruption) Case No.205/2009 for the offences punishable u/ss. 7, 13(1)(d) & Sec.13(2) of the Prevention of Corruption Act, 1988 vide order dated 05.07.2011. Her Criminal Appeal No.711/2011 against the same came to be allowed by a learned Single Judge of this court vide order dated 14.08.2013. The CBI took the matter to the Apex Court in SLP No.18240/2014;

on leave being granted, the same came to be registered as Criminal Appeal No.274/2014 and after hearing it came to be dismissed on 31.01.2024. The said order though short is as clear as gangetic waters and it reads as under:

> *"1. We find no reason to interfere with the reasoning given by the High Court for acquittal of the respondent. 2. The appeal is dismissed accordingly".*

(2) The vehement submission of learned ASG that the acquittal order made by the learned Single Judge does not make out a case of '*honourable acquittal',* is bit difficult to countenance, and reasons for this are not far to seek: the respondent-employee being the Assessing Officer had passed the assessment order on 26.12.2008 (Ex.P-1) and on the same day, it was handed to complainant's Auditor (PW-4). This apart, a copy of the said order was also dispatched to the complainant-assessee on the same day as is reflected in the Despatch Register, which mentions about assessment orders of others too. Very significantly, this document that was marked as Ex.P-22 is not in dispute. The learned Single Judge in the acquittal order at paras 10, 11 & 13 observed as under:

> *"10. … From this document Ex.P22 it is evident that the appellant passed the order of assessment relating to complainant's company on 26.12.2008. 11. It is not in dispute that once an order of assessment is passed the same cannot be recalled nor reviewed by the officer who has passed the order of assessment… Therefore, the assessing officer became functus officio on 26.12.2008 when she passed the order of assessment. The appellant ceases to have control over the order of assessment… Thus it is manifest that the appellant had no motive or intention to demand illegal gratification from the complainant to pass favourable order…. Therefore, the entire story advanced by the prosecution knocks at the bottom of their case… 13… When the appellant has already passed an order of assessment on 26.12.2008, the question of she demanding initial payment of Rs.2 lakhs in the first week of January 2009 is unbelievable".*
>
> *(emphasis is ours)*

(3) The complainant who was examined as PW-1 in the criminal case stated in his Examination-in-Chief that the respondent-employee had demanded on 26.12.2008 a bribe of Rs.10 lakh saying that it should be paid on or before 31.12.2008. However, in his Complaint dated 01.01.2009 that was filed on 02.01.2009 he made an improvement that the employee had insisted on initial payment of Rs.2 lakh in the first week of January 2009. In his cross-examination, he gave the following admission:

> *"The accused told me that she already passed orders pertaining to our appeal which was pending before accused. Further she informed that she already handed over the order in the morning to our Auditor by name Adi Narayana. Accused told me to call my Auditor to come back along with the order passed by her".*

After examining all this, the learned Single Judge of this court observed at paras 14 & 15 as under:

> *"14. … If really the appellant had demanded the bribe amount then she ought to have given a hearing date. Further it was mandate for the appellant to pass the order of assessment on or before 31.12.2008. Therefore the impugned theory of prosecution that the appellant insisted initial payment of Rs.2,00,000/- in the first week of January 2009 falls to the ground. 15. P.W.1 in his evidence admits that in the discussion on 26.12.2008 the appellant stated that the complainants company concealed about Rs.3.00 crores income. It is further deposed that the appellant was not convinced with the arguments of complainant. In the order of assessment the concealed income was brought to tax. The complainant, on knowing the order of assessment which was against his interest, falsely implicated the appellant in the case. Thus the prosecution failed to prove and establish the second ingredient".*

(4) The next submission of learned ASG that the Phenolphthalein Test proved positive, the left hand of Respondent turning pink and that excludes the argument of honourable acquittal, is again difficult to countenance.

Learned Single Judge of this Court in the acquittal order has also discussed about the same, at para 22, as under:

> "… *The trap mahazar specifies that the left hand of the appellant answered positively that she has touched the cover containing currency notes. If really appellant has accepted the currency notes from PW.1, then in the normal course, the right hand of the appellant ought to have answered positive. The version of the appellant that when the cover containing currency notes were pushed towards her, she refused the same in her left hand appears to be natural in the course of circumstances. In the normal course whenever a persona accepts the money, he/she will accept the same through right hand. It is possible that from left hand one may refuse to accept the money. Since the left hand of the appellant has answered, I am of the considered opinion that she might have refused to accept the currency notes. Further from the transcription of the micro tape recorder as per Ex.P8 do not specify that appellant accepted the bribe amount as contended by the prosecution. Thus the prosecution has miserably failed to prove and establish the acceptance of bribe amount by the appellant from the complainant – PW.1.*"

Thus, the contention advanced is not founded on full truth. No explanation is offered as to how, in the given circumstance, the Phenolphthalein Test proved negative *qua* the right hand. Consistent with the observations of the learned Single Judge made in the acquittal order and challenge to the same having been negatived by the Apex

Court, there is no impediment for us to accept the said observations as they are, nothing repugnant having been demonstrated by the Petitioners.

(5) Learned Sr. Advocate appearing for the respondent-employee is justified in contending that his client's case is a text book case of *honourable acquittal*. The following observations of the learned Single Judge of this Court lend credence to such a contention:

> *"(18) From the evidence of P.W.1 it is clear that in the second visit to the Chamber of appellant she has not demanded the bribe amount from him. The evidence of P.W.1 is hearsay evidence stating that appellant demanded Rs.10.00 lakhs with the auditor. This auditor P.W.4 has not supported the case of prosecution. Though P.W.4 is treated as hostile nothing is elicited in his cross-examination which supports the case of prosecution. Thus there is no evidence to suggest that even in the second visit the appellant demanded the bribe amount.*
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> *(19) … This conversation between PW 1 and the appellant was recorded in a micro tape recorder carried by PW1. The transcription of this tape recorded is produced before the court as per Ex.P8. A perusal of this transcription Ex.P8 do not specify the demand made by the appellant either during the first visit, second visit or third visit on the date of trap. Except the interested testimony of PW1 there is no other evidence on record. … There is no other evidence on record to prove and establish that*

during the third visit appellant demanded bribe amount from PW1.

(23) … It is not the case of prosecution that appellant demanded and accepted the bribe amount for reviewing, altering or modifying the order of assessment. It is settled position of law that the assessing authority has no power to review the order of assessment except to reopen the order of assessment in case of escaped income under Section 148 and for rectification under Section 154 of the Income Tax Act. Either in the case of reopening or in the case of rectification the assessing authority cannot show any favour to the complainant. Thus the prosecution has failed to prove and establish the motive, the demand and the acceptance of bribe amount by the appellant…

(24) The material on record discloses that on 26.12.2008, complainant and his auditor appeared before the appellant and discussed the returns filed by them. In the course of discussion the arguments advanced by the complaint and his auditor are not accepted by the appellant. Further the appellant has passed the order of assessment on the very same day bringing Rs.3 crores of income under assessment and levied tax on it. Aggrieved by this the complainant lodged a false complaint against the appellant and implicated her in the case. …"

The findings as to complaint being 'false', as to the lack of motive, as to the absence of demand & acceptance, the assessment order having already been passed & officially communicated to the assessee and the entire story of the

prosecution being 'knocked at its bottom', leave no manner of doubt that the respondent has established a clear cut case of *honourable acquittal.* Added, the Enquiry Officer has already found her 'not guilty' vide report dated 14.03.2014. Therefore she cannot be subjected to any 'further enquiry'. An argument to the contrary falls foul of fair play and established canons in the realm of law.

B. AS TO PERMISSIBILITY OF FURTHER ENQUIRY POST HONOURABLE ACQUITTAL:

(1) It is relevant to state that the term '*honourable acquittal', 'acquitted of blame', 'fully exonerated'* or the like are not mentioned in IPC, Cr.PC, & Evidence Act. This concept is evolved by judicial institutions whilst dealing with cases that pertain to the realm of disciplinary enquiry when same set of facts had given rise to a criminal proceeding. The idea of *honourable acquittal* is not easy to define, although it can be illustrated. A Co-ordinate Bench of this Court (to which Dixit., J was a member) in **P.V.RUDRAPPA vs. STATE OF KARNATAKA, MANU/KA/0236/2024** having surveyed the development of law, has observed as under:

> *"The idea of 'honourable acquittal' is not easy to define although it can be illustrated. If an accused is discharged at pre-trial stage or the criminal proceeding launched against him is quashed, there is no difficulty in treating the same as the cases of 'honourable acquittal' for the limited purpose of disciplinary enquiry. (We are mindful that the question of acquittal comes post trial).*
>
> *A case of 'honourable acquittal' may arise when, after trial the Criminal Court orders acquittal with any of nearly the following illustrives:*
>
> *(i) the accused is falsely prosecuted to seek vengeance or for some ulterior motive.*
>
> *(ii) that there is absolutely no evidence to implicate the accused in the proceedings;*
>
> *(iii) there is very little evidence which is insufficient to connect the accused with the commission of crime;*
>
> *(iv) the prosecution has miserably failed to prove the charges against the accused;*
>
> *(v) the prosecution witnesses are unworthy of any credit and their version does not generate any confidence.*
>
> *We again say that the above are only illustrative and not exhaustive…".*

(2) It hardly needs to be stated that the determination as to whether it is a case of *honourable acquittal* or not, has to be made by the Enquiry Officer firstly after discussing the findings recorded in the order of acquittal. For this purpose it is open to him to look into the entire record of

criminal case, if made available by the delinquent employee. The Enquiry Officer after adverting to the findings in the acquittal order in the criminal case had framed the report of 'not guilty' and had submitted the same on 14.03.2014. True it is that, such a report does not bind the disciplinary authority, and he may disagree with the findings in the report. It is also open to him to direct 'further enquiry' too, under Rule 15(1) of Central Civil Services (Classification Control and Appeal) Rules, 1965 which reads as under:

> *"(1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be".*

Accordingly, a direction was issued on 05.12.2017 for holding a 'further enquiry'. The concept of 'further enquiry' has been discussed by the Apex Court in **K.R.DEB vs. COLLECTOR OF CENTRAL EXCISE, SHILLONG, 1971 (2) SCC 102.** This was in the text of Rule 15(1) of the erstwhile 1957 Rules which are replaced by 1965 Rules. The textual difference of the rule not being significant, the

following observations of the Apex Court come to aid in construing Rule 15(1) of new Rules:

> *"…It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report of, the Inquiring Officer … does not appeal to the disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9. ... It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant … it seems to us that on the material on record a suspicion does arise, that the Collector was determined to get some Inquiry Officer to report against the appellant…".*

The above observations have been reiterated in **KANAILAL BERA vs. UNION OF INDIA, (2008)1 SCC (L&S) 63**.

(3) The vehement submission of learned ASG that subsequently the Enquiry Officer pursuant to further enquiry has submitted a Report finding the employee 'guilty' cannot

be agreed to. Reasons for this are apparent: Firstly, no 'further enquiry' can be ordered unless a case is made out for the invocation of Rule 15(1) as interpreted in **K.R.Deb** *supra.* Secondly, what additional evidence was generated in the so called 'further enquiry' or that which additional witness was examined is not forthcoming from the pleadings or the record. Thirdly, not even a bus-ticket-size-paper is also not produced to show that any 'further enquiry' was ever held. Even to discredit assertion of the respondent that the notice of such enquiry was not given to her till date, absolutely no material is placed on record by the petitioners. Our Constitution expects all Article 12 – Entities to be fair & reasonable in their action. The Governments should conduct themselves as model employers, is a constitutional imperative. The action of the petitioners in somehow endeavoring to continue the disciplinary proceedings against the respondent employee runs counter to all this, to say the least. The disciplinary authority cannot go on holding enquiry after enquiry against an employee till the desired report is given by the Enquiry Officer. In the absence of a *prima facie* demonstration of further enquiry, the

subsequent report finding the employee 'guilty', cannot come to the aid of petitioners for voiding the Tribunal's order.

(7) There is force in the submission of learned Sr. Advocate appearing for the respondent – employee that the further enquiry in terms of Rule 15 of the 1965 Rules is vitiated, such a decision having been taken by the disciplinary authority at the instance of 'extra-departmental agency' like the CVC. The disciplinary authority functions under the four corners of law namely the 1965 Rules. The CVC therefore, cannot influence the decision making at various stages of disciplinary proceedings, in the absence of statutory enablement. As adding salt to the injury, the said proceedings, if at all held, were behind the back of employee. All that is impermissible. This view gains a broad support from the following observations of the Apex Court in **NAGARAJ SHIVARAO KARJAGI vs. SYNDICATE BANK (1991) 3 SCC 219**:

> *"19… The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No*

> *third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellant authority as to how they should exercise their power and what punishment they should impose on the delinquent officer."*

Similarly, it is observed in **ORIENTAL BANK OF COMMERCE vs. S.S.SHEOKAND, (2014) 5 SCC 172** that it could not be ignored that CVC report was sought by the management and thereafter punishment was imposed and that the apprehension of the employee that the decision was taken under pressure, could not be ruled out.

In the above circumstances, this petition being devoid of merits, is liable to be and accordingly dismissed, costs having been reluctantly made easy.

This Court places on record its deep appreciation for the able research & assistance rendered by its Law Clerk cum Research Assistant, Mr.Raghunandan K S.

Sd/-
JUDGE

Sd/-
JUDGE

Snb/Bsv/cbc