CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.NOS. 2463, 2465, 2538, 2537, 2416, 2973
AND 3224 OF 2001

Wednesday, this the 17th day of April, 2002

Hon'ble Shri Justice Ashok Agarwal, Chairman
Hon'ble Shri S.A.T. Rizvi, Member (A)

B.P. Mahaur
Asstt. Settlement Commissioner
(Under Suspension)
Land & Building Department
Govt. of NCT of Delhi

R/O C-7/202, Sector-8, Rohini
New Delhi-83

..Applicant

(By Advocate: Shri T.R.Kakkar)

Versus

Lt. Governor, Delhi
through Chief Secretary
Govt. of NCT of Delhi
Delhi of Secretariat
ITO, New Delhi-2

..Respondent

(By Advocates: Mrs. Avnish Ahlawat & Shri Mohit Madan)

O R D E R (ORAL)

Hon'ble Mr. S.A.T. Rizvi, M (A):-

All these OAs, seven in number, filed by one and the same applicant, namely, Shri B.P. Mahaur relate to the period during which he worked as a Sales Tax Officer/Assessing Authority in respect of Ward No.81. The facts and circumstances obtaining in these OAs are broadly the same and the same legal issue has been raised in these OAs. Accordingly, we are taking these up for disposal by this common order.

2. In order to provide facts which are broadly the same in all the OAs, we are placing reliance on OA-2416/2001 which is the earliest OA filed by the applicant. In this OA, as also in all the other Os, the applicant has been charge-sheeted on the ground that he

has issued various Sales Tax Forms, namely, ST-1 form, ST-35 form, C form, etc. in a reckless manner in utter disregard of the instructions issued by the respondents on the subject. The various acts of omission and commission for which the applicant has been held responsible have been enumerated in the charge-sheets served on the applicant. In OA-2416/2001 which we have taken up as the lead case, the applicant stands charged for showing favours to M/s.Nikalson India, Parwana Road, Jagatpuri, Delhi. He is alleged to have shown similar favours to other firms and the connected matters form the basis of the charge-sheets served on him on various dates and which have been impugned each separately in the aforesaid OAs.

3. In the present OA-2416/2001, the allegation levelled is that immediately after the aforesaid manufacturer/dealer, namely, M/s. Nikalson India shifted to a place in his jurisdiction, the applicant initiated the process of issuing the aforesaid statutory forms and went on to allow diversified items for resale and manufacturing without obtaining any report from the concerned lower functionaries. The forms were allegedly issued in quick succession. The aforesaid statutory forms were issued in contravention of circular/ order Nos.7 & 9 issued in 1995-96. These circular/orders required that the form issuing authority (applicant in the present OA) should, at the time of issuing forms, fill up the forms indicating therein several details so as to eliminate the chances of their misuse. However, in contravention of the aforesaid circular orders, the

statutory forms issued were left blank. Moreover, except in one case, in all other cases, the aforesaid statutory forms were issued without obtaining additional security from the aforesaid dealer. He has also issued the aforesaid statutory forms to the aforesaid firm more than once in a year again in disregard of the aforesaid circular orders. He also failed to get the aforesaid dealer/firm surveyed in accordance with the very same orders. The applicant is also alleged to have ignored the storage facilities available with the aforesaid dealer/firm and also did not care to keep in view the economic condition of the dealer before allowing amendments in the registration certificate and prior to issuance of forms. On the basis of these allegations, the applicant has been formally charged for his failure to maintain absolute integrity and for having acted in a manner unbecoming of a Govt. servant in violation of the provisions of Rule 3 of the CCS (Conduct) Rules, 1964. The allegations made in the other OAs are broadly similar to the allegations enumerated above. The individual variations in the allegations made in these OAs are, as will be seen in due course in this order, of no consequence in adjudicating these OAs.

4. The learned counsel appearing on behalf of the applicant has strenuously argued that the acts of omission and commission enumerated above arise from the discharge of quasi-judicial functions by the applicant and the remedy in such cases lies before the next higher quasi-judicial authority and accordingly disciplinary proceedings cannot be initiated in such cases. In

support of his contention, the learned counsel has placed reliance on Junjarrao Bhikaji Nagarkar Vs. Union of India & Ors. decided by the Hon'ble Supreme Court on 6.8.1999 and reproduced in 1996 (6) Supreme To-Day 523. He has also placed reliance on the judgement rendered by the High Court of Orissa in Anurag Steel Industries Vs. State of Orissa & Others decided by that Court on 14.5.1992. The learned counsel appearing on behalf of the respondents has also placed reliance on the very same judgement rendered by the Supreme Court in Junjarrao Bhikaji Nagarkar's case (supra) and additionally on the Division Bench judgement of this Tribunal rendered in Shri Suraj Bhan Vs. Union of India & Ors. (OA-2755/97) decided on 22.8.2000. The main argument sought to be advanced on behalf of the respondents is that the protection available in exercise of quasi-judicial authority can be invoked only where the decision made by the quasi-judicial authority is questioned on the basis of error of law or misinterpretation of law, and certainly not when the conduct of such quasi-judicial authority has been called into question on various grounds.

5. We have perused the aforesaid judgement rendered by the Supreme Court in Junjarrao Bhikaji Nagarkar's case (supra) and also the judgement rendered by the Division Bench in Suraj Bhan's case (supra). We proceed first by dealing with the order of the Division Bench of this Tribunal dated 22.8.2000. The judgement rendered by the Supreme Court in the aforesaid case was noticed by the Division Bench in the case in question. After a detailed

discussion of the facts and circumstances of that case, this is what the Division Bench has observed in its judgement in the aforesaid case:-

> "7. The learned counsel for the applicant has also raised the question of legality of action taken against a Sales Tax Officer in respect of quasi-judicial orders passed by him. The learned counsel has, in this connection, referred to certain judgements of the Hon'ble High Court. However, this issue has been contested by the respondents, who have referred to Hon'ble Supreme Court's judgements dated 27.3.92 in the case of U.O.I. Vs. A.P.Saxena and dated 27.1.93 in the case of U.O.I. Vs. K.K.Dhawan AIR 1993 (1) SC 473, respectively. We are in agreement with the respondents that in terms of the aforesaid judgements of the Hon'ble Supreme Court, disciplinary action is possible against a Govt. servant even where quasi-judicial powers have been exercised, subject to the condition that the officer/Govt. servant is found to have acted in a manner that would reflect adversely on his reputation for integrity, or on his good faith or devotion to duty. In other words, if a Govt. servant has acted in order to unduly favour a party or he has been actuated by corrupt motive etc., he can be proceeded against departmentally as in this case."

The corresponding portion of the judgement rendered by the Supreme Court in the aforesaid case on which reliance has been placed by the Division Bench in the above case reads as under:-

> "After examining the early decisions of this Court in V.D. Trivedi v. Union of India, Union of India v. R.K.Desai, Union of India v. A.N.Saxena and also in S Govinda Menon v. Union of India this Court has held as under:-
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> > "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 in the disciplinary action can be taken the following cases:

(i) Where the officer had acted in a manner as would reflect on his reputation for integrity or good faith or devotion to duty;

(ii) If there is prima facie material to show recklessness or misconduct in the discharge of 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"."

6. By reading the same judgement, the learned counsel appearing on behalf of the respondents has also drawn our attention to certain other observations made by the Supreme Court in the same case. These are as follows:-

> "26... A wrong interpretation of law cannot be a ground for misconduct. Of course it is a different matter altogether if it is deliberate and actuated by mala fides.
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> XX XX XX XX
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> 29.... In other words, to maintain any charge sheet against a quasi judicial authority something more has to be allowed than a mere mistake of law, e.g., in the nature of some extraneous consideration influencing the quasi judicial order..."

7. We have considered the submissions made by the learned counsel on either side and have carefully gone into the ratio of the judgement rendered by the Supreme Court in the aforesaid case and also what has been held by the Division Bench in OA-2755/97. We are convinced that in the detailed facts and circumstances revealed in the imputation of misconduct described in some detail in paragraph 3 above and the charge of lack of integrity and of acts and omissions unbecoming of a Govt. servant, the disciplinary authority undoubtedly had the competence to proceed against the applicant departmentally. In this view of the matter, we find ourselves unable to interfere at this interlocutory stage when orders initiating the disciplinary proceedings have alone been passed. It is open to the enquiry officer and the disciplinary authority to proceed further in the matter in accordance with the prescribed rules and by giving a reasonable opportunity to the applicant to state his case at various stages and thereafter to conclude the proceedings in accordance with the merits of the case.

8. During the course of hearing, the learned counsel appearing on behalf of the applicant submitted that

though the charge-sheets have been served in all these OAs, copies of the documents relied upon have not been supplied to him and the applicant has also not been allowed to carry out the inspection of certain documents required to build up his defence. If that be the case, we direct the respondents, without any hesitation, to supply the same to the applicant before proceeding further with the departmental enquiry. Similarly, we also direct the respondents to allow the applicant to inspect the documents required by him.

9. In the light of the foregoing, the aforesaid OAs are dismissed with the directions contained in paragraphs 7 & 8 above.

10. A copy of each of this order will be placed on the case files relating to O.A.Nos. 2463, 2465, 2538, 2537, 2973 and 3224 of 2001

(S.A.T. Rizvi)
Member (A)

(Ashok Agarwal)
Chairman

/sunil/

Attested,
A.S. Agarwal
C.O. CJ