CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 2749/1999

New Delhi this the 24th day of April 2001.

Hon'ble Smt. Lakshmi Swaminathan, Vice-Chairman (J)
Hon'ble Shri Govindan S. Tampi, Member (A)

P.K. Mandal
Joint Commissioner of Income Tax Range 20,
Bamboo Villa, 169, A.J.C. Bose Road,
Calcutta,

.....Applicant

(By : Shri A.K. Behera, Advocate)

Versus

1. Union of India,
through Secretary,
Ministry of Finance, North Block,
New Delhi

2. Chairman
Central Board of Direct Taxes
North Block New Delhi

3. Chairman
Union Public Service Commission,
Dholpur House, Shahjahan Road,
New Delhi.

.....Respondents.

(By : Shri V.P. Uppal, Advocate)

O R D E R

By Hon'ble Shri Govindan S. Tampi, Member (A)

Challenge in this application is against order F. No. C.14011/90/91-VNL dated 18.5.99 passed on behalf of the President imposing a penalty of withholding of increments of pay for a period of 2 years without cumulative effect, on Shri P.K. Mandal, the applicant.

2. Heard Shri A.K. Behera, Learned Counsel for applicant and Shri V P Uppal, learned counsel for respondents.

3. Relevant facts of the case are that the applicant who joined Indian Revenue Services (Income Tax) in 1974, became Dy. Commissioner in March 1985 and on the re-designation of the post in 1998, as Joint Commissioner of Income Tax in 1998. While he was working as Dy. Commissioner, Income Tax in Company Circle, Calcutta, a charge sheet was issued to him on 10.12.91, containing 11 articles of charge pertaining to his tenure as Income Tax Officer Class-I between 11.7.84 and 19.2.85 and as Dy. Commissioner of Income Tax, Calcutta Range 23 in 1988, relating to discharge of his quasi judicial functions though there was nothing at all illegal in the assessments made by him. His challenge directed against the charge-sheet in O.A. No. 252/92, was repelled by the Principal Bench of this Tribunal on 24.12.92 as being pre-mature Tribunal, at the same time also invited the attention of the respondents to a few judicial pronouncements holding that stale matters of past several years should not be made the subject matter of departmental enquiry. Though the Tribunal directed that the proceedings be completed within 6 months from the date of the decision, it was not done so. However, finally the enquiry was completed and the Inquiry Officer's report was filed, against which a detailed representation was submitted by the applicant, pointing out that all the findings in the report were faulty and erroneous. The Inquiry Officer's report of June 1993, applicant's representation dated 1-12-93 and the entire related case records were sent by the respondents for advice to Union Public Service Commission, who opined on 26.8.96 that :-

i) that there was no malafide intention on the part of the applicant, in any of the cases referred to in the Charge Sheet ;

ii) there was no aspersion on the efficiency or the integrity of the applicant ;

iii) none of the orders passed by the applicant referred to in the charge sheet was passed hastily.

iv) none of the orders passed by the applicant referred to in the charge sheet caused any loss to revenue of the Government and

v) the applicant has not passed any order referred to in the charge sheet, without having any jurisdiction.

In the face of their own recommendation as above, the Commission advised the imposition of punishment of withholding of increments for 2 year without cumulative effect on the applicant which was accepted by the Disciplinary Authority who issued the impugned order.

4. Shri A.K.Behera, learned counsel for the applicant, pointed out that the disciplinary proceedings were initiated in 1991 for alleged misconduct which had taken place nearly seven years earlier. Even thereafter there was considerable delay and inspite of specific directions of the Tribunal in November 1992, to complete the proceedings within six months, the proceedings went on for a considerably long time i.e. upto July 1993. While UPSC's advice was obtained in June 1996, the impugned order was issued only on 18.5.99. Thus, the proceedings which were initiated in 1991, had taken over eight (8) years to complete, solely on account of delay caused by the Department. This delay has vitiated the proceedings and caused considerable prejudice to the applicant. Besides, while the UPSC had arrived at the correct facts and held that no malafide was proved, no loss of

revenue was caused, and that applicant had acted clearly within his jurisdiction, they still went on to recommend imposition of penalty, which was clearly erroneous and incongruous. Shri Behera further stated that all the 11 articles in the charge sheet related to exercise of quasi judicial functions by the applicant and unless and until it is proved that such exercise was culpable in nature or was criminal or dishonest in content or characterised by negligence or recklessness it cannot lead to a conclusion that the applicant was guilty and should be punished. Merely because some error or mistake had arisen in the exercise of quasi judicial functions, the inference cannot flow that the applicant has acted in a manner, deserving to be punished in the departmental proceedings. According to Shri Behera, the case of the applicant was squarely covered by the decision of the Hon'ble Supreme Court in the case of Z.B. Nagarkar Vs U.O.I. & Others JT (1998) SC 366. In the circumstances of the case, UPSC'S recommendations that the punishment be imposed on the applicant and the respondents' action of imposing the punishment on the applicant was improper and illegal and deserved to be quashed and set aside with full consequential reliefs to the applicant urges Sh. Behera, learned counsel.

5. Strongly canvassing the case of the respondents, Shri V P Uppal, learned counsel for the respondents points out that the applicant did not enjoy a clean record and reputation and two more charge sheets had also been issued against him on 26.4.1993 and 12.1.99. Sanction has also been conveyed on 23.1.96 for prosecuting him. While

conceding that there was some delay in the completion of proceedings, the learned counsel states that the proceedings were completed well within the extended time granted by the Tribunal. According to the I.O. out of the eleven (11) articles of charge, nine (9) were found 'proved' substantially while two (2) articles were 'not proved.' It is in this context, that UPSC's opinion was called for and obtained and keeping in mind the same the President as Disciplinary Authority had passed the impugned order. The same cannot be appealed against or assailed on facts or in law. Shri Uppal argues that it was wrong on the part of the applicant to have made remarks that UPSC had exceeded its jurisdiction while tendering its advice. He also fervently contested the pleas raised on behalf of the applicant, placing reliance on the Apex Courts' decision in **Nagarkar's case (supra)**, which according to him, did not lay down any law but was only referred to interpretation. The case under issue in which the applicant has been indicted, related to a series of acts, which were reckless, negligent and unbecoming of a government servant. Punishment has therefore been correctly meted out to him. The action of the respondents stood fully endorsed in the light of the findings of the Full Bench of the Hon'ble Supreme Court in the case of **Union of India & Others Vs K.K. Dhawan** [(1993) 2 SCC 56]. In as much as the Respondents have acted correctly throughout committed no procedural irregularity and the punishment was only reasonable, no interference from the Tribunal is justified according to Sh. Uppal, learned counsel.

6. We have carefully considered the matter and perused the relevant papers brought on record. We observe that the charge sheet issued to the applicant had eleven (11) articles and the findings of the Inquiry Officer in his report dated 27.7.93 in respect of the same are as below:

First Article of Charge:	is established to the extent as brought out in 'para 40 above.
Second Article of Charge:	is established to the extent as brought out in para 57 above.
Third Article of Charge:	is established to the extent as brought out in para 75 above.
Fourth Article of Charge:	not established.
Firth Article of Charge:	is established to the extent as brought out in paras 100 and 105 above.
Sixth Article of Charge;	is established to the extent as brought out in para 119 above.
Seventh Article of charge:	is established to the extent as brought out in para 134 above.
Eight Article of Charge:	is established to the extent as brought out in para 143.
Ninth Article of Charge:	is established as brought out in para 148 above.
Tenth Article of Charge:	is established to the extent as brought out in para 155 above.
Eleventh Article of Charge:	not established."

7. After receipt of the Inquiry Officer's report as well as the representation dated 1.12.1993 from the applicant, the matters were placed before the Union Public Service Commission, who have, in their opinion dated 26.8.96, recommended as below:

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"20. The Commission observe that the allegations against the Charged Officer relate to committing irregularities under three broad categories namely (i) wrongful assumption of jurisdiction (ii) irregularity in respect of the receipts of returns (iii) irregularity in assessment proceedings. Out of the three irregularities noted third irregularity namely in the assessment proceedings is the most serious one. The Commission note that the Charged Officer followed same mechanical process in all cases (for example always making some 10 persons and taking same approach in all cases. The disciplinary Authority while making allegations against the Charged Officer has not stated the role of IAC Sh. H. Panchu who was the senior officer of the Charged Officer and his reporting officer and accepted the jurisdiction and the assessments completed by the Charged Officer. Similarly nobody from the receipt section has been enquired into by the prosecution to prove the irregularity in connection with the receipts of the returns.

21. The Commission based on the evidence available on record, Inquiry Officer's report, Disciplinary Authority's observations and analysis as presented above agree with Inquiry separately as one of misconduct - in both cases it is serious. Although it is also true that the reporting officer of the Charged Officer approved and justified all assessments made by Charged Officer as not misconduct on the part of the Charged Officer by committing irregularity in assessment proceedings are serious. However, no malafide intentions have been proven against the Charged Officer.

22. In the light of their findings as discussed above and after taking into account all other relevant aspects of the case, the Commission are of the view that the ends of justice would be met in this case if the penalty of withholding increments for a period of two years without cumulative effect is imposed on Shri P.K. Mandal. They advise accordingly."

8. Hence UPSC's recommendations which have been duly accepted by the Disciplinary Authority while issuing the impugned order of 18.5.99 . The points raised by the learned counsel against the alleged unsavoury reputation of the applicant as well as two subsequent chargesheets, issued to him are not relevant for deciding this OA and therefore, not being considered. The applicant has a point when he states that all the eleven the articles of charge in the memorandum, relate to orders passed by him while

exersing his quasi judicial capacity and therefore the decision of the Hon'ble Supreme Court in the **Nagarkar's case** (supra) would be relevant in his case as well. We are not convinced of the correctness of Shri Gupta's argument that the said decision was only on interpretation and that it did not lay down any law. We hold it to be contrary. Hon'ble Apex Court has in the said decision, after examining a number of earlier pronouncements on the issue, directed as follows in para 43.

> "If, every error of law were to constitute a charge of misconduct, it would impinge upon the independent functioning of quasi judicial officers like the appellant. Since in sum and substance misconduct is sought to be inferred by the appellant having committed an error of law, the charge-sheet on the face of it proceeds on a wholly illegal premise rendering it liable to be quashed. In other words, to maintain any charge-sheet against a quasi judicial authority something more has to be alleged than a mere mistake of law which is in the nature of some extraneous consideration influencing the quasi judicial order. Since nothing of the sort is alleged herein the impugned charge-sheet is rendered illegal, void and non est. The present charge-sheet, if sustained, will thus impinge upon the confidence and independent functioning of a quasi judicial authority. The entire system of administrative adjudication, where under quasi judicial powers are conferred on administrative authorities would fall into disrepute if officers performing such functions are inhibited in performing their functions without fear or favour because of the constant threat of disciplinary proceedings." This definitely is law.

9. This however, does not appear to come to the rescue of the applicant, as pleaded. The above judgement nowhere states that merely because a decision is quasi judicial in nature, it becomes immune from any review or examination (in fact, quasi judicial orders are subject to statutory appeals, reviews and revision). What it lays down is that mere commission of an error in law, while exercising a quasi judicial

powers cannot invite disciplinary proceedings on the persons concerned unless something more is alleged and proved. In Nagarkar's case (supra) respondents were not able to prove anything beyond an error in law in his quasi judicial action. Hence the Apex Courts' decision . The same is not the position in the instant case. Here the applicant has been charge sheeted for committing irregularities, leading to conferment of undue benefits on the assesses and for having failed to maintain absolute integrity and for having exhibited lack of devotion and acted in a manner unbecoming of a Government Servant. Nine out of the eleven articles of charge have been shown as proved and therefore the UPSC felt that though no malafides have been proved, the charges raised and established against the applicant were serious enough to warrant imposition of a punishment. The applicant in the circumstances, cannot take the plea that as the irregularities arose during the course of his exercising quasi judicial functions, he cannot be punished. In fact, the directions of the Hon'ble Supreme Court in similar situations are to the contrary. In Union of India and another Vs R,K. Design [(1993) 2 SCC 49] Hon'ble Supreme Court has opined as under:

> 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 immunce from disciplinary proceedings wherever he discharges quasi judicial or judicial functions. If in the discharge of such functions he takes any action pursuant to a corrupt motive or an improper motive to oblige someone or takes 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. 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 judgement 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. 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'."

"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."

The Hon'ble Court went on to recon as below

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

10. Further in Union of India & Others Vs K.K. Dhawan [(1993) 2 SCC 56] a Full Bench of the Hon'ble 3 Judges of Supreme Court has held as under in paras 26 to 28 :-

26. "In the case on hand, article of charge clearly mentions that the nine assessments covered by the article of charge were completed.

(i) in an irregular manner.
(ii) in undue haste, and
(iii) apparently with a view to confer undue favour upon the assesses concerned (emphasis supplied)

Therefore, the allegation of conferring undue favour is very much there unlike Civil Appeal No. 560 of 1991. If that be so, certainly disciplinary action is warranted. This Court had occasion to examine the position. In Union of India V. A.N. Saxena to which one of us (Mohan J.) was a party, it was held as under : (SCC pp. 127-128, paras 7 &8)

It was urged before us by learned counsel for the respondent that as the respondent was performing judicial or quasi-judicial functions in making the assessment orders in question even if his actions were wrong they could be corrected in an appeal or in revision and no disciplinary proceedings could be taken regarding such actions.

In our view, an argument that no disciplinary action can be taken in regard to actions taken or purported to be done in the course of judicial or quasi-judicial proceedings is not correct. It is true that when an officer is performing judicial or quasi-judicial functions disciplinary proceedings regarding any of his actions in the course of such proceedings should be taken only after great caution and a close scrutiny of his actions and only if the circumstances so warrant. The initiation of such proceedings, it is true, is likely to shake the confidence of the public in the officer concerned and also if lightly taken like to undermine his independence. Hence the need for extreme care and caution before

initiation of disciplinary proceedings against an officer performing judicial or quasi-judicial functions in respect of his actions in the discharge or purported to discharge his functions. But it is not as if such action cannot be taken at all. Where the actions of such an officer indicate culpability, namely a desire to oblige himself or unduly favour one of the parties or an improper motive there is no reason why disciplinary action should not be taken."

27. This dictum fully supports the stand of the appellant. There is a great reason and justice for holding in such cases that the disciplinary action could be taken. It is one of the cardinal principles of administration of justice that it must be free from bias of any kind.

28. Certainly, therefore, the officer who exercise 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 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".

11. The decisions in the above two cases are of greater relevance and significance in the circumstances of the case before us. We are therefore not inclined to accept the contentions of Shri Behera, learned counsel that the applicant has been dealt with improperly and incorrectly, for decisions taken by him while discharging his quasi judicial functions. As the Hon'ble Apex Court has indicated, it is not the incorrectness of the decision per se which attracts the disciplinary proceedings but the conduct, or for that matter, the misconduct of the individual while exercising quasi judicial functions which becomes the subject matter of the proceedings. And no misconduct gets clothed by any immunity merely because it was committed during the exercise of the quasi judicial functions. That is what precisely has happened in this case. The applicant has as brought out in detail in the Inquiry Report, had acted in a negligent, careless and reckless manner, not expected from an officer of his rank, status and responsibility. He has thus acted in a manner unbecoming of a Government servant that too a senior and responsible Govt. servant. Respondents have correctly taken the remedial action and that too by scrupulously following the procedure at every stage. and the same cannot at all be faulted. Even if one accepts that the applicant's plea about the delay in the proceedings has some merit, the same cannot detract from the correctness of the action taken and soundness of the decision arrived at. It is also

seen that the punishment imposed on the applicant is only stoppage of increment of two years, a very lenient penalty. The same deserves to be totally upheld.

12. The applicant, we are convinced, has not at all made out any case for our interference. The application therefore fails and is accordingly dismissed.

13. No order as to costs.

(Govindan S. Tampi)
Member (A)

(Mrs. Lakshmi Swaminathan)
Vice Chairman (J)

Patwal/