IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

O.A. No. 2540/1989
~~T.A. No.~~ and MP 219/91 199

DATE OF DECISION 22.03.1991

Shri K.K. Dhawan — Petitioner

Shri R. Kapur — Advocate for the Petitioner(s)

Versus

U.O.I. through Secretary, Department of Revenue — Respondent

Shri R.S. Aggarwal — Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. P.K. KARTHA, VICE CHAIRMAN(J)

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGMENT

(of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice Chairman(J))

The applicant, who is working as Assistant Commissioner of Income Tax, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the disciplinary proceedings initiated against him by the impugned Memorandum dated 2.5.1989, be quashed. By way of interim relief, he has prayed that the respondents be directed to stay the proceedings and to consider the case of the applicant for promotion on merits without resort to the sealed cover procedure. He has also filed MP 219/91 seeking the same interim relief.

2. The facts of the case in brief are as follows. While working as I.T.O. at Muktsar during 1982-83, the applicant completed certain assessments. The respondents served on him a Memorandum dated 2.5.89 proposing to hold an enquiry against him under Rule 14 of the CCS (CCA) Rules, 1965. The Article of Charge framed against him was

as follows:-

"Shri K.K. Dhawan, while functioning as I.T.O. 'A' Ward, Muktsar during 1982-83 completed nine assessments in the cases of:

(1) M/s Channana Automibles,

(2) M/s Gupta Cotton Industries,

(3) M/s Ajay Cotton Industries,

(4) M/s National Rice Mills,

(5) M/s Tok Chand Budhram

(6) M/s Tilak Cotton Industries,

(7) M/s Chandi Ram Behari Lal,

(8) M/s Pnuman Mal Chandiram, and

(9) M/s Modern Tractors

in an irregular manner, in undue haste and apparently with a view to conferring undue favours upon the assessees concerned.

By his above acts Shri Dhawan failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Govt. servant, thereby violating provisions of Rules 3(1)(i), 3(1)(ii) and 3(1)(iii) of the C.C.S. (Conduct) Rules, 1964."

3. The applicants has contended that while completing assessments in the cases which are the subject matter of the impugned charge-sheet, he was discharging quasi-judicial functions and in the absence of any clear allegation of misconduct, these quasi-judicial functions are not amenable to disciplinary jurisdiction of the respondents. The respondents have contended that the imputations in the charge-sheet would show that the applicant has given undue favours to assessees in completing the assessments.

4. During the hearing of the case, the learned counsel of the respondents argued that it was not part of the duty of the applicant or it was not in his power under the Income Tax Act to pass Assessment Order in the case of M/s Gupta Cotton Industries for the Assessment year 1983-84 in December, 1982 before the begining of Assessment year on 1.4.1983. The rates of Income Tax to be charged for the assessment year 1983-84 were not known at that time and were only prescribed by the Finance Act of 1983 passed in May, 1983.

5. With regard to the above contention, the learned counsel of the applicant has submitted that in terms of Section 139(1) of the Income-tax Act, an assessee has a right to file his return of income before the commencement of Assessment year or even before the closing of the accounting period. This fact has even been clarified by the Central Board of Direct Taxes in Instruction No.1531. Further section 176 of the Income-tax Act provides for completion of Assessments in cases of "Discontinuance of business or Dissolution". In Sub-Section (1) of this Section, discretion has been given to the assessing officer to charge to tax the income of the previous year before the commencement of the relevant assessment year. In Sub-Section (2) of this Section, it has been provided that such income shall be chargeable to tax at the rate or rates in force in that Assessment Year.

In the instant case, the assessee vide letter dated 20.10.1982 had written to the Income Tax Officer that:-

(i) The Constitution of the Firm has been changed with effect from 1.7.1982.

(ii) The Return of the Assessment year upto the date of change (Assessment year 1983-84) had been filed.

(iii) The assessment for Assessment year 1983-84 may be finalised at the earliest possible so that the additional tax liability if any could be ascertained.

The applicant exercised his powers in terms of Section 176(1),

completed the Assessment after proper enquiry and examination of the Accounts and charged tax at the rates prescribed in Section 176(2) of the Income-tax Act.

6. We are inclined to agree with the aforesaid submissions. The respondents have stated in their counter-affidavit that they are relying on the decision of this Tribunal in V.D. Tirvedi Vs. Union of India, ATR 1989(2) CAT 666. In that case, the Tribunal held that if there is prima facie evidence of misconduct on the part of a judicial or quasi-judicial authority, that authority cannot take shelter under any immunity from any proceedings, including disciplinary proceedings. Allowing the appeal filed by Shri Trivedi, the Supreme Court observed in its order dated 25.10.1990 that "the action taken by the applicant was quasi-judicial and should not have formed the basis of disciplinary action"(SLP[c] Nos.2635-36/1989 in Civil Appeal No.4986 of 1990).

7. We are bound by the aforesaid view expressed by the Supreme Court in Shri Trivedi's case. We, therefore, allow the application and set aside and quash the impugned memorandum dated 2.5.1989. The order passed on MP 219/91 on 8.2.1991 directing the respondents to open the sealed cover and implement the recommendations of the DPC, is hereby made absolute. There will be no order as to costs.

(D.K. CHAKRAVORTY)
MEMBER (A)

(P.K. KARTHA)
VICE CHAIRMAN(J)

SECTION-XIV

D.No 2442/91/ /SC/SEC.XIV
SUPREME COURT OF INDIA
NEW DELHI.

DATED: 2nd February, 1993.

From,

The Registrar(Judicial)
Supreme Court of India,
New Delhi.

To

The Registrar,
High Court of Delhi,
New Delhi.

CIVIL APPEALS NOS. 266- OF 267 OF 1993.
(Appeal by Special Leave granted by this Court's Order dated 27th January, 1993 in Petition for Special Leave to Appeal (Civil) Nos. 10905-10906 of 1991 against the judgment and order Dated the 8th February, 1991 and 22nd March, 1991 of the Central Administrative Tribunal, Prineipal Bench New Delhi in O.A. No. 2540 of 1989). and disposed of by this

Union of India & Ors. ...Appellants

Versus

Shri K.K. Dhawan ...Respondents

Sir,

I am directed to forward herewith under Rule6, ORDER XIII,S.C.R.1966 (As amended), a certified copy of the Order/Judgment of this Court dated 27th January, 1993 in the Appeal above-mentioned. A Certified copy of the Decree and the Original Records, if any, in the matter will be sent in due course.

Please acknowledge receipt.

Yours faithfully,

FOR REGISTRAR(JUDICIAL)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

423095

CIVIL APPEAL NOs.266-267 OF 1993
(Arising out of S.L.P.(C) Nos. 10905-06/91)

Union of India & Ors. ...Appellants

Vs.

Shri K.K.Dhawan ...Respondent

J U D G M E N T

Mohan,J.

Leave granted.

The respondent, while working as Income Tax Officer, Muktsar during the year 1982-83 completed certain assessments. A charge memorandum dated 2.5.1989 was served on him to the effect it was proposed to hold an inquiry against him under Rule 14 of the Central Civil Services (Classification, Central & Appeal) Rules, 1965. A statement of article of charge framed against him was to the following effect:

STATEMENT OF ARTICLE OF CHARGE FRAMED AGAINST SHRI K.K.DHAWAN, A GROUP 'A' NOW POSTED AS ASSISTANT COMMISSIONER OF INCOME TAX,BOMBAY.

Article I

Shri K.K.Dhawan, while functioning as I.T.O. "A" Ward, Muktsar during 1982-1983 completed nine assessments in the case of :

(1) M/s Chananna Automobiles,

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(2) M/s Gupta Cotton Industries,
(3) M/s Ajay Cotton Industries,
(4) M/s National Rice Mills,
(5) M/s Tek Chand Buchram,
(6) M/s Tilak Cotton Industries,
(7) M/s Chandi Ram Behari Lal,
(8) M/s Phuman Mal Chandi Ram, and
(9) M/s Modern Tractors,

in an irregular manner, in undue haste and apparently with a view to conferrring undue favour upon the assessees concerned.

By his above acts Shri Dhawan failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of a Govt. servant, thereby violating provisions of Rules 3(1) (i), 3(i) (ii) and 3(1) (iii) of the CCS (conduct) Rules, 1964.

This was accompanied by a statement of imputation of his misconduct or misbehaviour in support of the article of charge framed against him.

In each of the nine cases of the assessees above referred to, the details relating to misconduct or misbehaviour were furnished. Therefore, it was charged that the respondent had violated the provisions of Rule 3(1) (i), 3(1) (ii) and 3(1)(iii) of the Central Civil Services (conduct) Rules, 1964. The necessary documents in support of these allegations were also enclosed.

Against the said memorandum dt. 2.5.1989, the respondent preferred an application O.A. No. 2540/89 before the Central Administrative Tribunal, New Delhi praying for a stay of the disciplinary proceedings and to consider his case for promotion on merits without resort to the sealed cover procedure.

By its order dated 8.2.1991, Central Administrative Tribunal, Principal Bench, New Delhi directed the

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respondent Union of India to open the sealed cover immediately and implement the recommendations of the Departmental Promotion Committee in so far as it pertained to the petitioner and to promote him to the post of Deputy Commissioner of Income Tax if he was found fit for promotion within two weeks from the date of said order.

Thereafter, by a detailed judgment dated 22.3.1991, the Tribunal relying on S.L.P.(C) Nos. 2635-36/89 in Civil Appeal No. 4986-87/90, held that the action taken by the officer was quasi-judicial and should not have formed the basis of disciplinary action. Therefore, the application was allowed and the impugned memorandum dated 2.5.1989 was quashed. The earlier order dated. 8.2.1991 to open the sealed cover and implement the recommendations of Departmental Promotion Committee was made absolute.

Aggrieved by these two orders, the present special leave petitions have been preferred.

The learned counsel for the appellant Shri K.T.S. Tulsi submits as under:

i) That in a case where disciplinary proceedings are pending against the respondent, the procedure of opening the sealed cover should not have been resorted to. Otherwise, it would amount to putting a premium on misconduct.

ii) The Tribunal failed to appreciate the ratio of the order in C.A. Nos. 4986-87/90. In that case, the enquiry report showed that the charge framed against the officer had not been proved. That is entirely different from holding that in a case of quasi-judicial action taken by the officer no disciplinary action could be taken. The true purport of that observation is only to buttress the earlier finding that the charge had not been proved. Therefore, reliance ought not to have been placed on this ruling which turned on the peculiar facts and circumstances of that case.

iii) Though nine cases were cited in the charge memorandum, only one of the cases had been discussed.

iv) Lastly, it is submitted that the respondent is charged for violation of Rule 3(1)(i), 3(1) (ii) & 3(1) (iii) of Central Civil Services (conduct) Rules, 1964.

Therefore, if the conduct of the respondent could be brought within the scope of the Rules, immunity from the disciplinary action cannot be claimed.

In support of these submissions, reliance is placed on Union of India & Ors. Vs. A.N.Saxena, 1992 (3) SCC

124.

In Civil Appeal No. 560 of 1991, the peculiar facts are different; in disregard to the instructions of the Central Board of Direct Taxes, refund of taxes was ordered. Further, there was no allegation of corrupt motive or to oblige any person on account of extraneous considerations. Therefore, that ruling is distinguishable.

The respondent would try to support the impugned order contending that the opening of the sealed cover was correctly ordered because on the date when the Departmental Promotion Committee met in March 1989, no charge-sheet had been served on the respondent. The charge memorandum dated 2.5.1989 came up to be served only on 5.5.1989. Therefore, following the earlier procedure such a direction was given.

This is a case in which the respondent was exercising quasi-judicial functions. If the orders were wrong the remedy by way of an appeal or revision could have been resorted to. Otherwise, if in every case of wrong order, disciplinary action is resorted to, it would jeopardise the exercise of judicial functions. The immunity attached to the officer while exercising quasi-judicial powers will be lost. Rightly, therefore, the Tribunal relied on Civil Appeal Nos. 4986-87/90 where this Court took the view that no disciplinary action can

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be taken in respect of exercising quasi-judicial functions. To the same effect in Civil Appeal No. 560/91 the decision relied on by the appellant namely Union of India & Ors (1992)3 SCC 124 (supra) has no application to the instant case.

The charge memorandum dated 2.5.1989 states as follows:

MEMORANDUM

"The President proposes to hold an inquiry against Shri K.K.Dhawan under Rule 14 of the Central Civil Services (Classification, Central & Appeal) Rules, 1965. The substance of the imputations of misconduct or misbehaviour in respect of which the inquiry is proposed to be held is set out in the enclosed statement of article of charge."

At this stage, we will refer to Rule 3(1)(i), 3(1)(ii) and 3(1)(iii) of the Central Civil Services (conduct) Rules, 1964 which are as under:

Rule 3 (1): Every government servant shall at all time-

(i) maintain absolute integrity;
(ii) maintain devotion to duty; and
(iii) do nothing which is unbecoming of a government servant.

The substance of the charge is the completion of nine assessments in a irregular manner, hastily with a view to confer undue favour upon the various assessees. By such act, the respondent failed to maintain absolute integrity and devotion to duty and exhibited a conduct unbecoming of government servant. Certainly, it cannot be contended that concerning the violation of these rules, no disciplinary action could be taken. However,

what is urged is that in so far as the respondent was exercising quasi-judicial functions, he could not be subject to disciplinary action. The order may be wrong. In such a case, the remedy will be to take up the matter further in appeal or revision.

The question, therefore, arises whether an authority enjoys immunity from disciplinary proceedings with respect to matters decided by him in exercise of quasi-judicial functions?

In Govinda Menon vs. Union of India AIR 1967 SC 1274, it was contended that no disciplinary proceedings could be taken against appellant for acts or ommissions with regard to his work as Commissioner under Madras Hindu Religious and Charitable Endowments Act, 1951. Since the orders made by him were quasi-judicial in character, they should be challenged only as provided for under the Act. It was further contended that having regard to scope of Rule 4 of All India Services (Discipline and Appeal) Rules, 1955, the act or ommission of the Commissioner was such that appellant was not subject to the administrative control of the Government and therefore, the disciplinary proceedings were void. Rejecting this contention, it was held as under:

> "It is not disputed that the appropriate Government has power to take disciplinary proceedings against the appellant and that he

could be removed from service by an order of the Central Government, but it was contended that I.A.S. Officers are governed by statutory rules, that 'any act or omission' referred to in Rule 4(1) relates only to an act or omission of an officer when serving under the Government, and that 'serving under the Government' means subject to the adminstrative control of the Government and that disciplinary proceedings should be, therefore, on the basis of the relationship of master and servant. It was argued that in exercising statutory powers the Commissioner was not subject to the adminstrative control of the Government and disciplinary proceedings cannot, therefore, be instituted against the appellant in respect of an act or omission committed by him in the course of his employment as Commissioner. We are unable to accept the proposition contended for by the appellant as correct. Rule 4(1) does not impose any limitation or qualification as to the nature of the act or omission in respect of which disciplinary proceedings can be instituted. Rule 4(1)(b) merely says that the appropriate Government competent to institute disciplinary proceedings against a member of the Service would be the Government under whom such member was serving at the time of the commission of such act or omisssion. It does not say that the act or omission must have been committed in the dischrge of his duty or in the course of his employment as a Government servant. It is, therefore, open to the Government to take disciplinary proceedings against the appellant in respect of his acts or omissions which cast a reflection upon his reputation for integrity or good faith or devotion to duty as a member of the service. It is not disputed that the appellant was, at the time of the alleged misconduct, employed as the First Member of the Boaord of Revenue and he was at the same time performing the duties of Commissioner under the Act in addition to his duties as the First Member of the Board of Revenue. In our opinion, it is not necessary that a member of the Service should have committed the alleged act or omission in the course of discharge of his duties as a servant of the Government in order that it may form the subject-matter of disciplinary proceedings. In other words, if the act or omission is such as to reflect on the reputation of the officer for his integrity or good faith or devotion to duty,

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there is no reason why disciplinary proceedings should not be taken against him for that act or omission even though the act or omission relates to an activity in regard to which there is no actual master and servant relationship. To put it differently, the test is not whether the act or omission was committed by the appellant in the course of the discharge of his duties as servant of the Government. The test is whether the act or omission has some reasonable connection with nature and condition of his service or whether the act or omission has cast any reflection upon the reputation of the member of the Service for integrity or devotion to duty as a public servant. We are of the opinion that even if the appellant was not subject to the administrative control of the Government when he was functioning as Commissioner under the Act and was not the servant of the Government subject to its orders at the relavant time, his act or omission as Commissioner could form the subject-matter of disciplinary proceedings provided the act or omission would reflect upon his reputation for integrity or devotion to duty as a member of the service." In this context reference may be made to the following observations of Lopes, L.J. in Pearce V. Foster, (1866) 17 QBD 536, p.542.

> "If a servant conducts himself in a way inconsistent with the faithful discharge of his duty in the service, it is misconduct which justifies immediate dismissal. That misconduct, according to my view, need not be misconduct in the carrying on of the service of the business. It is sufficient if it is conduct which is prejudicial or is likely to be prejudicial to the interests or to the reputation of the master, and the master will be justified, not only if he discovers it at the time, but also if he discovers it afterwards, in dismissing that servant." (emphasis supplied)

Concerning, the exercise of quasi-judicial powers the contention urged was to the following effect:

> "We next proceed to examine the contention of the appellant that the Commissioner was exercising a quasi-judicial function in sanctioning the leases under the Act and his

orders, therefore, could not be questioned except in accordance with the provisions of the Act. The proposition put forward was that quasi judicial orders, unless vacated under the provisions of the Act, are final and binding and cannot be qustioned by the executive Government through disciplinary proceedings. It was argued that an appeal is provided under S.29(4) of the Act against the order of the Commissioner granting sanction to a lease and that it is open to any party aggrieved to file such an appeal and question the legality or correctness of the order of the Commisioner and that the Government also may in revision under S.99 of the Act examine the correctness or legality of the order. It was said that so long as these methods were not adopted the Government could not institute disciplinary proceedings and re-examining the legality of the order of the Commissioner granting sanction to the leases."

That was rejected as under:

"The charge is, therefore, one of misconduct and recklessness disclosed by the utter disregard of the relevant provisions of S.29 and the Rules thereunder in sanctioning the leases. On behalf of the respondents it was argued both by Mr. Sarjoo Prasad and Mr. Bindra that the Commissioner was not discharging quasi judicial functions in sanactioning leases under S.29 of the Act,but we shall proceed on the assumption that the Commissioner was performing quasi judicial functions in granting leases under S.29 of the Act. Even upon that assumption we are satisfied that the Government was entitled to institute disciplinary proceedings if there was prima facie material for showing recklessness or misconduct on the part of the appellant in the discharge of his official duty. It is true that if the provisions of S.29 of the Act or the Rules are disrgarded the order of the Commissioner is illegal and such an order could be questioned in appeal under S.29 (4) or in revision under S.99 of the Act. But in the present proceedings what is sought to be challenged is not the correctness or the legality of the decision of the Commissioner but the conduct of the appellant in the discharge of his duties as Commissioner. The appellant was proceeded against because in the discharge of his functions, he acted in utter disregard of the

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provisions of the Act and the Rules. It is the manner in which he discharged his functions that is brought up in these proceedings. In other words, the charge and the allegations are to the effect that in exercising his powers as Commissioner the appellant acted in abuse of his power and it was in regard to such miscoduct that he is being proceeded against. It is manifest, therefore, that though the propriety and legality of the sanction to the leases may be questioned in appeal or revision under the Act, the Government is not precluded from taking disciplinary action if there is proof that the Commissioner had acted in gross recklessness in the discharge of his duties or that he failed to act honestly or in good faith or that he omitted to observe the prescribed conditions which are essential for the exercise of the statutory power. We see no reason why the Government cannot do so for the purpose of showing that the Commissioner acted in utter disregard of the conditions prescribed for the exercise of his power or that he was guilty of misconduct or gross negligence. We are accordingly of the opinion that the appellant has been unable to make good his argument on this aspect of the case."

The above case, therefore, is an authority for the proposition that disciplinary proceedings could be initiated against the government servant even with regard to exercise of quasi judicial powers provided:

i) The act or omission is such as to reflect on the reputation of the government servant for his integrity or good faith or devotion to duty, or

ii) there is prima facie material manifesting recklessness or misconduct in the discharge of the official duty, or

iii) the officer had failed to act honestly or in good faith or had omitted to observe the prescribed conditions which are essential for the exercise of statutory power.

We may also usefully refer to two English decisions. Thayre vs. The London, Brighton and South Coast Railway Company, 22 T.L.R.240 states:

> " 'Dishonesty' included dishonesty outside the service of the company as well as dishonesty towards the company."

In Thompson Vs. British Berna Motor Lorries Limited 33 T.L.R. 187 at page 188, it has been held as under:

> "It was the duty of the servant to render proper, full, and clear accounts to his principals, and it was the duty of a servant to render prompt obedience to the lawful orders of his master. In this case the plaintiff had failed in both respects. There was no question as to the plaintiff's honesty, but he had been negligent."

The Tribunal has chosen to rely on Civil Appeal Nos. 4986-87/90. The order in that case clearly shows the ultimate conclusion was that the charge framed against the delinquent officer had not been established. In support of that conclusion, it was observed as under:

> "We are also of the view that the action taken by the appellant was quasi judicial and should not have formed the basis of disciplinary action."

We do not think where to butteress the ultimate conclusion, this observation was made, that could ever

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be construed as laying down the law that in no case disciplinary action could be taken if it pertains to exercise of quasi-judicial powers.

Then, we come to Civil Appeal No. 560/91 to which one of us (Mohan,J) was a party. The ruling in this case turned on the peculiar facts. Nevertheless, what we have to carefully notice is the observation as under:

> "On a reading of the charges and the allegations in detail learned Additional Solicitor General has fairly stated that they do not disclose any culpability nor is there any allegation of taking any bribe or to trying to favour any party in making the orders granting relief in respect of which misconduct is alleged against the respondent."

The above extract will clearly indicate that if there was any culpability or any allegation of taking bribe or trying to favour any party in exercise of quasi-judicial functions, then disciplinary action could be taken. We find our conclusion is supported by a following observations found in the said order at page: 3:

> "In our view, the allegations are merely to the effect that the refunds were granted to unauthorised instructions of the Central Board of Direct Taxes. <u>There is no allegation, however, either express or implied that these actions were taken by the respondent actuated by any corrupt motive or to oblige any person on account of extraneous considerations.</u> In these circumstances, merely because such orders of refunds were made, even assuming that they were erroneous or wrong, no disciplinary action could be taken as the respondent was discharging quasi-judicial function. If any erroneous order had been

passed by him the correct remedy is by way of an appeal or revision to have such orders set aside."

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. 560/91. If that be so, certainly disciplinary action is warranted. This Court had occasion to examine the position. In Union of India & Ors. Vs. A.N.Saxena (1992)3 SCC 124 to which one of us (Mohan,J) was a party, it was held as under:

"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

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> 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 likely 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."

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.

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 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."

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.

In view of the foregoing discussion, the appeals will stand allowed. There will be no order as to costs.

We make it clear that it is open to the respondent to put forth all defences open to him in the departmental inquiry which will be considered on its merit.

.....CJI

.....J
(S.Mohan)

.....J
(S.P.Bharucha)

New Delhi,
January 27th, 1993.